

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER
RE:
PROPOSAL OF VERIZON NEW ENGLAND TO IMPOSE A LATE CHARGE
ON RESIDENTIAL CUSTOMERS
March 29, 2006

DTE 06-26

On February 3, 2006, Verizon New England, Inc. (“Verizon”) filed with the Department of Telecommunications and Energy (“Department”) a proposed tariff change that would allow Verizon to impose a late payment charge of 1.5% on late payments. On March 3, the Department suspended implementation of the tariff filing until June 5. On March 9, the Department issued a “Request for Comment” allowing interested parties to file comments by March 22. Upon the request of the National Consumer Law Center (“NCLC”), the Department extended the comment deadline to March 29. NCLC appreciates the willingness of the Department to allow additional time for comments.

NCLC opposes Verizon’s proposal. In its comments below, NCLC makes the following arguments:

1. Many advocates for low-income customers see this as an extremely dangerous proposal for their clients. NCLC received an unprecedentedly large volume of comments from front-line advocates, caseworkers and service workers across the state, all strongly opposed to Verizon’s plan.
2. Verizon itself notes that only 5% of its customers are two or more months behind on their bills. Most of these customers are likely low-income households, and the burden of late charges will therefore fall squarely on the shoulders of those who cannot afford to pay the current charges, let alone additional late charges. There is no doubt that this proposal disproportionately burdens low-income people. Seeking late charges from low-income

people will actually increase the likelihood of non-payment rather than increasing collections from these households, as they already cannot afford to pay their current charges.

3. Verizon's proposal is completely contrary to the current direction of policy regarding low-income customers and utility bill payments, as expressed in Department precedent (*Barnstable Water Co., 91-189-A*) and in the HEAT legislation, Section of Chapter 140 of the Acts of 2005. Increasingly, state policies foster allowing low-income households additional time to pay their utility bills rather than penalizing them for their inability to pay.
4. If the Department allows the adoption of any late charges (which NCLC strongly opposes):
 - A. Verizon should exempt low-income customers, including those receiving Lifeline or LIHEAP (fuel assistance) from these charges, and
 - B. The Department should limit the late charge to .5%, for those customers not exempt.

I. Low-income Advocates Are Very Concerned About This Issue

At the outset, NCLC wishes to note that Verizon's proposal has aroused a great deal of concern among advocates, caseworkers and other front-line staff who help low-income families and seniors to keep up with their utility bills and avoid termination of service. NCLC maintains an e-mail "list serve," that is, an e-mail network through which approximately 300 people in Massachusetts who help low-income families with their utility problems are able to share information and inquiries. When NCLC posted notice of the proceedings in DTE 06-26, we quickly received over a dozen comments from around the state, all of them strongly opposed to the proposal, including the following:

[Legal services worker]: "I don't think that I've come across a client that isn't regularly behind in their phone bill. . . . The charge that Verizon proposes will increase the debt and create the potential for larger more unmanageable balances for our clients. Does Verizon propose to charge the fee to customers that have special protections in place? How about those customers on Lifeline?"

[Municipal employee]: “This proposal . . . will [be] disastrous for homeless families and low income families on the edge of financial upheaval. Many families are homeless due to financial hardship and in order to secure future housing they have to clear outstanding bills piecemeal. . . 99% of the families I work with have utility arrearages and outstanding phone bills . . . This fee will make it more difficult, if not impossible for them to have a home phone.”

[Employee of non-profit agency]: “This type of ‘late payment charge’ will cause families to lose phone service, create bad debt histories and as such severely impact families being able to obtain housing of any sort due to landlords looking at credit histories . . . The vast majority of all clients we see in shelter . . . have phone debt.”

[Community development corporation employee]: “. . . This type off penalty if approved would have a devastating effect on the clients we serve. . . It is going to cause problems for many people who do not have the ability to pay within the time given resulting in additional charges . . .”

[Director of a shelter program for homeless families]: “If [customers’] bills were to increase due to being late it would . . . create a system [where they] would not be able to ‘catch up.’ We serve 50 families in shelters and many of them are frequently behind in their bills.”

[Fuel assistance worker/financial counselor]: “As for the late fees proposal, I think it would hurt my clients terribly. They try to pay what they can, when they can. . . This late fees thing would come down harder on them.”

[Elder home care worker]: “”The interest fee should be opposed across the board.”

[Fuel assistance director]: “At the risk of stating the obvious - low income households are having a difficult time with any/all utility and phone payments and late fees would be regressive and punitive.”

[Community action program executive director]: “”The majority of our clients live (pay) check to (pay) check and have limited resources as it is . . . so I see these charges as just less financial resources for our clients.”

II. Verizon’s Proposal Will Fall on the Shoulders of the State’s Neediest Citizens.

Verizon in its filing notes that “approximately 10% of VerizonMA’s residence customer bills were paid one month late and 5% were paid two or more months late.”¹ Presumably, Verizon is primarily concerned about those customers who are two months or more late in

¹ February 3, 2006 letter from John L. Conroy to the DTE.

payment, and not as concerned about customers who pay one month late, that is, close to the payment due date.² It is highly likely that most of the 5% of households who pay two or months late are financially unable to pay more quickly, and therefore that a late payment charge is not likely to increase collections by the company. If anything, increasing the amount due makes it less likely that these households will pay, as even their current bills are beyond their financial ability to pay.

While NCLC does not have ready access to the number of Verizon's residential customers in Massachusetts, the U.S. Census Bureau counted 2,443,580 total Massachusetts households as of 2000, and it is a reasonable assumption that Verizon does not have measurably more residential customers than there are residential households. Of those 2.4 million total households, 9.3% were living at or below 100% of the federal poverty guideline.³ But a far larger number, 578,000, more than 20% of all households, live at or below 200% of poverty, the level that would qualify a household for fuel assistance (LIHEAP) and also for Verizon's Lifeline discount. Thus, far more Massachusetts households are income-eligible for Lifeline and LIHEAP than the percentage of customers Verizon states are at least one month behind in paying their bills, and it is a reasonable assumption that a large majority of the late-payers simply do not have the ability to pay more promptly. There is an extremely strong correlation between income and both late payment and disconnections of telephone service. As shown in Appendix A, households in the lowest income quintile are more than 7 times as likely to have their phone

² See Verizon response to DTE Info Req. 1-10 for an explanation of the timing of when late charges are imposed.

³ U.S. Census Bureau, State and County Quick Facts, Households.

service disconnected as upper income households. Appendix B shows that households in the lowest income quintile are also roughly 7 times as likely to have failed to pay their fuel oil, gas or oil bill in full, compared to households in the highest quintile.⁴ Imposing a late charge on households who cannot afford to pay will not increase Verizon's collections and may in fact only serve to increase the number of households who do not have wireline service.⁵

III. Verizon's Proposal is Contrary to State Policy

Massachusetts, both through legislative action and rules adopted by the Department, has long been a national leader in developing policies that assist low-income households to stay connected to their electric, gas and telephone service. For example, Massachusetts has some of the strongest protections in the country to protect low-income households from losing their electric, gas or telephone service if someone in the house is seriously ill.⁶ The state also imposes a moratorium on terminations of heat-related utility service during the winter months⁷ and requires

⁴ It is also worth noting that unmarried adults raising children are by far the least likely to pay their utility bills in full, while married couples with no children are the most likely to pay in full. This further supports NCLC's position that ability to pay is the primary determinant of whether utility customers in fact do pay on time. See Appendix C.

⁵ Telephone subscribership in the United States peaked in March 2003, at 95.5% of all households. In the subsequent two years, it declined sharply to 92.4%. FCC, "Telephone Subscribership in the United States (data through March 2005)", Table 1. The causes of the decline are not well understood, but the Department should be concerned about a large charge policy that may serve to further decrease subscribership.

⁶ 220 C.M.R. 25.03 (serious illness rules governing electric, gas and water); DPU 18448, Rule 5.15 (Rules and Practices Relating to Telephone Service to Residential Customers).

⁷ 220 C.M.R. 25.03.

companies to offer deferred payment arrangements (“payment plans”) on overdue bills.⁸

Verizon is prohibited from imposing interest or late charges on payments made after the due date, if those late payments are under a deferred payment agreement.⁹

Because of the recent, large increases in electric and gas utility rates and, consequently, arrearages, the legislature and the Department in the past several months have adopted innovative policies to help low-income customers who fall behind in paying their bills. The so-called HEAT legislation, Ch. 140 of the Acts of 2005, directed electric and gas companies to propose arrearage management programs under which the companies will write off a portion of the arrears owed if the customer stays current with an agreed-upon payment plan. The Department promptly approved those utility proposals, with minor modifications in some instances.¹⁰

Verizon’s proposal is completely contrary to this current direction in state policy. Rather than finding better ways to work with its low-income customers who fall behind in payment, the company proposes a late charge that would simply increase their financial burdens, making it even harder for these customers to avoid termination of phone service. The Department should reject this dangerous proposal.

The Department has previously addressed the request of a utility company, one that was not legally prohibited from charging late charges, for approval to impose a 1.5% per month charge on all bills unpaid after 45 days. In *Barnstable Water Co.*, DPU 91-189-A, the company sought to impose the 1.5% per month charge, noting that fully 20% of its accounts were more

⁸ 220 C.M.R. 25.02(6) (electric, gas, water); DPU 18448, Part 7 (telephone).

⁹ *Id.*

¹⁰ The docket is DTE 05-86.

than 45 days overdue (a significantly larger percentage than Verizon has alleged here), and that there was no statutory prohibition against water companies imposing late charges on residential customers. The Department flatly rejected the proposal to add late charges to residential bills:

[W]e find there to be a *strong public policy against charging interest on residential accounts for utility service*. This policy is reflected in G.L. c. 164, § 94D, which prohibits gas and electric companies from imposing penalties on residential customers with delinquent accounts. Because water, like gas and electricity, is an essential service, and because the statute does not direct a contrary result, we consider it appropriate that a policy against the imposition of interest penalties on residential accounts be adopted by the Department for the protection of water company customers.

(Emphasis added). NCLC urges the Department to reach the same conclusion as to wireline service provided by Verizon.

IV. If the Department Allows Late Charges, Which NCLC Strongly Opposes, It Should Reduce the Allowed Interest Rate and Exempt Low-income Customers

NCLC strongly opposes Verizon's proposal to impose late charges on overdue bills. However, in the event that the Department is inclined to allow any charge, NCLC urges the Department to reduce the interest rate and exempt low-income customers.

Verizon's proposed 1.5% late charge is simply too high and not supported by any data filed by Verizon. Verizon only offers that "1.5% is the same as the rate applied by other competitive carriers, such as Comcast, to overdue residence accounts."¹¹ The Department's role, however, is not to allow Verizon to charge the highest rate of interest that the market will bear, but to protect the public interest. Here, Verizon cannot argue that the 1.5% charge is in any way meant to compensate it for the cost of having to terminate service or even of , e.g., going to court to collect on an account. The 1.5% charge is nothing more than a routine charge imposed on

¹¹ February 3, 2006 letter from John L. Conroy to the DTE.

accounts that have not yet been terminated or, in most instances, yet sent to collection. The late charge, if allowed at all, should therefore only reflect Verizon's reasonable cost of money. Large and financially-sound companies such as Verizon can generally float bonds at rates between 5% and 6%¹², and Verizon should therefore not be allowed to charge a late payment fee of more than .5% per month, which equates to approximately 6% per year. Because late charges will fall predominantly on people who have a limited ability to pay on time, it is important that the Department ensure that late charges do not become a profit center built on the backs of poor and working people.

Further, if the Department considers allowing the imposition of a later charge, it should exempt low-income customers from that charge, automatically including as exempt customers on the Lifeline rate or receiving fuel assistance, and such other customers as the Department's Consumer Division may approve. A late charge is extremely unlikely to act as an incentive for prompt payment when imposed on people who simply cannot afford to pay on time. Moreover, the late charge will likely lead to more low-income customers being terminated from their utility service. Third, allowing late charges to be imposed on any residential is contrary to state policy as reflected, *inter alia*, in the Department's decision in the *Barnstable Water* case and in G.L. c. 164, §94D, and should be seen as particularly inappropriate in the case of low-income households.

¹² For example, the March 28, 2006 New York Times, p. C18, lists A-rated corporate bonds with coupon rates between 2.8% and 7.1%, and actual yields between 4.96% and 6.09%.

V. Conclusion

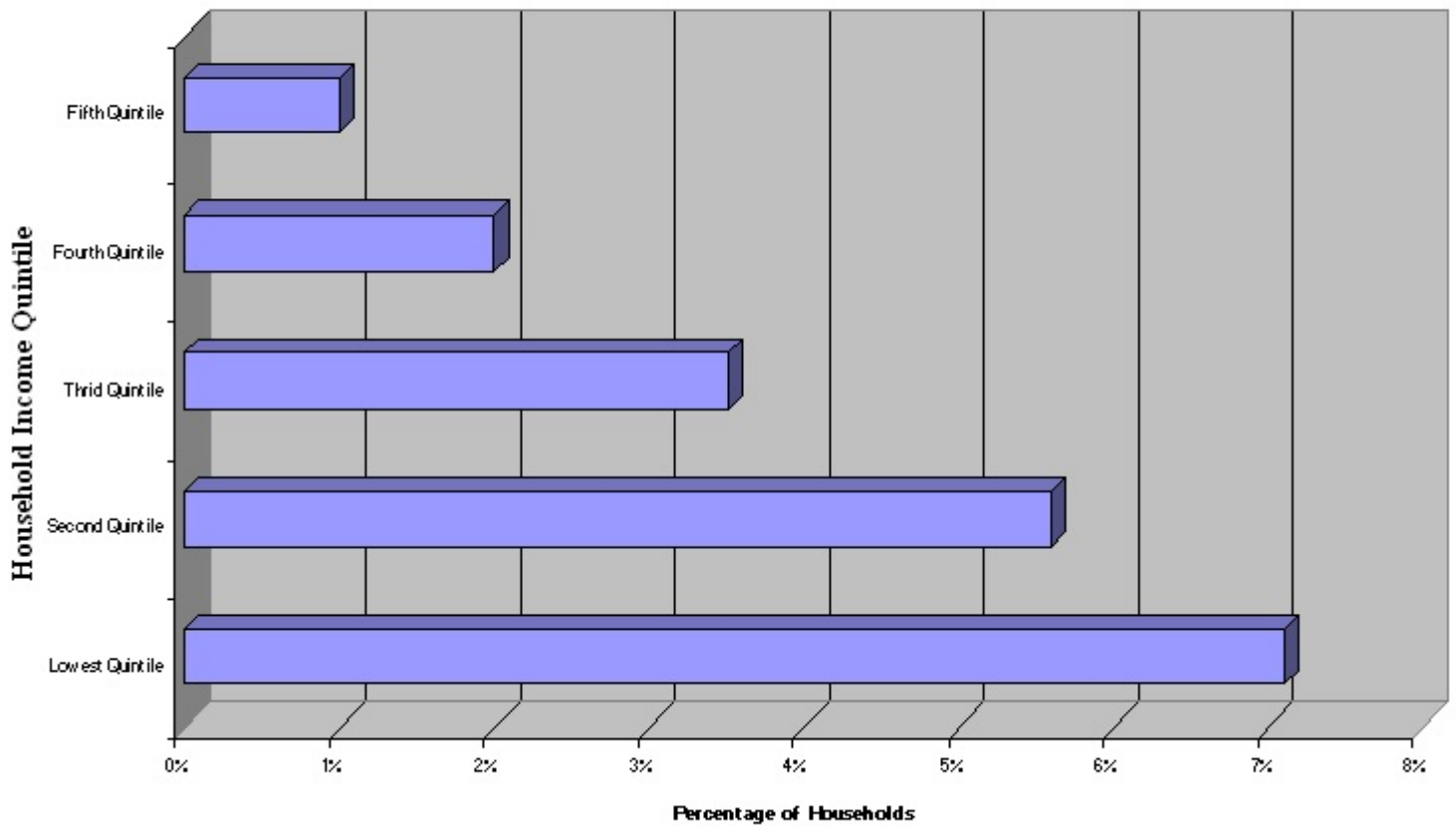
NCLC urges the Department to reject Verizon's proposal for the reasons noted above.

Respectfully submitted,

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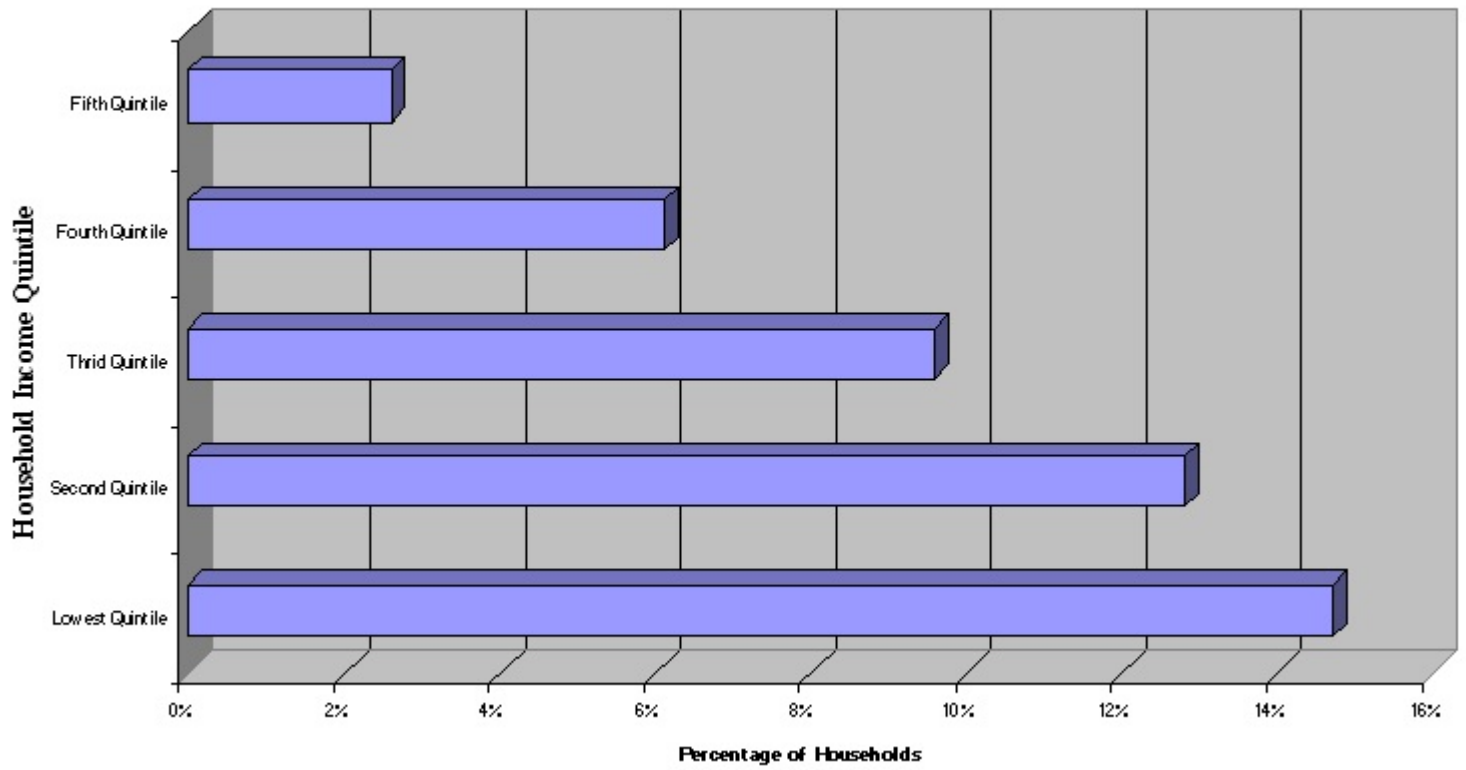
App. A: Percentage of U.S. Households With Disconnection of Telephone Service in 1998



Source for Appendices A, B & C:

U.S. Census Bureau, Survey of Income and Program Participation, 1996 Panel, Wave 8
Release date: May 2003

App. B: Percentage of U.S. Households that Did Not Pay Full Oil, Gas or Electric Bill in 1998



App. C: Percentage of U.S. Households that Did Not Pay Full Oil, Gas or Electric Bill in 1998

