

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: ESTABLISHING BILLING AND TERMINATION PRACTICES
FOR TELECOMMUNICATIONS CARRIERS

DTE 06-8

INITIAL COMMENTS OF THE NATIONAL CONSUMER LAW CENTER

I. INTRODUCTION

On April 7, 2006, the Department opened this docket to establish billing and termination regulations for telecommunications carriers. The Department's "Order Opening a Notice of Inquiry" ("NOI") notes that Verizon's billing and termination practices date back to an order issued almost thirty years ago in DPU 18448, when Verizon's predecessor operated under the name NYNEX-New England Telephone Company. These "Rules and Practices Relating to Telephone Service to Residential Customers" directly apply to Verizon, while other "[c]ompanies who wish to provide telecommunications services to presubscribed residential customers" must file billing practices that are similar in substance.¹

DPU 18448 pre-dates the breakup of the American Telephone & Telegraph Company into regional Bell operating companies; pre-dates the birth of the Internet; and pre-dates the growing plethora of means by which consumers and businesses can communicate with one another, such as cell phones, text messaging, VOIP ("voice over internet protocol"), e-mail, etc. While telecommunications technology is evolving at a rapid clip and companies are broadening the scope of choices for consumers, we urge the Department to protect and promote access to basic wireline and wireless

¹ See the introduction to "Rules and Practices Relating to Telephone Service to Residential Customers."

telecommunications service for low-income households. We also urge the Department to address the special telecommunication needs of consumers with disabilities. We recommend that as technologies other than basic wireline and wireless service become more commonplace that the Department should extend these programs and protections to those technologies.

The Department has embarked on an ambitious agenda with this billing and terminations protections docket. Consumers could substantially benefit from rules that apply to the vastly changed marketplace that now exists. They could also benefit by the Department formally adopting the core billing and termination practices that apply to telecommunications carriers as part of the Department's regulations, to make those rules readily accessible to consumers and practitioners before the Department.

The National Consumer Law Center (NCLC) urges the commission to keep in mind the telecommunications needs of low-income households. Phone service is a modern necessity. It is critical for finding work; maintaining connections with family, friends and the community; participating in the marketplace; engaging in civic activities, such as calling elected officials and government agencies; and calling for assistance when medical or other emergencies arise. In addition, the more people connected to the telecommunications network, the more valuable the network is. Federal telecommunications policy strongly supports making telecommunications service available to all Americans, including low-income households who may have a hard time paying for those services:

Quality services should be available at just, reasonable, and affordable rates. . . Access to advanced telecommunications and information services should be provided in all regions of the Nation. . . Consumers in all regions of the Nation, including low-income consumers and those in rural,

insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. 47 U.S.C. § 254 (b).

We believe that strong, enforceable consumer protection rules concerning the day-to-day telecommunication needs of low-income clients are necessary to encourage a healthy marketplace.² The telecommunications market is an oligopoly with few, very large players who set the rules on their own terms and are not particularly subject to consumer pressure.³ NCLC urges the Department to formally adopt protective rules to promote and preserve affordable basic telecommunications service to low-income consumers.

II. RESPONSE TO QUESTIONS POSED BY THE DPEARTMENT⁴

A.1: What billing and termination or other consumer protection practices are necessary for today's marketplace?

Today's telecommunications marketplace is a confusing and frustrating one for consumers. Numerous surveys have documented consumer frustration with the telecommunications industry. Telephone services have made it on to the Federal Trade Commission's (FTC) Top 10 Consumer Complaints list for the past five years.⁵

² See NOI, p. 4 ("customers must receive certain basic consumer protections . . . even in a competitive market").

³ Incumbent local exchange carriers ("ILECs"), of which Verizon is by far the largest, control around 79% of the Massachusetts residential market. NCLC seriously questions the ability of the market to restrain the ILECs from increasing their prices, limiting choices, or imposing less desirable terms and conditions of service.

⁴ NCLC does not respond to all of the questions posed by the Department. In particular, NCLC takes no position on the questions addressing business customers or to some of the questions that address emerging technologies such as VOIP. Also, in most instances NCLC's headings for each question are shortened versions of the complete question as appearing in Attachment 1 to the NOI.

⁵ "FTC Releases Top 10 Consumer Fraud Complaint Categories," FTC Press release, January 25, 2006, available at <http://www.ftc.gov/opa/2006/01/topten.htm>; and similar, earlier FTC releases available at <http://www.ftc.gov/opa/2005/02/top102005.htm>; at <http://www.ftc.gov/opa/2004/01/top10.htm>; at <http://www.ftc.gov/opa/2003/01/top10.htm>; at www.ftc.gov/opa/2002/01/idtheft.htm.

According to the American Customer Satisfaction Index, wireline and wireless phone services rank lower in customer satisfaction than other industries.⁶ In 2004, the last year these data were reported, the Council of Better Business Bureaus (CBBB) reported that cell phone companies were the second most complained about industry, behind car dealers as the most complained about industry. Internet services ranked fourth and telephone companies ranked 9th on the CBBB list of most complained about businesses.⁷ CBBB also reports that billing problems were noted in two-thirds of the cell phone complaints in 2003. Consumers have also been experiencing problems with newer telecommunications technologies and with new service packages.⁸

Low-income households and disabled consumers need strong consumer protections in the areas of:

- Non discrimination in access to services and terms of service
- Notice and disclosure
- Adequate time for consumers to act
- Fair and accessible basic telephone service (e.g., payment plans, serious illness, elderly, personal emergency protections, Lifeline outreach)

⁶ American Customer Satisfaction Index, "First Quarter Scores: Utilities; Transportation & Warehousing; Information; Health Care & Social Assistance; Accommodation & Food Services" and Commentary by Professor Claus Fornell available at www.theasci.org/first_quarter.htm.

⁷ CBBB news alert, "Better Business Bureau Analysis of Cell Phone Complaints Reveals Root Causes of Customer Dissatisfaction," at www.bbb.org/alerts/article.asp?ID=511 May 4, 2004 and "BBB Services Nationwide Surged in 2003: Businesses Ranked by Inquiries and Complaints" May 4, 2004 available at www.bbb.org/Alerts/article.asp?ID=510.

⁸ Shawn Young and Li Yuan, "Vonage Faces User Complaints as IPO Looms," Wall Street Journal, May 18, 2006; Lynn Cowan, "Vonage IPO Declines in Debut," Wall Street Journal, May 24, 2006 (Vonage struggling with service problems); Yuki Noguchi, "No bundle of Joy: Some Buyers Find Packaged Telecom Services a Tangle of Trouble," Washington Post, March 22, 2006.

- Fair billing and collections practices: including segregation and disclosure of all mandatory taxes and non-mandatory fees so that consumers can make an apples-to-apples comparison
- Privacy
- Protections regarding unfair marketing and marketplace abuses
- Redress/complaint and appeals
- Service quality

A.2: Are there certain issues for which specific requirements are needed and other issues for which general guidelines would be appropriate?

NCLC urges the Department to establish mandatory and specific requirements in order to protect consumers, primarily by adopting regulations that preserve and expand upon existing policies that help low-income and elderly customers maintain their telephone service. The telecommunications marketplace is far more competitive than 30 years ago, when the Department adopted the current rules and practices incorporated in DPU 18448. Customers can not only choose among various providers of a particular service, such as long-distance dialing or wireless service, but can also choose to use one communications medium (e.g., e-mail) instead of another (e.g., a local or long distance phone call). In this more competitive environment, telecommunications companies are highly focused on preserving and expanding their customer base and market share and marketing new products and services, and increasingly resistant to offering accommodations or favorable policies to low-income and elderly customers.

While NCLC is not suggesting that the telecommunications marketplace is truly competitive and sees it more as an oligopoly dominated by a few, very large players, there is no doubt that the marketplace is changing and, generally, more competitive than

at the time DPU 18448 was decided. The current nature of the telecommunications marketplace dictates that the Department take a more active role when it comes to protecting low-income and elderly consumers. Even a partially competitive marketplace is indifferent to whether seriously ill low-income customers have access to their phones to call their doctors or to make other urgent calls. Even where markets are only marginally competitive, companies feel that they must try to get out from under any policies that they see as a regulatory burden or as hindering their market-driven goals.

The Massachusetts experience with the low-income discount rates for basic telephone service (Lifeline rates) versus discounts for electric and gas distribution service is illustrative of the pressures that competition places on policies with high social value but perceived costs. All of the state's investor-owned electric and gas companies now participate in a program of electronic matching for discount rate eligibility, under which the companies share their residential customer data bases with the state's Executive Office of Health and Human Services ("EOHHS") to identify and enroll EOHHS client households that are eligible for the discount rates.⁹ In the first round of this matching effort, the electric and gas companies added approximately 24,000 new households to their discount rate rolls. The utilities as well as the state itself invested substantial time, effort and resources into overcoming the obstacles to this massive data sharing effort and making the program a notable success.

In sharp contrast, Verizon, which initially was one the companies subject to the "[i]nvestigation by the Department . . . to increase the penetration rate for discounted electric, gas and telephone service" initiated in DTE 01-106, expended its efforts in

⁹ See, e.g., "Order on Motion of Boston Edison Co. [et al.] for Reconsideration or, in the Alternative, Clarification," DTE 01-106-B (Dec. 6, 2004) (describing electronic matching program).

convincing the Department to exclude telecommunications companies from coverage by the orders in DTE 01-106. Thus, while electric and gas companies have expended substantial efforts in expanding the number of households that are actually enrolled on their discount rates, Verizon instead made sure that it was exempted from the entire DTE 01-106 process.

Similarly, most electric and gas companies in Massachusetts provide information about their discount rates in easily accessible portions of their web pages. Verizon, by contrast, has not made Lifeline information readily accessible. There is nothing on Verizon's home page that leads directly to information about Lifeline rates. Someone looking for Lifeline information via Verizon's web pages would have to utilize the "Search function" (at www22.verizon.com/Search/Results), type in "Lifeline," and then review the several pages listed. The only listed pages that have useful, practical information are maintained by the Universal Service Administrative Company, not by Verizon. By contrast, the home page of Western Massachusetts Electric Company ("WMECO")¹⁰ includes a link to "Residential Discount Rate" and that link contains detailed information about the discount rate, including further links to English and Spanish versions of WMECO's discount rate enrollment forms. It is almost as straightforward to find information about NSTAR's discount rates on its home page.¹¹

Those who work directly with low-income households routinely complain about the difficulty of actually enrolling their clients on the Lifeline rates. Over the past two years, NCLC has delivered approximately two dozen trainings on the basic rights of

¹⁰ www.wmeco.com.

¹¹ By going to www.nstaronline.com, then clicking on "Customer Service" (www.nstaronline.com/customer_service), discount rate information is easily found under "Help With My Bill – Financial Assistance Programs."

utility consumers all over the Commonwealth of Massachusetts, to over one thousand trainees. Trainees regularly complain about barriers they face when trying to enroll their clients on the Lifeline rates, including getting access to information about Lifeline. NCLC also receives phone calls from front-line workers who are having a difficult time locating information about Lifeline and actually getting their clients onto the discount rates. By contrast, NCLC receives very few complaints from advocates trying to enroll their clients on the discount rates offered by electric and gas companies.

There is every reason to believe that when a company such as Verizon, which was once highly regulated and effectively operated as a monopoly, moves towards a lesser degree of regulation and faces at least some competition, it will seek to jettison any policies it considers hindrances to its competitive goals. This appears to be the case with Verizon, as best evidenced by its conduct in DTE 01-106. The appropriate response from the Department should be greater vigilance regarding the broad range of policies that help low-income and elderly customers.

Therefore, NCLC urges the Department to formally adopt in regulations specific requirements, and not just general guidelines, for the broad range of consumer protections now contained in DPU 18448. These include rules about clear, complete and informative disclosure of information about the last-expensive service available and about the range of products and services available (DPU 18448, Part 2); rules about billing and payment standards (DPU 18448, Part 3); rules regulating security deposits (DPU 18448, Part 4); rules regulating termination of service and establishing protections against termination (DPU 18448, Part 5); rules for the resolution of complaints (DPU 18448, Part 6); rules

requiring that deferred payment plans be offered (DPU 18448, Part 7); and rules governing service to seniors (DPU 18448, Part 8).

It is likely that Verizon and other carriers are interested in reducing the scope of existing rules and practices that protect the interests of consumers. In a marketplace in which there are still relatively few competitors for the business of average residential customers, the Department should be concerned that the current marketplace may be the most risky of all possible worlds for consumers, where a few, large companies provide relatively few choices for customers but where the dawning of some level of competition makes the carriers eager to cut back on consumer protections. NCLC again urges the Department to formally adopt regulations that embody those protections that are essential to making affordable service universally available on fair and equitable terms.

B.1 & B.2: Should the new Practices apply only to certain types of carriers/should the new Practices apply to specific services (including bundled services)?

From the standpoint of low-income consumers, what is most important about the scope of the proposed rules is that they work to promote access to and maintenance of affordable basic telecommunications services. The definition of what constitutes basic telecommunications services should also evolve as new technologies become more commonplace. At this point in the proceeding, NCLC recommends that the Practices should apply to any local exchange carrier, including any CLEC, but NCLC may provide more detailed comments once it has reviewed the initial comments filed by the carriers and other commenters.

Under current federal telecommunications legislation, the states have jurisdiction over “charges, classifications, practice, services, facilities, or regulations for or in

connection with intrastate communication service by wire or radio of any carrier.”¹² In addition, while federal law provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service,” that law also does not “prohibit a State from regulating the other terms and conditions of commercial mobile services.”¹³ Furthermore, the governing federal law does not “exempt providers of commercial mobile services . . . from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications at affordable rates.”¹⁴ NCLC notes here that the Department does have jurisdiction over the “terms and conditions” of wireless service, and may provide comments at a later point in this proceeding on the extent to which the Department should attempt to regulate wireless service. At present, NCLC will focus its response to questions B.1 and B.2 on bundled service offerings

Bundled services are not for everyone. While some consumers may want the option of purchasing bundled service, not all consumers do. Bundled service offering pose particular problems for low income consumers, as detailed more fully below:

1. Bundled services may be too expensive for a cash-strapped household.

Companies must be prohibited from pressuring residential consumers to buy bundled packages. In particular, eligible telecommunications carriers¹⁵ must be required to disclose the availability of the Lifeline program for eligible consumers whenever a

¹² 47 U.S.C. §152 (b).

¹³ 47 U.S.C. §332(c)(3)(A).

¹⁴ 47 U.S.C. §332(c)(3)(A).

¹⁵ Those designated as ETC for the purposes of participating in the federal Universal Services program pursuant to 47 C.F.R. §54.201.

residential consumer inquires about acquiring telephone services,¹⁶ especially since customers who buy most bundled service packages are not eligible for Lifeline in Massachusetts.¹⁷ All telecommunications carriers over which the Department has jurisdiction should be required to offer stand-alone basic telephone service where the company is also offering bundled telecommunication services that include local service. Rule 2.1 (DPU 18448) should be extended to bundled service offerings so that consumers must be told the lowest cost plans for their particular needs. For low-income households, aggressive marketing of a bundled product that is more expensive than basic service puts those households at risk of obtaining service that is not affordable.

2. Consumers must be able to easily switch back to regular local service. NCLC is concerned that future bundled service offerings may lock consumers into a long-term contract that may include early termination fees, which would inhibit consumers from changing their minds and shopping around or returning to basic, local service. This is a particularly important concern for low-income households who may not have the discretionary income to maintain service for a more expensively priced bundled service. The Department should prohibit a carrier which offers bundled service from imposing an early termination fee or other penalty on a customer who wishes to switch from a bundled service offering to basic local service.

3. Basic local service must be protected with bundled service offerings. Where one of the components of a bundled package includes local phone service, the Department should aggressively protect access to local service. For example, where a partial payment is made and the carrier is considering termination, local service should

¹⁶ See 47 C.F.R. §54.405(b).

¹⁷ In other states, Verizon and other carriers that offer Lifeline discounts allow their residential customers to buy a wider range of service plans and still be eligible for the Lifeline discount.

not be disconnected where the partial payment covers the local service component of the bundled service, whether the carrier determines the cost of that “local service component” based on its existing tariffs for local service or by disaggregating the price for bundled service into its constituent components. In addition, local service should not be disconnected for failure to pay non-telecommunication charges included in any bundled service. Disconnection notices for bundled service should clearly state that local service will not be disconnected if the consumer pays a specified amount to continue local service.

4. Bundling should be closely monitored. To ensure a healthy marketplace, the Department should closely monitor bundling practices, including whether any companies require long-term contracts with early termination penalties. The Department should ensure that predatory pricing, tying and other anticompetitive actions are not occurring, because such practices discourage competition.

C. 1: Should carriers be required to provide written information about service offerings, rates and terms and conditions, including available alternative payment options and payment assistance programs?

NCLC strongly supports the notion that carriers should be required to provide written information about service offerings, rates and terms and conditions to prospective customers, and to current customers on request. Current Rule 2.1 already states that whenever a:

person applies for residential telephone service or for the conversion of one type of residential telephone service to another, a representative of the Company shall first explain the lowest-priced service and equipment available . . .

The Department should formally adopt this as a regulation applicable to carriers.

In addition, carriers should be required to provide current and prospective customers information about payment options and all available consumer protections, such as those that prohibit or limit terminations to the seriously ill, elderly, or those having a personal emergency. The current Rule 5.20 already requires that all “notices of discontinuance of service and all notices of removal of account shall contain” specified information about the rights to continued service during serious illness and personal emergency, and Rule 8.2 contains notification requirements to customers where every adult in the household is age 65 or older. These notification requirements should be formally adopted by the Department as regulations applicable to carriers. NCLC additionally recommends that information about the serious illness, personal emergency, elderly protections and about deferred payment plans be made available to all new customers at the time that service is initiated, and that the deferred payment plan rules should be summarized on each termination notice sent.

It is extremely important for carriers to disclose clear, complete and accurate information about their service offerings, rates, terms and conditions to prospective customers because of the large number of service offerings and the complexity of their terms. For example, if a consumer goes to the home page of Verizon-Massachusetts (www22.verizon.com/about/community/ma), and clicks on “Products and Services,” the consumer will find a list of almost a dozen residential products and services, each of which contains its own details. Customers can currently choose among Verizon Freedom Essentials, Verizon Regional Package, Verizon Regional Package Unlimited, Verizon Local Package Extra, Verizon Local Package, Flat Rate Service and Measured Rate Service as packages that would allow them to make local calls, as well as other calls

depending on the package. The monthly fees listed for each of these services or plans do not specify the various taxes, fees and charges that actually appear on monthly bills and that are only alluded to in the fine print.¹⁸ If the Department hopes to foster a more competitive telecommunications marketplace, it must ensure that consumers have access to clear, complete and accurate information about prices, terms and conditions. This is especially important for prospective customers, who should be given the ability to make fair comparisons among the several plans being offered by any one carrier, or between competing plans being offered by different companies. Carriers should also be required to provide clear information about plans, prices, terms and conditions to current customers who may be considering switching their plans or switching carriers.

Second, carriers should be required to disclose all available payment options, including deferred payment options, and all rules and policies that may help a customer protect existing service. As noted above, over the past two years NCLC has trained over one thousand front-line social workers/case workers, advocates, and service delivery personnel in Massachusetts in the rights of utility consumers. Almost without exception, not a single trainee has been aware of the personal emergency rule contained in Rule 5.17 of DPE 18448, and relatively few trainees are aware of the serious illness protections described in Rules 5.15 and 5.16 or the elderly protections contained in Part 8 of DPU 18448. This is not surprising given how unlikely it would be that a customer or caseworker would even know of the existence of DPU 18448 and given the dearth of information readily available from Verizon or other carriers about these rules. The Department should make sure that every customer is provided clear, complete and

¹⁸ See, for example, http://www22.verizon.com/ForYourHome/sas/sas_con_LongDescriptionTabs.aspx, which simply mentions that “Universal Service fees, taxes and other charges apply,” without providing any detail.

accurate information about any and all existing payment options and protections, at the time of initially signing up for service, at periodic intervals thereafter, and when termination notices are sent.

Third, the Department should adopt very clear and mandatory rules requiring carriers to disclose the availability of Lifeline and Linkup rates and the applicable terms. As noted above, the experience of advocates across the state is that information about Lifeline is hard to access and that customers have a difficult time applying. Further, Verizon restricts the types of calling plans to which Lifeline applies (generally, to the one or two least expensive plans), yet it is rare for a consumer to find out this information until he or she actually applies for Lifeline and is rejected due to having a calling plan to which the Lifeline discount does not apply.¹⁹ Carriers should be required to advise every prospective customer of the availability of Lifeline and Linkup rates, and periodically to provide this information to existing customers.

C.2: Should carriers be required to notify customers in advance in changes in their rates, terms and conditions of service?

Carriers should be required to notify customers at least 30 days of a change in rates, terms or conditions to allow customers adequate time to review those changes and decide whether to maintain, cancel or switch their service or plan based on the nature of the proposed changes. Any mailed or paper notice of proposed changes should be apart and distinct from any other billing matter or promotional material that may be included in the same envelope, and any electronic (e-mail) notice should also be apart from other electronic notices the carrier may choose to send. Notice should clearly summarize or describe both the current rates, terms or conditions that the company proposes to change

¹⁹ NCLC urges the Department to address at some point in this or some other docket whether it makes sense for a customer to be eligible or ineligible for Lifeline based on the customer's choice of calling plan.

as well as the proposed changes themselves. Any notice should also explain how the customer, if he or she so chooses, can cancel the existing service or plan.

NCLC recommends that a carrier must provide notice 30 days in advance of any change in ownership or control. Consumers have the right to know with whom they are dealing.

C. 3: Should carriers be required to maintain their current DTE-approved tariffs on a publicly accessible website?

All carriers should be required to maintain all of their current DTE-approved tariffs and pending supplements on the carrier's web site, for tariffs currently being offered to new customers and also for any "legacy" tariffs under which any existing customers are being served even if those tariffs are not available to new customers. This requirement is extremely important as there may be no other way for a customer to access all of the terms and conditions that apply to the customer's service. In addition, the Department itself would more easily be able to resolve disputes regarding telephone service if it could always have ready access to a particular company's tariffs on that carrier's web site, without having to search its own files.

D.1: What requirements governing the billing process, contained in Part 3 of the current Practices, should be included in the revised Practices?

Part 3 of the current rules provide important consumer protections and should be formally adopted as regulations by the Department. Just to choose a few examples, Rule 3.6 (b) regarding bilingual notice is critical because according to recent U.S. Census data, 19.5% of Massachusetts residents speak a language other than English at home.²⁰ Rule

²⁰ U.S. Census Bureau American Fact Finder, "Massachusetts: 2004 American Community Survey Data Profile Highlights" (Massachusetts ranks 12th in the nation for percent of households that do not speak English at home), available at http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=01000US&_geoContext=010

3.2 provides an essential minimum of thirty days between the date a bill is received and the date that payment in full is due. While NCLC may provide additional comments on reply, here it simply urges the Department to adopt Rule 3 as formal regulations.

D.2: Should the updated Practices allow bills to include separately itemized charges and, if so, should the updated Practices have different rules for surcharges carriers are required to itemize and surcharges carriers choose to itemize?

Clear and accurate billing is essential for a functional marketplace, and the Department should maintain and extend the telecommunications billing rules in Part 3 to provide consumers with an essential tool for comparison shopping and protections from cramming and slamming. The FCC has clearly acknowledged the importance of clear billing. In rejecting the wireless carriers' arguments that they should be exempt from the Truth-in-Billing rules, the FCC noted that "as competition evolves, the provision of clear and truthful bills is paramount to efficient operation of the marketplace."²¹

- Government Mandated Charges Must Appear In A Separate Section Of The Bill:

In the FCC's Further Notice of Proposed Rulemaking in the Truth-in-Billing Format docket, the FCC tentatively concluded that where carriers choose to list charges in separate line items, government mandated charges must be placed in a separate section of the bill.²² NCLC agrees that government mandated charges should be listed in a separate section of the bill, itemized and clearly labeled. This is to prevent the misrepresentation of non-government charges in a manner which disguises the true nature

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²¹ FCC's Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55, CC Docket No. 98-170, CG Docket No. 04-208, (Rel. March 10 2005) ¶17, referencing FCC's Truth-in-Billing Order, 14 FCC Rcd at 7501, ¶14.

²² Second Further Notice of Proposed Rulemaking, FCC 05-55, CC Docket No. 98-170, CG Docket No. 04-208 (Rel. March 18, 2005) ¶ 39.

of the charges. Nearly 20,000 consumers submitted comments in support of the NASUCA²³ Truth-in-Billing petition because they felt their phone bills were too confusing. Many consumers complained that their bills have increased with each new fee and surcharge, but it was not clear if it the company chose to charge the fee or the government required the collection of the tax or fee. NCLC and other consumer organizations feel strongly that “mandated charges” should be defined as those required to be collected and remitted to a federal, state or local government.²⁴ Mandated charges must be distinguished from the discretionary charges that the carriers are permitted to collect directly from consumers, but are not required to collect.

We also note that this position is consistent with the *Assurance of Voluntary Compliance* entered into by the Attorneys General of 32 states (including Massachusetts) and Cingular, Sprint and Verizon regarding the provision of wireless service:

F. Disclosures of Taxes and Surcharges on Consumer Bills

36. On Consumers’ bills, Carrier will

a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.²⁵

²³ “NASUCA” is the acronym for National Association of State Utility Consumer Advocates.

²⁴ Initial Comments of AARP, Asian Law Caucus, Consumers Union, Disability Rights Advocates, National Association of State PIRGS, National Consumer Law Center, Before the FCC In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, CG Docket No. 04-208.

²⁵ See In the Matter of Cellco Partnership d/b/a Verizon Wireless, Assurance of Voluntary Compliance (June 25, 2004).

- Combining regulatory charges is misleading: NASUCA has well-documented the abuse of lump-sum regulatory charges in its Truth-in-Billing petition.²⁶ “Regulatory” line items are vague and provide the opportunity for carriers to recover costs that should be included in the overall cost of service. Thus allowing carriers to combine ill-defined regulatory charges into a single line on a bill facilitates the ability to bury costs in the lump figures and confuse and mislead consumers.²⁷

D.3: [NCLC has no comments at this time in response to this question]

D. 4: Should carriers be allowed to render bills by means other than mailing?

Paper billing is still necessary for many low-income consumers who are less likely to have Internet access at home. NCLC urges the Department to keep the very real Digital Divide issues in mind as it considers electronic billing.²⁸ From the consumer’s perspective, electronic billing is not equivalent to paper billing, and the Department should thus appropriately protect consumers in light of the difference.

- Cost and burden to consumers: Receipt of mail at the consumer’s residence through the U.S. Post Office is free to the consumer, and the ability to read the mail requires no special equipment. E-mail to a consumer’s home requires a computer, an Internet account to access the mail and a computer to read the mail. Furthermore, if a consumer wants a record of the bill, the consumer must use a printer or store the file electronically.

²⁶ National Association of State Utility Consumer Advocates’ Petition for Declaratory Ruling, Before the FCC In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170 (March 30, 2004).

²⁷ See FCC’s *Truth-in-Billing Order*, 14 FCC Rcd at 7526, ¶ 55.

²⁸ Department of Commerce, “A Nation Online: Entering the Broadband Age” (in 2003, 54.6 percent of US households had Internet connections); John Horrigan, Pew Internet & American Life Project, “Home Broadband Adoption 2006” (May 28 2006) (21% of households with incomes under \$30,000 had broadband at home).

- Disruption of Access: While a home mailing address is fixed, e-mail accounts can and do change with ease. Where a consumer moves to a new home, the mail can be forwarded to the new address for a period of time for free. When a consumer deactivates an e-mail account, the sender may get a bounce message, but the e-mail is not forwarded on to the consumer's new e-mail address. The U.S. Postal Service is a public institution which consumers can count on to continue delivering the mail while Internet Service Providers can go out of business. Consumers falling on hard times may lose their Internet service, while the U.S. mail is free and will continue to be delivered regardless of the consumer's financial situation.
- Junk mail and spam: Junk mail is easier to distinguish from a utility bill than spam e-mail from legitimate e-mail. There is the danger that legitimate e-mail bills from the utility will be inadvertently deleted.

In light of the differences between paper mail and e-mail, NCLC urges the Department to require paper billing as the standard format for billing, unless the consumer expressly consents to electronic billing. Consumers, particularly low-income, should not receive discriminatory treatment because they receive paper billing. Consumers who opt for electronic billing should be able to easily (e.g., via phone call, writing or e-mail), and without penalty, switch back to paper billing at any time.

D.5: Should the updated Practices address the situation where a carrier fails to bill a customer for service, or under-bills a customer?

In the case of under-billing, carriers should offer customers a payment plan option for the same length of time as that of the under-billing. This is consistent with the

Department's long-standing approach to under-billing in the context of electricity and natural gas,²⁹ and also consistent with Rule 3.2.³⁰

D.6: [NCLC has no comments at this time in response to this question]

D.7: Should the updated Practices continue to mandate that certain charges be prorated, or should carriers have the flexibility to offer, or not offer, payment arrangements and/or deferred payment plans?

There are strong public policy reasons to continue the practices of Part 3.5 which requires the carriers to prorate charges for installation, restoration, or reconnection of service, especially for low-income households. To require immediate and full payment for these services would be cost-prohibitive and a barrier to service to low-income households. Spreading the cost over time reduces the burden on consumers, yet the utility receives full payment over a brief period of time. Rule 3.5 currently places the choice to prorate with the consumer, which ensures that the maximum number of consumers who need this flexibility can use it, thus promoting access to essential telephone service. This also avoids allowing the utility to arbitrarily make a determination of the consumer's ability to pay all of the charges in one payment.

D.8: What modifications, if any, should be made to the requirements contained in Rule 3.6, regarding the manner in which Customer Protection Notices must be rendered, including the size of font and inclusion of a tagline in Spanish, Portuguese, or other languages?

Rule 3.6 currently applies to all bills and notices and provides very important consumer protection information. NCLC urges the commission to require that notices

²⁹ See e.g., *Villarino v. Boston Gas Co.*, D.P.U. 87-AD-6 (Oct 6, 1987) (undercharge for period of seven months; back bill payable over 12 months).

³⁰ "In the event a bill is not rendered with the frequency required by Rule 3.1 hereof, the Company shall allow, for payment in full, additional days equal to the number of days by which the date of receipt of the bill exceeds the billing frequency required by that Rule."

must also be provided in accessible formats for vision-impaired customers (e.g., large fonts, Braille, electronic text-file formats which can be read by screen reading software).

NCLC also urges the Department to expand the language accessibility requirement. Rule 3.6(b) currently only requires two sentences to be translated, “THIS BILL (NOTICE) IS IMPORTANT. TRANSLATE IMMEDIATELY.” According to current census data, Massachusetts ranks 12th in the nation for percent of households that do not speak English at home (19.5% of Massachusetts residents).³¹ In light of this, NCLC believes it is also reasonable to require that the full consumer protection notice be translated into the predominant foreign languages spoken at homes in Massachusetts based on current census data. Otherwise, the non-English proficient households bear the risk of an inaccurate interpretation of the notice contents. The Commission should make available to the utilities standard, translated versions of the notice. Consumers should be able to contact their utilities for a translated version of the notice and utilities should be required to mail the translated notice within 2 business days of the request.

D.9: Should the updated Practices limit the types of rates and charges that can be placed on a customer bill?

Allowing non-telecommunications products and services to be charged to the phone bill makes those phone bills more complicated and confusing and increases the risks of cramming. In the interest of preventing fraud, NCLC urges the Department not to allow non-telecommunications charges on already-complicated phone bills. Cramming can go undetected by consumers because phone bills are already so complicated and difficult to read. Allowing non-telecommunications charges on phone

³¹ See n. 20 and accompanying text, *supra*.

bills opens up the whole universe of products and services (whether gasoline or clothing or travel) to be billed through a phone bill. The FCC has noted that:

[I]t is significantly easier to bill fraudulent charges on telephone bills than on credit cards bills. While credit card charges require access to a customer account number that consumers understand should be treated as confidential, all that is often required to get a charge billed on a local telephone number is the consumer's telephone number. This number is not only expected to be widely distributed, but can easily be captured by an entity even when the consumer has not authorized charges or made a purchase.³²

If the Department disregards NCLC's concerns and allows non-telecommunication charges to appear on the phone bill, NCLC urges the Department to require each carrier to obtain the Department's case-by-case approval for including non-telecommunication charges on the phone bill upon a showing of good cause. For example, if Verizon works out an arrangement with Land's End or Delta air Lines to include their charges to customers on Verizon's phone bill, Verizon would seek the Department's permission to do so in advance. Further, no carrier should be granted blanket permission by the Department to include charges from any and all possible (but unnamed) merchants on the telephone bill, to protect telephone consumers from cramming and other abuses.

With this mechanism in place, carriers and the companies wishing to use the phone bill for non-telecommunication charges would have to make their case to the commission. This process would limit the number of merchants who would gain access to telephone bills and increase the likelihood that any merchants with access to the bill would be reputable and somewhat accountable for any cramming or billing errors. We also note, that allowing non-telecommunications charges on a phone bill may raise federal Truth in Lending³³ protections, such as error resolution and unauthorized use

³² FCC Truth-in-Billing Order, ¶ 7, fn 18.

³³ 15 U.S.C. §§ 1601 et seq.

provisions because the phone bill is a revolving account that defers the payment obligation on the purchase (like a credit card).³⁴

If the Commission allows non-telecommunication charges on phone bills, failure to pay non-telecommunication charges must not lead to denial, interruption or disconnection of local phone service. Partial payments must first be applied to the local phone bill and then other telecommunications portions of the phone bill, before being applied to non-telecommunications charges. Finally, consumers must be notified that failure to pay non-telecommunication charges will not result in loss of telephone service.

E.1: What specific requirements concerning credit, deposits and late or deferred payments should be included in the updated Practices?

The Department should formally adopt regulations that describe the circumstances in which the carrier may seek deposits from a customer and that place a cap on the amount of any deposits.³⁵ NCLC also urges the Department to adopt regulations regarding late charges and deferred payments.³⁶

E.2: What information should be made available to carriers in order that applicants establish their identity (e.g., social security number)?

While NCLC agrees that carriers should be allowed to seek reasonable proof of identity from new customers, customers should not be required to produce social security numbers. First, many customers, especially recent immigrants, simply will not have a social security number. There is not, and should not be, any requirement that a telephone customer be a citizen of the United States or have a social security number in order to obtain telephone service. Second, many customers are unwilling to provide a social

³⁴ See NCLC's *Consumer Banking and Payments Law*, 3rd ed. (2005) §6.1.3.4, "Charges Added to Phone Bills."

³⁵ NCLC addresses deposits in more detail under heading E.4, below.

³⁶ NCLC addresses these topics under headings E.6 and E.7, below.

security number out of concern about identity theft or the desire to protect information deemed private. These customers should not be forced to disclose their social security numbers.

Most utility commissions in the United States do not have rules governing the methods by which a new customer proves his or her identity.³⁷ Among the few states that do address the forms of proof of identity that are acceptable, NCLC is not aware of any state that requires a customer to provide a social security number. For example, New Jersey's rules allow a utility, in its discretion, to seek proof of identity from an applicant for service, and the rules list nine forms of proof that are acceptable, none of which is a social security number.³⁸ The New York PUC has formally-adopted rules that allow a utility to "establish non-discriminatory procedures to require an applicant to provide reasonable proof of the applicant's identity,"³⁹ but those rules do not specify what constitutes "reasonable proof." In a 1998 decision, the commission ruled that companies cannot insist on obtaining only one particular form of identification (social security numbers) and must be flexible in accepting any reasonable proof, such as a driver's license, resident alien card, public assistance registration card, etc.⁴⁰

The Department should not allow a carrier to require a customer to provide a social security number as a condition of obtaining service. Companies should be required to accept any reasonable proof of identity such as those listed in the New Jersey rules and the New York PSC decision.

³⁷ For example, the Wisconsin Public Service Commission has detailed rules about deposits that may be sought from new customers, but those rules are silent on the issue of how the new customer proves his or her identity. Wisc. Adm. Code PSC § 113.0406 (2004).

³⁸ N.J. Adm. Code § 14:3-3.2(d) (listing valid driver's license, employment identification, unexpired foreign passport, U.S. passport, alien registration card, county identification card, county welfare identification card, student identification card or military identification card.)

³⁹ N. Y. Adm. Code tit. 16, § 11.3(a)(1)(v) (2004).

⁴⁰ NY PSC case No. 96-M-0706, order dated Feb. 17, 1998.

E.3: Under what circumstances should a carrier be able to refuse to provide service?

Carriers should only be allowed to refuse service on the basis that the applicant owes money to that carrier for prior telecommunications service. While the current Rules and Practices in DPU 18448 are not entirely clear on this question, Rule 4.1 does provide that the “only” basis for “require[ing] a deposit as a condition of new service” is if the “customer has an outstanding bill from previous telephone service.” Similarly, regulated electric and gas companies in Massachusetts are generally prohibited from denying service except where the customer owes that company for service previously rendered (excluding instances of fraud, risks to public safety, and other limited exceptions), as part of being granted a monopoly franchise.⁴¹

Telephone service is essential for all households, and especially for frail seniors who may be unable to leave their homes and for those with a serious illness who need to contact doctors and other service providers. The Department should not allow carriers to deny service either because the applicant’s credit score is low or because the applicant owes money to merchants or creditors other than the carrier itself. Carriers who are concerned about the credit-worthiness of an applicant already have adequate tools available in that they may charge a deposit and can yield the heavy club of terminating service.

A customer who has been denied service should always have recourse to the Department’s Consumer Division, under the rules in Part 6.

E.4 & E-5: What deposit requirements should apply to new non-residential service accounts or to temporary or seasonal accounts? How long should carriers be allowed to hold deposits and should carriers be required to pay interest on deposits?

⁴¹ Electric and gas companies are also prohibited from charging deposits, 220 C.M.R. 27.00.

NCLC takes no position on the “deposit requirements [that] should apply to new non-residential service accounts or to temporary or seasonal accounts.” However, NCLC urges the Department to formally adopt as regulations the policies now incorporated in Rule 4.5 regarding limitations on deposits, interest earned on deposits, and return of deposits.

E.6: Should carriers be allowed to assess a fee and/or interest for delinquent payment of a bill and, if so, how should those charges be determined and should exemptions apply?

The Department has already stamp-approved Verizon’s revised late charge tariff filed in DTE 06-26.⁴² Under Verizon’s proposal in that docket, the late charge applies to all residential customers except those making payments under an agreed deferred payment plan, those who have received a final bill, and Lifeline customers. The exemption for Lifeline customers was made in a revised filing by Verizon, after NCLC and other parties filed comments opposing Verizon’s initial late charge proposal.

As NCLC noted in its comments filed in DTE 06-26, NCLC opposes the imposition of late charges on residential customers. In light of the Department’s stamp-approval of the revised tariff, NCLC urges the Department to consider the additional comments it filed by letter on May 22, 2006. NCLC particularly urges the Department to expand the categories of customers who are exempt from the late charge beyond just Lifeline customers, to include households receiving fuel assistance, food stamps, TAFDC, Medicaid, SSI, school free lunch program or discounted rates from any regulated electric or gas company in Massachusetts. This is particularly important because there are many households with incomes low enough to be on Lifeline but who

⁴² See May 22, 2006 e-mail from Carol Pieper, hearing officer in DTE 06-26 to various parties who submitted comments in DTE 06-26, noting that tariff M.D.T.E. 10 had been stamp-approved on May 18.

cannot overcome the barrier that Verizon places in their way: insisting that the household be on the most limited basic local service plans in order to qualify for Lifeline. There are many low-income households for whom more expansive plans are the best economic choice, but who cannot get Lifeline service if they choose those plans.⁴³ The apparent intent of Verizon's revised tariff is to protect economically vulnerable households from the late charges (as well as to mute the objections raised by NCLC, the Attorney General, and other commenters), yet many low-income households will in fact be excluded from the protection against late charges because they cannot get onto the Lifeline rate. The Department should require Verizon and other carriers who impose late charges on residential customers to exempt not only Lifeline customers, but also those customers who receive assistance under the fuel assistance, food stamps, TAFDC, Medicaid, SSI, or school free lunch programs, or who receive discounts from any regulated electric and gas company.

E.7: Should the Department allow carriers to recover a reasonable finance charge on deferred payment agreements?

Existing Rule 7.2 provides that a “deferred payment agreement may not include a finance charge.” Under Rule 7.1, deferred payment plans are available only “if the customer claims inability to pay an outstanding bill in full.” By definition, deferred payment plans are available only to those who are already struggling to pay their current bills. Requiring those customers to pay a finance charge only increases the likelihood that the customer will not be able to pay the bill and will therefore lose telephone service.

⁴³ For example, in a call NCLC made to Verizon, the customer service representative advised that the Freedom Essentials plan at \$39.95 per month would be “the best bet” for most people who make some amount of regional and nation-wide calls, in addition to local calls. But a customer who chooses Freedom Essentials would be ineligible for the Lifeline discounts.

At the legislature, at the Department and among many utility companies in the Commonwealth, there is an increasing recognition that it is in the interest of company and customer alike to enter into payment arrangements that spread a low-income household's payments over time, if the household falls behind on its bills. For example, in DTE 03-40, Boston Gas Company proposed to bring to Massachusetts its "On-Track" arrearage management program that its New York affiliate had been running for many years. The Department noted with approval that the "On-Track program may likely enable the Company to lower its bad debt expense which, in the future could benefit all ratepayers." The Department concluded by stating it:

supports the implementation of the On-Track program and, if managing payment and bad debt programs in this way is beneficial to all ratepayers, encourages all gas and electric distribution companies to explore the implementation of low-income programs similar to On-Track.⁴⁴

In the ensuing three years, the Department has been very supportive of the efforts of various electric and gas companies to develop a range of arrearage management programs and flexible payment arrangements.

Last November, the legislature evidenced its strong support for arrearage management programs by passing Chapter 140 of the Acts of 2005 which, in section 17(a), required every regulated electric and gas company to develop arrearage management programs. Under Chapter 140:

companies work with eligible low-income customers to establish affordable payment plans and provide credits to those customers toward the accumulated arrears where such customers comply with the terms of the program.

The theory underlying arrearage management programs is that customers will be better able to pay their arrearages if the payment obligation is spread out over time and the

⁴⁴ DTE 03-40, at 511 (Oct. 31, 2003).

customer is given an incentive to stay current, and that the companies will benefit by seeing better compliance with payment agreements and reduced collection costs.

While deferred payment plans on overdue telephone bills are not identical to the arrearage management plans of electric and gas companies, the Department should apply the same theories here. Low-income customers are more likely to pay their overdue phone bills if given a reasonable amount of time to catch up. Carriers should be prohibited from charging late fees on deferred payment arrangements, to make those plans a little more affordable to the customer.

F.1: Should a similar provision apply, regarding a prohibition on disconnecting local service for non-payment of non-local charges, when a customer receives a bundled package combining, for example, local, toll, video and unregulated services?

Access to local phone service must be protected in the termination rules. As NCLC has stated throughout these comments, it is paramount that local phone service be protected when disputing a charge, or when the customer makes partial payments or no payments of non-local charges, because access to phone service is necessary to engage in the modern world. As for the specific question about termination protections regarding bundled services, we refer the Department to our comments on bundled services in our response to B.2, above.

F.2: Should written notice requirements apply to termination of service by carriers and, if so, what type of notice should be required?

Paper notice of termination must be provided to consumers. As discussed earlier in our comments to question D.4 above, paper notice, like paper billing, is still necessary for low-income consumers who are less likely to have Internet access at home.

Furthermore, as discussed in our response to question D.4, electronic

communications are more problematic than paper billing from the consumers' perspective in terms of cost, disruption of access and ability to get lost in a sea of spam. The notice of termination is even more critical to the consumer than receipt of a bill. NCLC notes that in 2003 the U.S. Department of Commerce's National Telecommunications and Information Administration reviewed the utility termination notice exception to the Electronic Signatures in Global and National Commerce Act (E-SIGN).⁴⁵ E-SIGN⁴⁶ provides that an electronic signature is the legal equivalent of a signature on a piece of paper and that a contract, disclosure, or other record may not be denied legal effect, validity or enforceability solely because it is in electronic form. The NTIA concluded that the exception that prohibits rendering utility termination notices electronically remained necessary to protect consumers.⁴⁷ NTIA had also recommended that in limited circumstances and only in states where the law allows utility companies to contract with customers for electronic billing services, the utility company should have the option of providing notice of cancellation via the Internet or other electronic means.⁴⁸ The NTIA further notes that this would be appropriate for consumers who voluntarily sign up for electronic billing and pay their bills electronically.⁴⁹

⁴⁵ National Telecommunications and Information Agency, U.S. Department of Commerce, Notice and Request for Comments re: The Utility Service Cancellation Notices Exception to the Electronic Signatures in Global and National Commerce Act, Docket No. 010222048-3014-08 (January 23, 2003).

⁴⁶ Codified at 15 U.S.C. §§ 7001-7006 (2000).

⁴⁷ US Department of Commerce, National Telecommunications and Information Agency, "Electronic Signatures: A review of the exceptions to the Electronic Signatures in Global and National Commerce Act" (June 2003) at 47-49.

⁴⁸ *Id.* at 48.

⁴⁹ *Id.*

F.3: How should the updated Practices provide for disconnection protections for the elderly?

The existing special termination protections for seniors should be continued.

NCLC strongly urges the Department to retain the current disconnection protections for seniors. According to AARP:

Telephone communication is a basic necessity that allows older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. In fact, people age 65 and older are more likely than any other age group to have traditional wireline telephone service. This higher market penetration rate exists even though older households must spend 4.1 percent of their income, or about twice as much as younger households (1.9 percent), just to use the average amount of telephone service.⁵⁰

NCLC notes that the current rule is not a prohibition on termination, although it establishes detailed procedural requirements before service to a senior could be terminated. The current rules should be formally adopted as regulations.

G.1: What records and other customer information should carriers be required to maintain, and for what period of time?

NCLC does not have comments in direct response to his question, but an issue that goes hand-in-hand with record retention is privacy protection. In the current environment, where there are numerous reports of phone companies sharing massive amounts of customer data with the government, consumers are increasingly concerned about the privacy of their phone records. The Department should adopt strong regulations regarding the protection of consumers' billing and other records. Customer concerns over whether carriers closely guard customer information reinforce NCLC's comments above that customers should never be required to disclose their social security

⁵⁰ Testimony Of Susan Weinstock, National Coordinator, Economic And Utility Issues, AARP Department Of State Affairs, Before The Kentucky House Of Representatives On House Bill 337, February 2, 2006

numbers. Company employees handling customer account information must be subject to background checks. Documents must be stored in a secure area with limited access. Electronic customer data should be encrypted and access should be limited to authorized users. Once the period for retaining customer records elapses, the documents (both electronic and paper) must be disposed of in a secure manner. Companies must not share customer information with anyone without first notifying the customer.

H.1: Should the updated Practices identify a specific process by which a customer disputes a bill or seeks resolution of a service problem?

NCLC strongly encourages the Department to adopt as formal regulations applicable to carriers the complaint and dispute resolution rules contained in Part 6 of DPU 18448. These existing procedures are fair and reasonable. In the absence of mandatory rules, many consumers will be left without a route to air their disputes or obtain a satisfactory resolution of the dispute. On their own, carriers have little reason or financial incentive to provide the type of fair complaint and resolution procedures contained in the existing Part 6 rules.

I.1: Miscellaneous requirements not covered above

1. Complaint Data Collection: With the rapidly changing telecommunications landscape, the Department should increase its efforts to collect consumer telecommunications complaint data and regularly report on the types of complaints it is receiving. This is critical to identifying emerging consumer problems to be addressed both at the state and federal level. The Department should engage in outreach efforts to raise awareness of the complaints process and make it easier for consumers to submit informal complaints either on the phone, on line or in writing.

2. Lifeline/Link-up evaluation: In light of what NCLC sees as a fairly high and consistent level of complaints about the difficulty in accessing information about Lifeline/Link-up and enrollment of eligible customers on those programs, the Department should investigate in this docket or in a new docket whether regulatory or other changes are needed to increase the penetration rate of these related programs.

III. CONCLUSION

NCLC urges the Department to adopt regulations and policies consistent with these comments. NCLC also strongly urges the Department, after it reviews the first round of comments and reply comments, to prepare a draft set of proposed rules and/or governing policies and principles that parties will be allowed to comment upon before any final order or decision in this docket. Given how this proceeding is structured, parties at the moment only know the questions to which the Department seeks answers and, as of filing their initial comments, have no idea what positions other parties may take. Given the very broad scope of this proceeding and the fact that the Department has not revised the basic telephone rules in thirty years, the Department will achieve a far better and more equitable result if it allows all parties more than one opportunity to offer comments and reply to the comments of others. It is also important for parties to have an opportunity to review and comment on a draft of the Department's own proposed order or rules before any final decision in this docket.

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