

States Must Help Protect Vital Utility Service During the Ongoing COVID-19 Pandemic: Models from Three States

As the COVID-19 pandemic spread through the United States, with its accompanying economic shutdown, several states adopted a moratorium on terminations of utility service. However, in most states that adopted moratoriums, those termination prohibitions have already expired or will within the next few months. Legislators and utility regulators must act now to extend these moratoriums and require more flexible and generous bill payment practices to ensure continued access to essential utility service. Even before the hardships due to COVID-19, about one-third of the U.S. population was already facing serious difficulty in paying utility bills. The COVID pandemic has exacerbated the problem, with essential utility service today even more unaffordable for millions of utility customers.

The COVID-19 crisis has highlighted that access to utility service is essential to maintain public health and safety. Access to utility service should not be forfeited because of a person's inability to afford that service. Policymakers should seize on the current pandemic as an opportunity to create permanent consumer-oriented policies that ensure access to vital utility service for all.

Recently, utility commissions in California, Illinois, and Massachusetts took significant steps to help consumers stay connected to utility service. In each of these states, state regulators acted proactively, while utility shut-off moratoria were in place, to enact consumer protections with the goal of ensuring continued access to essential utility service for vulnerable populations. Each offers model provisions for regulators to enact in their states. This blog post summarizes the orders.

California

On June 11, 2020, the California Public Utility Commission (CPUC) adopted a Phase I decision (D.20-06-003) in CPUC Rulemaking 18-07-005, the so-called "disconnection docket." The Phase I decision provides a suite of pro-consumer credit and collection rules and practices for the four large electric and gas companies to reduce residential disconnection rates for nonpayment. The proceeding followed the passage of California Senate Bill 598 (SB 598), which requires the CPUC to reduce utility disconnection rates by January 1, 2024.

Previously, in April, the CPUC had extended the shut-off moratorium until April 16, 2021, through its approval of Resolution M-4842.

The Phase I Decision makes permanent, with some modifications, interim rules that were previously adopted in D. 18-12-013, and which

- Sets caps on the disconnection rate of the four large investor-owned utilities (IOUs) .
- Protects medical baseline (seriously ill) customers from disconnection for nonpayment as long as they agree to a 12-month payment plan.
- Protects low-income customers from disconnection for nonpayment until the utility offers to enroll eligible customers in all applicable benefit programs administered by the utility.
- Requires the utility to offer customers a 12-month payment plan before disconnecting for non-payment.
- Prohibits disconnections for non-payment during extreme weather (temperatures above 100

degrees or below 32 degrees).

In addition, the Phase I decision:

- Eliminates service deposits and reconnection fees.
- Creates arrearage management programs (AMPs) for the four IOUs.
- Creates Percentage of Income Payment Plan (PIPP) pilots for the 10 California zip codes with the highest disconnection rates.
- Establishes a CPUC Enforcement Branch citation program designed to ensure compliance with the rules outlined in the decision.

Illinois

On June 18, 2020, the Illinois Commerce Commission (ICC) approved a settlement reached among the state's investor-owned utilities, consumer advocates, and the Commission's Staff. The settlement in ICC Docket No. 20-0309 provides financially struggling customers with several protections designed to minimize disconnection of essential utility service and make bills more affordable.

The Order followed the ICC's issuance of an Emergency Interim Order on March 18, 2020 that required a moratorium on investor-owned utility shut offs, suspended late fees and penalties due to a customer's inability to pay, and further required the investor-owned utilities to file more flexible credit and collections procedures for the Commission's consideration and approval.

The agreement, as approved by the Commission, includes the following:

- Reconnection of customers previously disconnected customers, and waiver of the usual reconnection fees.
- Extension of the moratorium on disconnections through late summer of 2020.
- Debt forgiveness for LIHEAP-eligible customers totaling \$48 million. A typical forgiveness, for example, totals \$500 per utility for Chicago customers.
- Provision of 24-month deferred payment arrangements (DPAs), with no down payments, for customers claiming financial hardship, and DPAs of 18 months for residential customers who do not claim financial hardship.
- Self-certification of financial hardship, which then allows access to expanded customer protections.
- Reporting of disconnections, late fees, DPAs, deposits and other data by zip code, to ensure that regulators and consumer advocates can monitor disconnection and other credit and collection practices for disproportionate impacts in communities of color.
- Utility agreement to engage, with stakeholders, in a discussion on how to improve the affordability of utility service for low income customers.

Massachusetts

The Massachusetts Department of Public Utilities (DPU) opened an investigation in May, Docket No. 20-58, to solicit input from stakeholders about the need for post-moratorium policies to protect struggling consumers, as well as recommendations for utility cost recovery. The DPU invited the utility companies, the Attorney General, the Department of Energy Resources, NCLC, the Low-Income Energy Affordability Network, and others to participate. On July 31, 2020, the DPU issued an order which includes the following protections for residential customers:

- Extends the residential disconnection moratorium until November 15. On that date, the winter moratorium on shut-offs for low-income Massachusetts customers kicks in and continues through March 15, 2021.
- Extends the length of payment plans for twelve months, with the possibility of 18 months for “unique circumstances.”
- Expands the Arrearage Management Program (AMP), by allowing repeat enrollments, increasing the amount of arrearages that are forgiven, and allowing applicants to initially self-certify their income eligibility.

For additional details about the orders in these three states, see NCLC’s new issue brief.

Residential Electricity Sales: The Early COVID-19 Stay-at-Home Period

Part 1 of 2 on consumer protections needed during and after COVID-19.

By John Howat, Senior Energy Analyst, National Consumer Law Center

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The U.S. Energy Information Administration’s most recent Electric Power Monthly, released on June 24, provides sales, price and revenue data by end-use sector and Census Division for April, 2020. Data from this report shows that in each of the 10 Census Divisions, April residential sector electricity sales increased over the 4-year average April sales from 2016 - 2019 (see table).

Census Division	April Residential Sales (kWh x 1,000,000)					Ratio of April 2020 Residential Sales to 2016 - 2019 (4-year Average)
	2020	2019	2018	2017	2016	
New England	3,509	3,197	3,418	3,417	3,327	1.05
Middle Atlantic	9,551	8,658	9,548	8,776	8,717	1.07
East North Central	12,867	11,833	13,194	11,591	12,022	1.06
West North Central	7,202	6,610	7,510	6,535	6,389	1.07
South Atlantic	25,210	23,231	24,001	23,247	22,139	1.09
East South Central	7,562	7,360	7,702	7,377	7,014	1.03
West South Central	14,256	12,866	13,208	13,287	12,534	1.10
Mountain	6,899	6,395	6,602	6,311	6,034	1.09
Pacific Contiguous	10,009	9,369	9,897	9,821	9,713	1.03
Pacific Noncontiguous	375	344	375	364	356	1.04

The table shows that April 2020 sales increased by a range of 3% to 10% in Census Divisions across the U.S. It is important to note that these monthly sales totals have not been weather-normalized, and are therefore not attributable solely to stay-at-home orders and increased unemployment.

However, they do provide a clear indication that economic and societal responses to Covid-19 have led to moderate increases in residential electricity usage and sales. (See charts illustrating April sales from 2016 - 2020 for each U.S. Census Division.) It is also important to note that April is considered a “shoulder” month when electricity usage, particularly in the residential sector, is lower than in mid-summer and mid-winter when more extreme temperatures drive higher usage and sales. Month-to-month comparisons may show greater COVID-19-related increases during the summer, particularly if unemployment and public health stay-at-home orders or recommendations persist.

Ramifications of Higher Residential Electricity Usage and Sales and the Need for Protective Programs and Policies

Higher usage and sales lead to higher bills and expenditures. Higher bills also lead to increased past due accounts, particularly in households that were already struggling financially prior to the onset of the coronavirus, but also in households more recently affected by unemployment, illness, or medical debt. As temporary Covid-19 utility disconnection moratoriums expire in many states, past due accounts pose the threat of loss of vital home electricity service just as the need for indoor cooling, warm water for sanitation, and reliable telecommunication services becomes greater than ever.

Here’s what states, utilities, and utility commissions can do now to keep the power on for struggling families who will be saddled with debt:

- Restore access to service for any utility customer whose service has been cut off without requiring a hefty down payment on overdue bills.
- Develop strong disconnection protections for vulnerable customers going forward.
- Waive punitive late payment fees and security deposits.
- Provide deferred payment plan options that are affordable based on a household’s actual income and expenses.
- For households with low incomes, implement debt forgiveness programs that avoid adding to current monthly bills.
- Expand bill payment programs that reduce monthly bills to an affordable level. These programs already exist in many states but need to serve the full scope of need. A common effective approach is to reduce total bills by a set percentage, or to cap total bills at a percentage of household income.
- Expand access to comprehensive whole-house energy efficiency and retrofit opportunities.
- Require more comprehensive utility tracking and reporting of data on residential customer overdue bills, disconnections, and repayment efforts.

Affordable Broadband Service is a Racial Equity and Public Health Priority During COVID-19

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By Olivia Wein, National Consumer Law Center and Cheryl Leanza, United Church of Christ, OC, Inc.

If you are reading this on your smartphone or laptop, you are fortunate to have access to internet service. More than 20 million households in the United States do not have internet service at home. The main barrier? Cost.

Racial disparities with broadband service: According to census data, about 10 percent each of Black and Hispanic Americans and 13 percent of American Indians and Alaska Natives have no internet subscription compared to 6 percent of White households. And not all broadband access is equal: a disproportionate number of Black and Latino households rely on a smartphone (small screen) for their broadband connectivity. It is clear during this pandemic that working and learning via a smartphone with limited data and throttling is second-class access compared with using a laptop via wi-fi and an unlimited wired broadband connection. However, with the public health risks of COVID-19, internet access strategies that may have worked in the past for students, adults, and elders (through schools, libraries, the workplace, community centers, and free wi-fi at fast food restaurants) are no longer safe.

COVID-19 exacerbates broadband service as a public health issue: COVID-19 has ravaged communities of color. Older adults and those with chronic health conditions of all races and ethnicities are particularly at risk from coronavirus and must self-isolate. Telemedicine minimizes the transmission of the virus, but patients must have broadband to take advantage of remote health care services. Broadband in the home enables families to stay at home.

COVID-19 exacerbates broadband as an economic issue: The risk of job loss during the pandemic also falls more heavily on workers of color. Access to work opportunities, services, and benefits for recently unemployed workers requires broadband. Physical distancing is still the safest way to limit the spread of COVID-19 and broadband is needed to access commerce and banking.

COVID-19 exacerbates broadband as an education issue: During surges of coronavirus infection, the bedroom has become the classroom for students of all ages. Students without broadband can't access classroom instruction. Even if COVID-19 infection rates continue to fall, in September many schools will likely blend at-home and in-class learning to maximize spacing among students. This means that broadband access will be important well into 2021 and beyond.

Opportunity to bring broadband to the home: The most economically distressed households must have access to affordable technology. Our health, our economy, and our educational competitiveness will not fully recover in the United States without it. Fortunately, Senators Wyden and Blumenthal have introduced the Emergency Broadband Connections Act of 2020, the Senate counterpart to Representative Veasey's bill (H.R. 6881), which passed the House as part of the HEROES Act (H.R. 6800) on May 15. The Emergency Broadband Connections Act guarantees a \$50 emergency broadband benefit — \$75 in tribal areas — to every eligible low-income household in the country that makes a request to their Internet Service Provider (ISP) and provides a one-time discount for ISP-provided devices. The bill also expands the existing Federal Communications Commission low-income Lifeline program to offer unlimited voice minutes and texting. This is the Senate's opportunity to address racial equity and, at the same time, enable telemedicine, distance learning, and online access to the workplace and marketplace from the home while also protecting public health.

Low Income Consumers Won't Pay for MA Solar Programs

Across the country, advocates for low-income energy customers are grappling with rate design and fair solar power policies. The Massachusetts Department of Public Utilities (DPU) recently issued a decision that could help guide other successful advocacy work.

In late 2015, National Grid asked the Massachusetts DPU to raise the electricity rates that it can charge to its customers. The Massachusetts Low Income Weatherization and Fuel Assistance Network (or Low Income Network), which is represented by NCLC, intervened in this rate case to advocate for the rights of low-income ratepayers, and to support programs that benefit low-income ratepayers, such as the low-income discount rate and the Arrearage Management Program (AMP) to help manage overdue bills.

The Low Income Network advocated for, and won, utility consumer protections in three key areas:

- Rates: a fair rate design that would not unfairly burden low-income customers;
- Arrearages: better implementation of the AMP program by National Grid, and retention of the method that already was used successfully to compensate utilities for operating the AMP program; and
- Solar Charges: an adjustment to the rates paid by low-income people to effectively exempt them from paying for renewable energy incentives that almost exclusively benefit higher income customers

Rates

National Grid asked to raise charges for low-income customers in two phases. Phase I would have raised prices, and Phase II would have then introduced tiered charges, where customers would pay a higher monthly charge ranging from \$6 to \$20 depending on their electricity usage. Under the Phase II method, one sample month would be used to lock in the household's monthly charge for the following year. Then the customer would then continue paying that monthly charge for the next year with no opportunity to lower their rate through energy efficiency or other conservation measures until the year was up.

The Low Income Network introduced testimony from NCLC senior energy policy analyst John Howat and argued that the increased fixed monthly charge should be rejected for three reasons. The increased charge would disproportionately burden low income ratepayers, with some customer bills increasing by as much as 60%. This increase would be particularly unfair since low income households tend to use less electricity than higher income households. Finally, higher fixed charges are coupled with lower volumetric rates, and this arrangement weakens the financial incentive to adopt energy efficiency measures.

The DPU concluded that there were a number of problems with the company's tiered charge proposal, including concerns about energy efficiency incentives, customer confusion, and unnecessary complexity. The DPU rejected the utility company's tiered charge proposal entirely.

Arrearages

After analyzing utility company data, NCLC found that National Grid had a level of AMP participation that was well below the state average. The Low Income Network presented this evidence and an analysis by NCLC researcher Marina Levy, and questioned National Grid witnesses on the workings of its AMP. The Low Income Network requested that National Grid examine its AMP policies and practices, report on these to the DPU in six months, and put forth a plan to improve its AMP enrollment rates. National Grid did not dispute the evidence or proposed remedy.

The DPU agreed with the Low Income Network on the need to remedy the low AMP enrollment rate and ordered the company to submit the report requested by the Low Income Network. The DPU also agreed to continue to allow National Grid to collect AMP recovery costs using the same method that had been used successfully in past years, through the Residential Assistance Adjustment Factor (or RAAF).

Solar Charges

Massachusetts law contains a unique consumer protection for low-income utility ratepayers. The DPU must consider the impact of distributed generation on low-income customers, and must make adjustments to keep rates affordable for low-income households. In this rate case, the DPU applied this section of the law for the first time.

The Low Income Network presented evidence to show that all customers pay through their electric bills for certain renewable energy subsidies, including costs associated with net metering for solar power customers and costs of complying with the Massachusetts Renewable Energy Portfolio Standard (a requirement that electricity suppliers must obtain a certain percentage of electricity from solar power and other renewable sources). Low-income customers pay for these subsidies as well, and have absorbed an unaffordable 6% increase in their electric bills. Yet it is unlikely that many low income customers would be able to benefit from the renewable energy subsidies themselves. The Low Income Network argued that, given this impact on the bills of low income ratepayers, the DPU must adjust the low-income discount rate to make sure that low-income customers are not paying for subsidies and programs that they cannot use.

The DPU found that the deployment of renewable energy has grown, causing growth in the renewable energy subsidies. Bills for low-income households have increased as a result. Applying Massachusetts law, the DPU agreed that the correct remedy was to order a reduction in the rates charged to qualifying low-income households, and directed National Grid to make this adjustment and include it with the utility company's compliance filings. The DPU also noted that other utility companies should do the same when they return to the DPU to seek increased rates.

The decision in this case, DPU 15-155, and the DPU's acknowledgment of the impact of renewable energy subsidies on low-income ratepayers, represent a victory for low-income Massachusetts households who struggle to pay their electric bills. NCLC can assist advocates in other states who are interested in trying to get similar legislation adopted elsewhere, or otherwise seek similar rate adjustments through their utility commissions.

For more information, please contact Charlie Harak,

John Howat or Jenifer Bosco at the National Consumer Law Center.

Payday Loan Stores Shouldn't be Utility Bill Payment Centers

Last month, the Missouri Public Service Commission joined Arizona and Nevada as states where utilities, as a result of pressure from consumer advocates, have been compelled or voluntarily agreed to cut contractual ties with payday lenders. Some utilities enter into contracts with payday and other short-term predatory lenders to accept bill payment from customers. Payday lending practices entrap lower-income individuals into a long-term cycle of exorbitantly-priced debt that often brings serious financial security consequences.

In June of this year the Consumer Financial Protection Bureau issued a draft proposed rule intended to rein in the most egregious payday lending practices and require that these lenders conduct basic ability to repay analysis before making loans. However, NCLC, Center for Responsible Lending, National Council of La Raza, NAACP, People's Action Institute, Consumer Federation of America, and numerous other advocacy groups issued a statement urging CFPB to close various loopholes and address other concerns with the proposed rule. There is the additional concern that the proposed rule may be weakened prior to adoption of final regulation over payday lenders. Unfortunately, state level advocates interested in working to keep utilities from using predatory loan storefronts as payment centers may not be able to fully rely on federal regulation to effectively address this problem.

Here are some payday lending stats and facts:

- Payday lenders typically offer their borrowers high-cost loans, typically with a short, 14-day term. The loans are marketed as a quick fix to household financial emergencies with deceptively low fees that appear to be less than credit card or utility late fees or check bounce fees. (National Consumer Law Center, *Consumer Credit Regulation*, 2012, p. 403.) The loans are marketed to those with little or no savings, but a steady income.
- The cost usually ranges from \$15 to \$30 for every \$100 borrowed. Fifteen dollars per \$100 borrowed is common among storefront payday lenders. The payday loan business model entails the borrower writing a post-dated check to the lender - or authorizing an electronic withdrawal equivalent - for the amount of the loan plus the finance charge. On the due date (payday), the borrower can allow the lender to deposit the check or pay the initial fee and roll the loan over for another pay period and pay an additional fee. The typical loan amount is \$350. The typical annual percentage rate on a storefront payday loan is 391%. (Saunders, et al., *Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't*, National Consumer Law Center, June, 2010, p. 4.)
- Rollover of payday loans, or the "churning" of existing borrowers' loans creates a debt trap that is difficult to escape: The Consumer Financial Protection Bureau found that over 75% of payday loan fees were generated by borrowers with more than 10 loans a year. And, according to the Center for Responsible Lending, 76% of all payday loans are taken out within two weeks of a previous payday loan with a typical borrower paying \$450 in fees for a \$350 loan. (Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings," April 24, 2013, p. 22; "Payday Loan Quick Facts: Debt Trap by Design," Center for Responsible Lending, 2014.)
- A 2008 Detroit Area study compared payday loan borrowers with low-to moderate income households that did not use payday loans. In that study researchers found that payday loan borrowers experienced nearly three times the rate of bankruptcy, double the rate of evictions, and nearly three times the rate of utility service disconnections. (Barr, "Financial Services,

Savings and Borrowing Among LMI Households in the Mainstream Banking and Alternative Financial Services Sectors,” Federal Trade Commission, October, 2008.).

For general information on payday lending, visit NCLC’s website. For more information about engaging in a state campaign to break utility-payday lender links, contact John Howat at jhowat@nclc.org.

Prepaid Utility: Subpar Service for Cash-Strapped Families?

The More Things Change, the More They Stay the Same

While prepaid metering and service technologies have changed — utilities now use smart meters, cell phones and the internet rather than prepayment meters that had to be fed with cash or a debit card to avoid loss of service — the ugliest truths about prepaid service remain constant. Everywhere in the Western world where it has been implemented, prepaid service is concentrated among lower-income households and disconnection rates far exceed those of customers getting regular service. It remains a second-class service with utility and vendor proponents preying upon financially-strapped households. It obscures the need for utilities and regulators to implement bill payment assistance, deposit assistance, arrearage management, energy efficiency, and other consumer protection programs and policies to help ensure real home energy security for all households.

Free Choice or Hobson’s Choice?

The aspect of prepaid service marketing that may be the most troublesome and challenging to overcome is that participation is described as voluntary, the free choice of the utility customer. Of course, those who have worked with utility customers have seen time and again low-income households faced with loss of necessary utility service doing whatever it takes to keep the lights and refrigerator going. We’ve seen households - to avoid disconnection - accept to last-minute payment “agreements” that are hopelessly unaffordable. In the case of prepaid service, a utility customer struggling to keep their household going may forfeit vital consumer protections and choose prepaid service rather than pay an unaffordable security deposit or deal with a looming disconnection.

The Prepaid Service - Predatory Lending Connection

Getting into the high-interest/high fee payday loan trap is a “free choice” exercised by about 12 million lower-income adults in the US each year. While proponents argue that payday lending helps underserved people solve temporary cash-flow problems, the practice preys on overburdened people in financial crisis. Similarly, prepaid service proponents promise greater control over electricity bills and energy savings, while preying on the vulnerability of low-income households juggling the financial impossibility of paying for basic necessities and keeping the lights on. Millions around the country and more recently the Consumer Financial Protection Bureau have come to recognize payday loans and other sub-prime lending as predatory. Hasn’t the time come for prepaid utility service to be viewed and regulated in a similar manner?

For more information, please see this NCLC report or contact National Consumer Law Center Senior Energy Analyst John Howat at jhowat@nclc.org.

AMPs are a Win-Win for Low-Income Customers and Utilities

Across the country, low-income consumers are struggling to pay their utility bills. In fact, one report from the Consumer Financial Protection Bureau found that collections in the “utilities or energy” category is the third most common item on consumers’ credit reports. Their study indicates that approximately one in thirteen consumers has a credit report containing one or more collections items originated from a utility or energy bill.

Helping consumers manage their utility bills can not only help keep the lights and heat on in households, but also provide utility companies with the opportunity to collect more money from otherwise uncollectible accounts. An example of a great way to manage arrearages is through Arrearage Management Programs, or AMPs, which have been successfully used in Massachusetts to provide incentives for low-income consumers to stay current on their bills in exchange for a structured, gradual forgiveness of past bills.

In September 2013, the National Consumer Law Center (NCLC) published the report *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs*, which provides an overview of how AMPs work in Massachusetts. Since then, NCLC has observed growing interest in replicating the success of Massachusetts AMPs in other states—most recently in Maine, Maryland, and D.C.

Penni McLean-Conner, Senior VP and Chief Customer Officer at Eversource Energy, has published several articles on the topic. Her first article characterized AMPs as a “win-win” for consumers and utilities alike. She then explored how AMPs may positively transform the customer/business experience. More recently, she shares insight on best practices for designing an AMP. Her articles have received favorable responses from utilities and regulators, indicating that the time is ripe for consumer advocates to push for the development of AMP programs in their states.

NCLC stands by AMPs as a useful tool for low income consumers to manage their bills. In order for AMPs to succeed, they must be well integrated with other state programs that help low income people pay their energy bills, such as discount rates, fuel assistance payments, and energy efficiency programs. We are happy to work with advocates and policymakers interested in bringing AMPs to their state. For more information, contact NCLC attorney Charlie Harak at charak@nclc.org.

Hurray! The FCC Modernized Lifeline! What You Need to Know

The Federal Communication Commission voted to modernize the Lifeline program on March 31, 2016. This was a monumental achievement for many advocates around the country who have worked

for years to modernize this critical low-income communications subsidy program.

The Lifeline program was established in the mid-1980s to connect low-income households to emergency services, jobs, healthcare, teachers, friends and family through affordable phone service. The focus of Lifeline was on access to affordable local phone service and it didn't cover those expensive long distance calls. Communications technology has evolved over the decades and today it is broadband that is dominant communications platform.

In modern life, access to broadband is as essential for access to opportunity as electricity was in the last century. As FCC Commissioner Clyburn noted, "Broadband is the greatest equalizer of our time." For those with the resources to afford broadband service, broadband integration in modern life has been nearly ubiquitous. Internet access has transformed the classroom and FCC Commissioner Rosenworcel eloquently noted that the "homework gap" is the cruelest part of the digital divide. From access to jobs to access to healthcare, as more aspects of modern life move online, the harmful effects of digital exclusion increase. So it is a really big deal that the Lifeline program will now include broadband as a supported service. Hurray! Now it is time to roll up our sleeves and help prepare Lifeline subscribers for the changes that are coming.

Nuts and Bolts Guide to Lifeline Changes

This is a quick summary of some of the changes to the Lifeline program that Lifeline subscribers will need to know.

- What types of service are covered? Voice-only wireline and wireless; Voice and data bundles; Broadband internet service, both fixed and mobile.
- The FCC Order phases out support for voice-only Lifeline over 5 years, but voice service is still available as part of a voice and data bundled Lifeline option.
- The FCC established minimum standards for Lifeline voice, bundles and broadband service, effective December 1, 2016. **Heads up for existing wireless Lifeline subscribers:** The minimum standard for wireless voice starts at 500 minutes a month and will go up annually in phases until it reaches 1000 minutes a month - I'll share details in a future blog post.
- Over the next three years, the Lifeline eligibility determination will be changing hands from the carriers to a National Verifier. Recertifications will also move to the National Verifier.
- Starting December 1, 2016, a different set of programs will qualify a household for Lifeline support: SNAP, Medicaid, SSI, Federal Public Housing Assistance, Veterans Pensions & Survivors Pension benefit, and the same suite of Tribal Programs that currently confer eligibility. Households may still qualify for Lifeline by demonstrating income at or below 135% of the Federal Poverty Guidelines.

Register for free webinars: The Universal Services Administrative Company (USAC.org) administers the Lifeline program and will implement these new program changes. USAC is sponsoring a series of free webinars on the new program. The next one is June 8. Register or view archived webinars.

There will be opportunities to weigh in and help with the implementation and outreach. Please stay tuned for more information. Congratulations and thank you, everyone. Rest up because we have a lot of good work ahead of us!

Exelon Merger Yields \$25 Million in Low-Income Benefits

On March 23, the D.C. Public Service Commission (DC PSC) gave final approval to the merger of Exelon Corporation and PHI Holdings (operating companies of Pepco, Delmarva, and Atlantic City Electric). The merger had previously been approved in the states of Virginia, New Jersey, Maryland, and Delaware, and at the Federal Energy Regulatory Commission. Given these prior approvals, the entire deal hung on the DC PSC's decision. The DC PSC had previously denied the merger on August 27, 2015, at a point in the proceedings when most parties strongly opposed it, and none supported. Shortly thereafter, Exelon and several parties, including the National Consumer Law Center (NCLC) and National Housing Trust (NHT) reached a settlement, which was presented to the PSC on October 6, 2015. There have been many twists and turns since, including the DC PSC initially rejecting the settlement, but ultimately approving a revised version.

NCLC and NHT were actively involved in the case for two years, presenting testimony and advocating that the merger should not be approved unless it included substantial investments in energy efficiency (EE) in affordable housing as well as other benefits for low-income households. Based on our advocacy, the settlement filed on October 6 included \$6.75 million for low-income energy efficiency investments, as well as substantial funding for other benefits targeted to low-income households. In the PSC's final order, it actually increased the amount primarily targeted for EE in multifamily housing to \$11.25 million.

The final order also commits the company - working in conjunction with NCLC, NHT, and other interested parties, to develop an Arrearage Management Program that will help customers who are behind on their bills to wipe out those arrearages so long as they pay the current, monthly bills regularly. However, we were quite disappointed that the final DC PSC order redirected \$9 million originally included in the settlement as a supplement to the federal fuel assistance funds the District receives. Instead setting those funds will be set aside to fund future grid modernization pilots.

In addition, due to a "most favored nation clause" (MFN) in the earlier Maryland decision, the low-income benefits that NCLC and NHT achieved for Maryland low-income customers will also increase. Under the MFN, Exelon now must roughly double the benefits already achieved in Maryland to equalize them, on a per customer basis, with those just included in the DC PSC order. In DC, the benefits work out to about \$213 per customer, while the per customer benefits in the Maryland case were closer to \$100.

There may be lengthy discussions and negotiations as to exactly how much the benefits in Maryland will now need to increase, but we believe the investments for EE in Maryland affordable multifamily housing will reach \$15 million to \$20 million.

Thus, the total for low-income energy efficiency between D.C. and Maryland will likely exceed \$25 million. In addition, in Maryland - as in D.C. - Exelon must develop an Arrearage Management Program for low-income customers in arrears on their bills. This will add significant additional benefits for low-income households.

Many thanks to our partners at NHT who've been involved throughout the negotiations to achieve this impressive win for low-income utility customers.

NCLC Intervenes in Exelon, Southern Co. Mergers

Utility mergers are on the rise. In the third quarter of 2015, there were 42 “deals”, with 18 of those greater than \$50 million, more big “deals” than in the prior two quarters combined. Twenty years ago, there were 100 publicly-traded, investor owned utilities. As of mid-2014, that number had shrunk to 48, and has no doubt declined since.

CEOs enter into these mergers to increase shareholder value and corporate profits. There is no guarantee that the oft-asserted merger-related “synergy savings” are realized, or that consumers (especially low-income consumers) derive significant benefit, unless consumer advocates intervene in those proceedings. Most mergers are approved by state utility commissions, but often with conditions attached. By intervening, advocates for low-income consumers can insist that, if the merger is to be approved, conditions be added that ensure their clients will benefit.

Over the past 18 months, the National Consumer Law Center (NCLC) has been involved in two of the largest recent mergers, the \$12 billion merger of Exelon and Pepco Holdings, Inc, and the more recent \$12 billion merger of Southern Company and AGL Resources.

The Exelon merger needed approval from state regulators in Virginia, New Jersey, Maryland, Delaware, and D.C. All but D.C. have already approved the merger. Along with our partner, the National Housing Trust (NHT), we intervened in the Maryland and D.C. proceedings asserting that the merger could only be approved if it included substantial benefits for low-income households, including energy efficiency investments in affordable housing paid for by stockholders, not ratepayers.

In Maryland, NCLC/NHT were parties to a settlement, since approved by the Commission, that includes a one-time, \$50 per customer rate credit as well as a total of \$57 million for energy efficiency related investments, all at shareholder (not ratepayer) expense. A floor of approximately \$10 million will be spent specifically on EE investments in affordable multifamily housing. The counties which distribute the funds are free to spend more on the affordable housing sector. In addition, Exelon agreed to enter good-faith discussions with NCLC and any other interested party towards developing an Arrearage Management Program proposal that would then be submitted to the Commission for its review.

Moreover, under a “most favored nations” clause in the Maryland settlement – which requires the amounts previously noted to increase if any other state obtains larger, per-customer benefits – those amounts will more than double, if and when the D.C. Commission approves a pending settlement there.

Initially, the Exelon-Pepco merger was opposed by virtually every intervenor in the D.C. proceeding, and the Commission denied approval. That brought Exelon to the negotiating table, resulting in a settlement with overall, per-customer benefits more than double the amounts obtained in Maryland. For low-income households in particular, the settlement includes \$7 million for energy efficiency investments in affordable multifamily housing – with those programs to be designed in consultation with NCLC, NHT, and other interested parties – and \$9 million for a supplement to the federal fuel assistance funds the District receives. As in Maryland, all of these funds come at shareholder, not

ratepayer, expense. This settlement is still pending before the District's Public Service Commission. If the Commission approves, the merger will go forward. There will still be challenging work to design and implement the energy efficiency and Arrearage Management Programs, but it will be well worth the effort, given the millions that will be made available for low-income households.

In Georgia, the proceedings in the Southern-AGL merger have only just begun. NCLC and its partner National Housing Trust (NHT) will seek similar energy efficiency investments in affordable housing, as we did in the Exelon cases.

Intervening in merger proceedings is not without costs and risks. Cases can be time-consuming: NCLC attorneys put in hundreds of hours of time, and NHT staff also logged significant time providing expert witnesses and other key support to the case. Moreover, there were parties representing consumer and environmental interests who vigorously opposed the merger being approved, regardless of any conditions. This was particularly true in D.C., where local environmental groups not only actively intervened in opposition before the Commission, but also engaged in extensive community organizing and public relations work to mobilize the merger's opponents.

It can be difficult to decide when a proposed merger is so inherently bad for consumers that it should be opposed, and when to advocate for conditions to be added to ensure that low-income customers benefit.

If you are interested in discussing any pending mergers in your area, feel free to contact NCLC attorney Charlie Harak at charak@nclc.org.