RIGHTS OF RESIDENTIAL TELEPHONE CUSTOMERS

The Telephone Fair Practices Act ("TFPA") and Other Consumer Protections for Telecommunications Customers

New York's Utility Project Law Manual
6th Edition 2013

New York's Utility Project
P.O. Box 10787
Albany, NY 12201
1-877-669-2572

TABLE OF CONTENTS

RIGHTS OF RESIDENTIAL TELEPHONE CUSTOMERS

I. Introduction

The main body of regulations governing residential telephone service, the Telephone Fair Practices Act ("TFPA"),[1] was adopted by the Public Service Commission ("PSC" or "Commission") in 1984, amended in 1997, and is codified at 16 NYCRR Part 609. The TFPA rules provide uniform protections to residential telephone consumers regarding application rights, suspensions, terminations, reconnections, deferred payment agreements ("DPAs"), medical emergency rights, and complaint procedures. TFPA rules do not apply to cellular telephone companies or to long distance telephone customers who do not use the billing and collection services of local exchange companies ("LECs").[2] Portions of TFPA are currently under review by the Commission as part of its consideration of intermodal competition.[3]

Eight years after the initial adoption of TFPA rules, the PSC adopted new rules in 16 NYCRR Part 606 to govern billing and collection services provided by LECs. The 1992 rules, and the Settlement Agreement in a court case arising from them,[4] achieved the technological and billing separation of basic local telephone services from other non-basic LEC services and from

[1] The TFPA rules are similar the Home Energy Fair Practices Act ("HEFPA"), the statute governing the provision of residential electric, gas, and steam service. In many areas, however, such as deferred payment agreements, the details of TFPA and HEFPA are very different. *See*, PULP Law Manual chapter on HEFPA, entitled, "Rights of Residential Gas and Electricity Customers."

[2] Consumer protections involving all telecommunications services are governed by the Federal Communications Commission ("FCC") and are addressed later in this chapter.

[3] *See*, Case 06-C-0481.

[4] *AT&T Communications of New York, Inc., et al. v. Public Service Commission*, No. 1559-92 (N.Y. Sup. Ct., Albany County), Settlement Agreement, July 1, 1992; approved by PSC August 7, 1992.

third party services, such as long distance toll service provided by interexchange carriers ("IXCs"). They also modify the applicability of the TFPA rules.

II. The Telephone Fair Practices Act

1. Applicability of TFPA

TFPA regulations generally govern the following services:

(1) Local residential telephone service of a LEC (*e.g.*, Verizon);

(2) IntraLATA and InterLATA toll service, unless IntraLATA presubscription is offered and selective IntraLATA access is available.[5]

TFPA applies only to "residential service" normally provided to customers in private homes or apartments, including any part of a customer's residence used for domestic purposes and not for substantial occupational purposes.[6] A "residential customer" is one "who is supplied directly by a telephone corporation with residential service at a dwelling for his or her residential use pursuant to an application for service made by such person or third party on his or her behalf."[7] A person requesting service who is not an "existing" residential customer and who requests basic local service at a dwelling for residential use is considered to be an applicant.[8]

2. Basic Local Service

By definition, basic local service includes:

(1) customer access line, including any usage bundled in this charge;

[5] 16 NYCRR §609.2(e). Long distance companies not using the billing and collection services provided by local telephone companies are wholly exempt from TFPA, but are subject to applicable non-TFPA customer protection rules, protections contained in the company's filed tariffs, and the jurisdiction of the FCC.

[6] Hotels and motels actually used for transient occupancy generally are not considered residential.

[7] 16 NYCRR §609.2(b).

[8] 16 NYCRR §609.2(c).

(2) local measured service;

(3) local measured units;

(4) locality rates (if any);

(5) mileage (if any);

(6) late payment charges on local exchange service;

(7) subscriber line charge;

(8) taxes and surcharges prorated to reflect only the taxes and surcharges associated with local exchange service;

(9) nonpublished service;

(10) touchtone;

(11) local exchange service restoration charge;

(12) non-sufficient funds check charge for local exchange service or any part of local exchange service;

(13) service order charge for local exchange service;

(14) construction charges for local exchange service (if any); and

(15) intraLATA toll service and interregional calls unless intraLATA prescription is offered and selective intraLATA access is available.[9]

3. Application For Service

Under TFPA, an application for residential service may be made orally or in writing.[10] In most instances, an oral application is sufficient. An oral application is complete when the applicant's name, address and, if applicable, the address of a prior account or a prior telephone number, are provided.[11]

---

9 16 NYCRR §609.2(e).

10 16 NYCRR §609.3(a)(1).

11 16 NYCRR §609.3(a)(6) Applicants are not required to provide their Social Security number as a condition of service.

A telephone corporation may require a written application if there are arrears on an account at the premises to be served or if the application is being made by a third person who will not be the customer. If a telephone corporation requires a written application, it must inform the applicant no later than three business days following the request, and it must indicate the basis for the requirement.[12]

A written application may require the information in an oral application, and reasonable proof of the applicant's identity and responsibility for service at the premises.[13] A written application containing the required information is deemed complete when it is received by the company.[14]

A completed oral or written application for <u>local</u> residential service will be considered approved unless it is denied within three business days. If timely denied, it must include the reason(s) for the denial, the requirement for an advance payment or deposit, and state exactly what the applicant must do to qualify. The applicant must also be informed of its right to an investigation or review by the Commission in cases of denials or requests for advance payments or deposits.[15]

If the denial of service and the required notification are made orally to the applicant, the telephone corporation must provide a written notice of denial to the applicant, upon request, at

12 16 NYCRR §609.3(a)(7).

13 A comment to 16 NYCRR §609.3(a)(7) states that a telephone corporation may seek a copy of a lease (if any), deed, bill of sale, or other documentation to establish the applicant's identity, residence, and responsibility for service.

14 16 NYCRR §609.3(a)(7).

15 16 NYCRR §609.3(b).

the address specified by the applicant. If oral notification is not given to the applicant within three business days due to the applicant's unavailability, the telephone corporation is required to send written notification immediately.[16]

Upon receipt and acceptance of the completed oral or written application, a telephone corporation must provide service within five business days or at a later date when specified by the applicant.[17] The only exceptions to the five-day service provision rule are in cases where the extension of service is precluded by strikes, law, considerations of public safety, non-payment of or refusal to agree to pay for reasonable charges for material and installation costs, or physical impediments (*e.g.*, adverse weather, no access to premises).[18] Carriers must make reasonable efforts to eliminate these conditions.[19] The Commission, however, may direct extension of service within 24 hours or less.[20]

If a residential customer moves to a different dwelling within the service territory of the same telephone corporation and within twelve months requests residential service at a new residence, it is considered a continuation of service in all respects, including any deferred payment plan, unless the customer was terminated for non-payment more than ten days prior to the new request for service.[21]

---

[16] 16 NYCRR §609.3(b)(3).

[17] 16 NYCRR §609.3(a)(5).

[18] 16 NYCRR §609.3(a)(5)(i)-(iv).

[19] 16 NYCRR §609.3(a)(5).

[20] 16 NYCRR §609.3(a)(5)(v).

[21] 16 NYCRR §609.3(a)(8).

Applications where the applicant has reportable charges or has been terminated for non-payment in the past six months can be denied if the applicant fails to pay a lawfully required security deposit or make an advance payment.[22] Reportable charges are defined in TFPA as any charges for local service which are unpaid 45 days from the date of the bill for the charges, provided that the bill was mailed within six business days of the date of the bill. Charges which are the subject of a DPA under which the customer is making the agreed-upon payments are not reportable charges. The failure to make an agreed-upon payment will make the entire unpaid balance of the deferred payment agreement a reportable charge. Charges which are the subject of a pending billing dispute are not reportable charges during the pendency of the dispute or for 15 days after its resolution.[23]

When an applicant has outstanding arrears for residential basic local service provided to a prior account in his name, the application must still be approved if: (1) the applicant makes full payment of arrears for basic local service;[24] (2) the applicant agrees to make payment for basic local arrears under a DPA, not to exceed three months;[25] (3) the applicant has a pending billing

---

[22] 16 NYCRR §609.3(a)(3).

[23] 16 NYCRR §609.2(d).

[24] 16 NYCRR §609.3(a)(2)(i).

[25] In order to qualify for a deferred payment agreement for the prior service arrears, the applicant must have been a customer for at least three months and service must not have been terminated for nonpayment during that period if the amount due was not subject to a previous deferred payment arrangement. 16 NYCRR §609.4(a)(2). *See, e.g., AT&T Communications of New York, Inc., et al. v. Public Service Commission* No. 1559-92 (N.Y. Sup. Ct., Albany County), Settlement Agreement, July 1, 1992; approved by PSC August 7, 1992.

dispute for such prior service and has paid any required amounts pursuant to the dispute procedure; or (4) the PSC or its authorized designee directs the provision of service.[26]

Although the rules provide for continuation of service to existing customers in arrears in medical emergencies, they do not address the situation of similarly situated applicants for service. A petition was filed with the PSC in 1989 by PULP and Legal Assistance of the Finger Lakes, seeking a rule requiring service upon certification of an applicant's medical emergency, despite the existence of arrears. Telephone companies subsequently modified their procedures to provide service to applicants in such situations, and the PSC did not issue the requested rule.

4. Suspension or Termination of Service

4.1 Notice

Under TFPA rules, "suspension" means the interruption of outgoing service only and "termination" means the interruption of both outgoing and incoming service.[27] Blocking of non-basic service, optional features, and long distance service is a "suspension" subject to TFPA procedures under the billing and collection rules, but under a court and PSC-approved settlement of a lawsuit, long distance service billed by a local corporation is <u>not</u> subject to TFPA if customers have selective access to other long distance carriers and the service is billed in a separate payment allocation category.[28]

[26] 16 NYCRR §609.3(a)(2)(iv).

[27] 16 NYCRR §609.2(f) and (g).

[28] 16 NYCRR §606.4(c); *AT&T v. PSC*, *supra*, Settlement Agreement, p. 8, para. 10(d). Before any long distance blocking is initiated due to nonpayment, however, companies must attempt to contact the customer by telephone as required by TFPA. *Id*.

Under the TFPA rules, a telephone corporation may suspend or terminate residential service if a customer:

(1) fails to pay charges that were due during the preceding six months, or in excess of six months if there was a billing dispute or when the customer's culpable conduct was the cause of the late billing. In these cases, the carrier must start billing not more than two months after resolving the billing dispute, the end of the event which caused the company to delay, or delays caused by the customer's culpable conduct; or

(2) fails to pay the amounts due on a DPA; or

(3) fails to pay or agree to pay equipment or installation charges for initiation of service; or

(4) fails to pay a lawfully required security deposit.[29]

The 1992 billing and collection rules now allow disconnection of basic local service only for nonpayment of charges for basic local service. Nonpayment of charges for other services no longer justify termination of basic local service, but may result in denial or blocking of service from a provider who has not been paid.[30] For example, if the applicant has paid, or makes arrangements to pay, for basic local service, but still owes money for long distance service or IntraLATA toll charges, only the unpaid service can be "blocked." The customer will also be offered an opportunity to maintain full service with a down payment and a DPA for all charges due for all services. If a customer defaults on a DPA that includes charges other than for basic local service, the DPA must be restructured to include only basic local charges, and partial payments made under the DPA must be re-credited to basic local service.[31]

[29] 16 NYCRR §609.4(a).

[30] 16 NYCRR §606.4(a). Under 16 NYCRR §606.4(d), should blocking of nonbasic services become necessary, it may not restrict the customer's ability to access emergency services by dialing 911 or the operator.

[31] *AT&T v. PSC*, *supra*, Settlement Agreement p. 7, para. 8. *See also* 16 NYCRR §606.5.

A notice of termination or suspension must be served upon the customer, or mailed to the customer at the premises served or to an alternative mailing address if applicable, at least eight days prior to the suspension date and at least 20 days prior to the termination date shown on the notice.[32] (Note: some telephone companies do not use the suspension procedures, but use only terminations.)

A notice of termination or suspension may not be sent until the 25th day after the date of the bill. The date of the bill is not necessarily the date the bill is mailed. However, the bill must be mailed within six business days of the date of the bill or the telephone corporation must extend the 25 day period one day for each day beyond the sixth business day. An individual customer may be required to present documentation, such as the postmarked date on the envelope, in order to get the extension.[33] A termination or suspension notice must clearly provide:

(1) the earliest date on which suspension or termination of service may occur;

(2) the reason for the action and how it may be avoided, including the total amount needed to be paid to avoid suspension or termination;

(3) the address and telephone number of the telephone corporation;

(4) specific information advising the customer of the availability of complaint handling procedures;

(5) the availability of a DPA, highlighted in the notice;

(6) a summary of the protections available under TFPA; and

32 16 NYCRR §609.4(c)(1).

33 16 NYCRR §609.4(c)(2).

(7) a message printed boldly on the face of the notice specifically stating that the document is a final disconnection notice.[34]

4.2 Time to Suspend or Terminate

Residential telephone service may only be suspended or terminated between 8:00 a.m. and 7:30 p.m., Monday through Thursday and between 8:00 a.m. and 3:00 p.m. on Friday, unless that day is, or is followed by, a public holiday or a day on which the corporation's main business office is closed. Further, service cannot be suspended or terminated from December 23 through December 26 or December 30 through January 2.[35]

Telephone service may be suspended or terminated following a determination that a customer's facility is abandoned or is being used without the customer's permission after five days' notice to the customer. However, the five-day advance notice period is waived when mailings are returned by the post office or when a new customer advises the corporation that he has moved into the location.[36]

On the day any suspension or termination for non-payment is scheduled, the corporation must verify that the account is indeed delinquent and that no payments have been received.[37] It is important that a customer indicate that a payment is being made specifically to keep service on because any payment, known by the telephone corporation to be made in response to a termination notice, must be posted to the customer's account on the date it is received or

34 16 NYCRR §609.4(b).

35 16 NYCRR §609.4(d).

36 16 NYCRR §609.4(e).

37 16 NYCRR §609.4(f)(1).

processed in whatever manner that will ensure that suspension or termination will not occur.[38] If the payment was made by a check which is subsequently dishonored, the corporation must make at least two attempts within 24 hours to contact the customer, one outside of business hours, before suspending or terminating service unless the customer has, within the previous 12 months, submitted a check for payment which was subsequently dishonored. After being contacted, the customer is to be given an additional 24 hours in which to pay the bill before suspension or termination of service occurs.[39]

4.3 Voluntary Third Party Notice

A residential customer may designate a third party to receive a copy of all notices relating to suspensions and terminations and other credit notices sent to the customer if the third party so agrees in writing. The telephone corporation must inform the third party that agreement to receive such notices does not constitute acceptance of any liability on the third party for service provided to the customer. The telephone corporation must promptly notify the customer of the third party's cancellation or refusal to accept receipt of such notices.[40]

5. Special Procedures for Medical Emergencies, Elderly, Blind, and Disabled Customers

Special pre-termination procedural protections are provided to customers with household members who have a medical emergency or are elderly, disabled, or blind. In particular

[38] 16 NYCRR §609.4(g).

[39] 16 NYCRR §609.4(h).

[40] 16 NYCRR §609.6.

situations the telephone corporation must restore telephone service when arrears to the company remain unpaid.

5.1 Medical Emergencies

A medical emergency exists when the customer or someone at the residence suffers from a serious illness or medical condition which severely affects the resident's well-being and the absence of telephone service would create serious risk of inaccessibility of emergency medical assistance or assistance relating to medical care, or professional advice.[41] A telephone corporation cannot suspend, terminate, or refuse to restore basic local service for non-payment of monthly bills while a medical certification is in effect.

A telephone corporation may require certification by a medical doctor or local board of health official that a medical emergency exists at the residence.[42] An initial certification of a medical emergency may be made by telephone as long as written certification[43] is provided to the telephone corporation within five business days. This certification must be submitted on the stationery of the doctor or local board of health and include:

(1) the name and address of the doctor or the local board of health;

(2) the doctor's state registration number;

(3) the name and address of the seriously ill person;

(4) the nature of the serious illness or medical condition;

[41] 16 NYCRR §609.5(a)(2).

[42] 16 NYCRR §609.5(a)(1).

[43] A faxed certification from a medical doctor that a medical emergency exists saves time and is usually acceptable.

(5) any service beyond basic local service which may be necessary to reach the customer's doctor because of the medical condition; and

(6) an affirmation that the customer suffers from a serious illness or medical condition and affects the patient's well-being and that the absence of telephone service would create a serious risk of inaccessibility to emergency medical assistance, assistance relating to medical care, or professional advice.[44]

The initial certification is effective for 30 days from the time the telephone corporation receives oral or written certification, whichever occurs earlier.[45] The initial medical certificate may be renewed if the medical condition is likely to continue beyond the expiration date of the initial certificate. In order to obtain a renewal:

(1) a medical doctor or qualified local board of health official must provide a written statement to the telephone corporation indicating the expected duration of the medical emergency and explain either the nature of the medical emergency or the reason why absence of telephone service will create a serious risk of inaccessibility to emergency medical assistance or assistance relating to medical care or professional advice, and

(2) the customer must demonstrate an inability to pay the charges for service, which may include submission of a form required by the telephone corporation before any certificate renewal. Within five days of submission of the form, the telephone corporation must determine if the customer's liquid assets and current income are insufficient to pay telephone bills after taking into consideration the customer's other necessary and reasonable expenses including food, shelter, medical, and other such necessities.[46]

If the telephone corporation determines that the customer does not have a financial hardship, it must provide the customer with a written notice of such determination and of the customer's right to a review of the determination by the PSC or its designee. The suspension or

[44] 16 NYCRR §609.5(a)(3). A form Medical Letter is available from PULP.

[45] *Id*.

[46] 16 NYCRR §609.5(a)(4).

termination is stayed pending the review. Normally, the renewed medical emergency certificate is effective for 30 days. However, in cases that are certified by the medical doctor or qualified local board of health official as "chronic," the renewed certificate is effective for 60 days or such longer period as approved by the PSC or its designee.[47]

After expiration of a certificate of medical emergency or a determination of no financial hardship, a telephone corporation must send the customer a final notice of suspension or termination at least eight days prior to suspension and 20 days prior to the date of termination.[48]

Even though service may not be terminated for nonpayment, the customer remains liable for telephone service while a medical emergency certificate is in effect, and conventional collection remedies other than termination can be pursued by the telephone corporation. A reasonable effort should be made to pay charges for such service. The PSC is available to assist customers in working out a payment schedule in order to avoid the accrual of substantial arrearages while the medical emergency exists.[49]

5.2 Provisions for the Elderly, Blind, or Disabled

Special procedures must be followed by the telephone corporation prior to suspending, terminating, or refusing to restore residential service to a customer known or identified to be blind, disabled, or age 62 or older where all remaining residents of the household are age 62 or

[47] *Id*.

[48] 16 NYCRR §609.5(a)(5).

[49] 16 NYCRR §609.5(a)(6).

older, 18 or younger, or blind or disabled.[50] In such cases, the telephone corporation must wait an additional 20 days after the date of termination or suspension as stated on the termination or suspension notice before suspending or terminating service. Further, the company must make a diligent effort to contact an adult resident at the customer's premises by telephone or, if unsuccessful, in person, at least eight days prior to the date suspension or termination may occur in order to arrange a payment plan.[51]

If a telephone corporation is notified that a customer is blind, disabled, or age 62 or older after telephone service has already been suspended or terminated, it must restore service within 24 hours and cannot then terminate service for an additional 20 days. The telephone corporation must also make a diligent effort to contact, in person, an adult resident at the customer's premises within 24 hours of such notification or as soon thereafter as practicable to arrange a payment plan.[52]

6. Reconnection of Service

A customer's residential service must be restored following suspension or termination within 24 hours (unless prevented by circumstances beyond the telephone corporation's control or when the customer requests otherwise) if:

(1) the arrears for basic local service have been paid in full;

(2) the conditions that warranted suspension or termination have been eliminated;

---

[50] 16 NYCRR §609.5(b)(1).

[51] 16 NYCRR §609.5(b)(2).

[52] 16 NYCRR §609.5(b)(3).

(3) the customer has entered into a deferred payment agreement for local service with or without a downpayment;

(4) the corporation has received notice that a serious impairment to health or safety exists for which telephone service is necessary, with all doubts to be resolved in favor of reconnection; or

(5) the PSC or its designee so directs.[53]

If the telephone corporation is prevented from reconnecting service for reasons beyond its control, service must be reconnected within 12 hours after these circumstances have ceased to exist.[54]

7. Deferred Payment Agreements

A residential customer who has been:

(a) an existing customer for three months, and

(b) whose basic local telephone service has not been terminated for nonpayment during that period for arrears owed on that person's account

must be offered a DPA before a telephone corporation can suspend, terminate, or refuse to restore the customer's residential service. If the customer has a medical emergency or is blind, disabled, or elderly, he is exempt from these eligibility criteria. However, if the PSC or its designee determines that the customer has the resources to pay, a DPA need not be offered.[55]

[53] 16 NYCRR §609.7(a). The requirements relating to the restoral of basic local service are in the Settlement Agreement in *AT&T v. Public Service Commission, supra.*

[54] 16 NYCRR §609.7(b).

[55] 16 NYCRR §609.8(a).

In the notice of termination, a telephone corporation must advise the customer of the availability of a DPA. Further, an offer of a DPA must be mailed to the customer at least six days prior to termination or suspension of service and must state:

(1) the total amount of arrears;[56]

(2) the downpayment, if any, and;

(3) the size of each installment payment and when they are due.

The notice must state in conspicuous, bold print that the customer may obtain the assistance of the PSC in reaching an agreement.[57]

If service has been terminated, the offer of a DPA must be made at the time the customer requests reconnection. A new DPA need not be offered to a customer who is in default on an existing DPA. A customer, however, may have his existing DPA renegotiated once in a 24 month period if a demonstration can be made that the customer's financial circumstances have changed significantly for reasons beyond his control.[58]

The TFPA provisions for DPAs are significantly different than those provided under HEFPA. The requirements of a TFPA DPA are as follows:

(1) a DPA obligates the customer to make timely payments of current charges for basic local service along with the agreed upon periodic deferred payments;

(2) a DPA can be for no amount greater than $150, unless either the PSC (or its designee) directs, or the telephone corporation agrees, to a larger amount;

[56] The billing and collection rules (16 NYCRR §606) require statements to show the amounts due in each category of service, and provide that partial payments will be credited in the order of basic local first, local company charges second, IntraLATA toll third, and IXC toll and other services fourth. These "buckets" are subject to a potential streamlining in the Commission's Comp III Proceeding. *See*, Case 06-C-0481.

[57] 16 NYCRR §609.8(a).

[58] *Id*.

(3) the duration of the DPA must be for no less than five months unless the customer agrees otherwise;

(4) a DPA may require a downpayment, of which the ceiling is the lesser of one-fifth of the deferred amount or three months of the customer's average billing for basic local service plus the difference, if any, between the amount of arrears and the deferred amount.[59]

The guidelines on which the terms of the DPA should be based are as follows:

(1) the periodic payments may be made on a weekly, monthly, or longer basis, at the convenience of the parties;

(2) when a customer cannot reasonably make the downpayments described above, the telephone corporation must voluntarily offer plans requiring a lesser (or no) downpayment;

(3) in those cases where a DPA is amended, the new terms should reflect the changed circumstances of the customer as much as is reasonable and possible.[60]

Eligible customers may voluntarily waive the right to the above limitations on the downpayment, but the telephone corporation cannot require or solicit the customer to give such a waiver.[61]

If a telephone corporation determines that a residential customer has the resources to pay his bill and, thus, that a DPA should not be offered, it must notify the customer and the PSC (or its designee) of the reasons for refusing to offer a DPA. The PSC, in accordance with 16 NYCRR §609.16, must then determine whether the customer indeed has the resources to pay his

[59] 16 NYCRR §609.8(b).

[60] 16 NYCRR §609.8(c).

[61] *Id*.

bill. The telephone corporation must stay any further suspension or termination actions and restore service until the PSC (or its designee) makes its determination.[62]

8. Security Deposits

A telephone corporation may not require an applicant or current customer to post a security deposit as a condition of receiving service unless the customer or applicant:

(1) Is a short-term, seasonal, or delinquent customer.[63]

(a) A *short-term customer* is a person who requires service for a specified period of time that does not exceed one year.[64]

(b) A *seasonal customer* is a person who receives service periodically each year, intermittently during the year, or at other irregular intervals.[65]

(c) A *delinquent customer* is an existing residential customer who accumulates two consecutive months of arrears without making reasonable payments (defined as one-half of the total arrears prior to the due date of the second bill). The telephone corporation must request a security deposit within two months of such failure to pay.[66]

(2) Had telephone service terminated for non-payment during the preceding six months.[67]

(3) Has reportable charges with another telephone corporation.[68]

(4) Does not give a telephone corporation to which he is applying for service permission to determine the existence of reportable charges or if the customer has

62 16 NYCRR §609.8(d).

63 16 NYCRR §609.9(a).

64 16 NYCRR §609.2(i).

65 16 NYCRR §609.2(h).

66 16 NYCRR §609.2(k).

67 16 NYCRR §609.9(a)(3).

68 16 NYCRR §609.9(a)(4).

been terminated for non-payment during the preceding six months on a previous or current account with other local telephone corporations,[69] or

(5) Fails to provide reasonable proof of identity.[70]

If a telephone corporation intends to require a deposit from an existing residential customer, it must first provide the customer with a written notice at least 10 days prior to the assessment of the deposit. Such notice must inform the customer of the amount of the deposit and the arrears, as well as advise him that the failure to make a timely payment will require the customer to pay a deposit.[71] If a deposit is permitted from a delinquent customer or an applicant for telephone service, the customer must be permitted to pay such deposit in installments over a six month period.[72]

A telephone corporation cannot require a security deposit from:

(1) a person known to the corporation to be a recipient of public assistance, Supplemental Security Income, or additional State payments;[73] nor

(2) a person known to the corporation to be aged 62 or older unless such customer has had service terminated for nonpayment of bills within the past six months. If a deposit is required from such a customer, the company must allow the customer to pay it in installments over a 12 month period.[74]

69 16 NYCRR §609.9(a)(5).

70 16 NYCRR §609.9(a)(6).

71 16 NYCRR §609.9(a)(2).

72 16 NYCRR §609.9(b).

73 16 NYCRR §609.9(c)(1).

74 16 NYCRR §609.9(c)(2).

An authorized deposit must be for a reasonable amount not greater than two times the average monthly bill for basic local service for a calendar year.[75] Each telephone corporation holding customer deposits must give a statement to each depositor when (and as) the deposit is applied to an unpaid bill showing the amount of the deposit (including interest accrued and the period covered) and the balance of the bills remaining unpaid or the balance of the deposit and interest remaining to the depositor's credit.[76]

A customer is entitled to a refund of the deposit if he is non-delinquent for one year or ceases to be a customer.[77] The refund can be credited to the customer's account or refunded to the customer, at the election of the depositor.[78] When the deposit is paid in installments, the date for the one-year period commences on the date of receipt of the first installment.[79] Interest must be paid on the deposit at a rate set annually by the PSC.[80]

A summary of these deposit requirements must be maintained by the telephone corporation and the corporation must let customers know of its availability.[81] Also, each

[75] 16 NYCRR §609.9(d).

[76] 16 NYCRR §609.9(f).

[77] 16 NYCRR §609.9(g)(1).

[78] 16 NYCRR §609.9(g)(3).

[79] 16 NYCRR §609.9(g)(4).

[80] 16 NYCRR §609.9(e). On November 8, 2007, the Commission revised the deposit rate, effective January 1, 2008. The customer deposit rate for investor-owned utilities is 3.75% and the rate for municipally owned utilities is 2.05%. This rate remains unchanged.

[81] 16 NYCRR §609.9(h).

telephone corporation holding customer deposits must keep adequate records with respect to each deposit.[82]

9. Backbilling

A telephone corporation may not charge for previously unbilled service nor upwardly adjust a bill for service supplied more than 24 months prior to the backbilling or billing adjustment unless culpable conduct of the customer caused or contributed to the late or inaccurate billing.[83] In instances where backbilling is permissible, the telephone corporation must:

(1) explain the reasons for delay in the billing;

(2) advise the customer that service cannot be suspended or terminated for non-payment of charges billed in excess of six months after the provision of service; and

(3) allow payment to be made under an installment plan. The installments in such a plan must be tailored to the customer's ability to pay and must be for a period of time of at least one month for each month the billing was late, unless otherwise agreed to by the customer. If requested by the customer, an explanation of the late billing and installment plan will be provided in writing. An adjustment to increase previously rendered bills more than six months after the time service was provided must be made within four months of the final resolution of the billing dispute.[84]

10. Late Payments

Telephone companies are permitted to impose late payment charges, fees, interest, or other charges on residential bills not paid within the time permitted. Such charges must be

---

[82] 16 NYCRR §609.9(i).

[83] PSL §118(2); 16 NYCRR §609.10.

[84] 16 NYCRR §609.10.

approved by the PSC.[85] For residential customers on fixed incomes, the telephone corporation must give them the opportunity to make payments on a reasonable schedule, adjusted for the customer's periodic receipt of income.[86]

11. Bill Contents

Under TFPA, each residential telephone bill must contain, in clear and understandable form and language:

(a) the name, address, and account number of the customer;

(b) the name of the telephone corporation;

(c) the telephone number of the telephone corporation's business office which may be contacted to discuss the bill;

(d) the amount owed for the latest period;

(e) the date by which payments for the latest period may be paid without a late-payment charge;

(f) the late payment charge for late-paid bills, if any;

(g) credits from past bills;

(h) any amounts owed and unpaid from previous bills;

(i) credits and charges which are adjustments to past bills due to service and/or rate increases;[87] and

(j) a statement of how the bill may be paid.[88]

In addition, all bills must include an itemized listing of the services being subscribed to and their monthly rates. Further, an identification of those services which are not necessary for basic service must be included with each new customer's first bill, each existing residential

85 16 NYCRR §609.11(b).

86 16 NYCRR §609.11(a).

87 16 NYCRR §609.12(a).

88 16 NYCRR §609.12(b).

customer's first bill after a change in service, and semiannually for all customers. New customers will be allowed 60 days to change their type or grade of service, or both, and to cancel any optional non-basic services without incurring any cancellation or nonrecurring charges other than the original service connection and monthly charges for the period service was used.[89]

Telephone corporations are not prohibited from providing pertinent messages and information on the bill, provided such information does not interfere with the presentation of the required information.[90]

12. Notification Requirements

12.1 Annual Notification of Rights

Every telephone corporation must, at the time service is initiated to a residential customer and at least annually thereafter, provide residential customers with a plain language summary of their rights and obligations under TFPA, or inform customers that such a summary is available and how it can be obtained from the company. At a minimum, the summary must include the following:

(1) a description of the complaint-handling procedures available at the telephone corporation and the Commission. (Such notice must clearly state the means by which a complaint can be made to the company and must also advise the customer that, if after contacting the telephone corporation, the customer remains dissatisfied, he may contact the Commission. The notice must further state that Commission Staff is available to give assistance in such matters, and must also specify an appropriate address for the Commission.);

(2) the rights and obligations of residential customers relating to payment of bills, termination of service and reconnection of service;

[89] 16 NYCRR §609.12(c).

[90] *Id.* Note that additional requirements have been ordered by the FCC under its Truth-in-Billing rules.

(3) a description of special protections afforded the elderly, blind, and disabled, and persons with medical emergencies;

(4) a request that residential customers who qualify for the protections afforded to elderly, blind, and disabled, and persons voluntarily so inform the utility;

(5) the right of a customer to designate a third party to receive copies of all notices relating to suspension and/or termination of service or other credit notices;

(6) appropriate forms that customers claiming the protections for elderly, blind, and disabled, and persons with medical emergencies may fill out and return; and

(7) a description of the customers' rights in regard to deferred payment plans and the holding and demanding of security deposits by the telephone corporation.[91]

12.2 Notices in Telephone Directories.

The opening pages of each directory published by the telephone corporations must contain a conspicuous notice advising customers that, should any utility fail to resolve their complaints regarding service or billing disputes to their satisfaction, they may refer their problems to the Commission's Consumer Services Division and include the appropriate address and telephone number for the Consumer Services Division.[92]

12.3 Billing Information in Non-English Language.

Every telephone corporation providing service to a county where, according to the most recent Federal census, at least 20 percent of the population regularly speaks a language other than English, must include in its telephone directories in such county a notice in both English and such other language which describes the contents of the telephone corporation's bill. At

[91] 16 NYCRR 609.13(a).

[92] 16 NYCRR 609.13(b). The Consumer Services Division is now known as the Office of Consumer Services.

least once a year, every telephone corporation must mail to all residential customers in such county a notice in both English and such other language which describes the contents of the telephone corporation's bill.[93]

13. Emergency Disconnections

A telephone corporation may disconnect residential service to a customer when an emergency threatens the health and safety of a person, the surrounding area or the telephone distribution system. In such circumstances, the corporation will restore the service as promptly as feasible and not disconnect for any other reason prior to restoration.[94]

14. Inspection and Examination of Equipment

A telephone corporation employee may enter any premises supplied with telephone service by the telephone corporation to examine the corporation's telephone equipment or wires to ascertain any service-affecting problems on a non-holiday workday between 8 a.m. and 6 p.m., or at such other reasonable times as requested by the customer. A photo-identification badge signed by the president or vice-president of the telephone corporation must be shown.[95] This rule does not apply to the inspection and examination of telephone equipment where an emergency may threaten the health and safety of a person, the surrounding area, or the telephone corporation's distribution system.[96]

---

[93] 16 NYCRR 609.13(c).

[94] 16 NYCRR §609.14.

[95] 16 NYCRR §609.15(a).

[96] 16 NYCRR §609.15(b).

A telephone corporation employee may not enter any locked premises supplied with telephone service by the telephone corporation to examine the corporation's telephone equipment or wires without the permission of the person lawfully in control of the premises, nor use any manner of force to perform the inspection or examination, except in the case of an emergency which may threaten the health and safety of a person, the surrounding area, or the telephone corporation's distribution system, or where authorized by court order.[97]

15. Telephone Corporation Complaint Handling Procedures

A residential customer who has a service problem or billing issue must first make a complaint to the telephone corporation. The telephone corporation must provide a simple system in which a customer's complaint may be accepted and processed. The telephone corporation must promptly investigate the complaint and report its results to the customer. Upon request, this oral report can be in writing, which must be sent within five business days after the request to the customer. If an oral report can not be given due to the unavailability of the complainant, either a letter requesting that the customer call the telephone corporation or a written copy of the report must be sent no later than two business days after the results of the investigation are determined. If a letter requesting the customer to call is not responded to in five business days, a written copy of the report must be sent to the customer no later than the seventh business day after the letter was sent to the customer. [98]

[97] 16 NYCRR §609.15(c).

[98] 16 NYCRR §609.16.

The telephone corporation must inform the customer of the availability of the PSC's complaint handling procedures in the event that the dispute is resolved in whole or in part in the corporation's favor. A customer's service may not be suspended or terminated for nonpayment of disputed amounts while a complaint is pending before the company or the PSC or for 15 days after its resolution, unless otherwise provided by the Commission or its designee. A customer must pay the undisputed portion of the bill as a condition of continued service during the pendency of the dispute.[99]

Further details on the complaint handling process are discussed in the next section.

16. Waiver

The TFPA rules contain a waiver provision, which allows the PSC to waive sections of TFPA "for good cause shown."[100] In addition, telephone companies may have somewhat different procedures which apply to particular circumstances that may not be explicitly covered by the TFPA rules. Advocates should check with the PSC in any case where a utility asserts it has a waiver of a TFPA provision, and should consult the telephone corporation's tariff with respect to any procedure which, while not violating TFPA, may appear to be unreasonable or otherwise questionable.

III. Complaint Handling

In addition to TFPA, the Commission has established a streamlined, electronic mechanism for consumers to file complaints against service providers, but complaints will not be

[99] *Id*.

[100] 16 NYCRR §609.17.

formally lodged against a carrier until it has had an opportunity to resolve the issue.[101] For example, some consumer complaints turn out to be erroneous, such as a long distance problem being brought to a local exchange carrier, and are vetted prior to being assessed on the carrier.

1. The Role of the Office of Consumer Services

The Commission's Office of Consumer Services ("OCS") receives consumer complaints via its toll-free telephone number, in writing, or over the Internet. After OCS completes entering the details of a complaint, it forwards the complaint to the utility by fax or e-mail. In an effort to ensure that utilities fulfill their obligation to provide effective customer service, OCS will first ask the utility to contact the customer and resolve the concern directly. If the complaint is related to the provision of service, the utility should contact the customer within two business hours. If the complaint is related to billing or another matter, the utility should contact the customer by the close of the following business day.

Should the utility not contact the customer with its initial acknowledgement, does not provide its response within two weeks, or the matter remains unresolved after the customer receives a response, the customer can contact OCS to escalate the matter. At this point, the complaint is considered a "true complaint" and will be counted against the utility. OCS will then further investigate the matter and notify the customer in writing or by telephone of the decision and the reasons for the decision.

[101] Complaints affect a carrier's ability to meet its minimum service quality requirements and negatively impact it being able to garner a Commendation Award from the Commission. Complaint statistics for each company are tracked by the Commission and are posted on its website to assist customers in choosing providers.

If the initial decision is believed to be wrong, the customer can request an informal hearing. This request may be in writing and made within 15 days of the initial decision. The customer may then be asked to submit certain documents to support his or her position. If the customer and the utility are unable to settle the complaint, the hearing officer will make a decision on the complaint and notify the customer in writing of the decision. If the customer believes that the informal hearing officer's decision was wrong, it can be appealed within 15 days of the decision to the Commission. The appeal must be in writing and must contend that there was an error made by the hearing officer that affected the decision or that evidence not previously available would affect the decision. The Commission will make a decision on the appeal and notify the customer in writing of its decision.

OCS can be contacted by telephone Monday through Friday at 800-342-3377 from 8:30am to 4:00pm or via the Internet (24 hours a day) at www.dps.state.ny.us by clicking the Consumer Assistance Link. The mailing address is Office of Consumer Services, Department of Public Service, Three Empire State Plaza, Agency Building 3, Albany, NY 12223-1350. For complete information on the OCS complaint and review process, see the PULP Law Manual chapter entitled, "Utility Complaint Handling Procedures of the New York Public Service Commission."

2. Limitations on Complaints

The Commission will not hear complaints against wireless or Voice over Internet Protocol ("VoIP") providers because it currently lacks jurisdiction over these technologies.

Complaints against these types of providers should be directed to the FCC (along with other interstate carriers, such as IXCs) or can be brought to the attention of the state Attorney General.

However, even among wireline providers, both incumbents and competitive LECs, there are limitations as to what the PSC can do. Back in 1997, a New York Telephone customer brought suit against the company for charging for calls in whole minute increments, meaning that if a two minute call went into the next minute by only one second, the customer would be charged for a three minute call. The Appellate Division supported the state Supreme Court's decision to dismiss the complaint under the "filed rate doctrine."[102] The filed rate doctrine states that when a company in a regulated industry files its service rates with the regulatory agency and the agency approves those rates, the rates are deemed to be fair and reasonable. Accordingly, even if a carrier's marketing activities or customer service representations would have a customer believe that rates charged would be different than what would be indicated by the filed rates, there is no remedy for customers, provided the rates were properly approved. As the *Porr* court held, "all of the plaintiff's common-law claims must be dismissed because they are barred by the Public Service Law, which gives the PSC the exclusive authority to determine intrastate telephone rates."[103] This holding was upheld seven years later when an AT&T customer complained that she had been told by an AT&T representative that rates would not increase as long she remained a customer. The court stated "[u]nder the filed rate doctrine, the plaintiff is

---

102 *Porr v. NYNEX Corporation*, 230 A.D.2d 564 (2nd Dep't 1997).

103 *Id.,* at.230 A.D.2d 576.

presumed to have had knowledge of this [tariffed rate] information, and so could not have been misled by the representative's alleged comments."[104]

In 2004, the United States Supreme Court handed down a major opinion regarding the application of the federal antitrust laws to incumbent local exchange carriers. The case, *Verizon v. Trinko*, determined that the New York-based customer of a competitive provider, AT&T, could not bring an antitrust action against the incumbent, Verizon, for its alleged failure to fill its rivals' orders on a nondiscriminatory basis. Trinko had filed a class action suit alleging that Verizon had completed its competitor's requests slower than orders for its own customers as part of an anticompetitive scheme to discourage customers from becoming or remaining customers of CLECs in violation of §2 of the Sherman Act. The Court found that the complaint alleged there was a breach of an incumbent LEC's duty under the Telecom Act to share its network with competitors, but that this does not state a claim under §2 of the Sherman Act.[105] Any remedy for discriminatory performance by the incumbent in making its facilities available will need to be brought by the competitor.

IV. Truth-in-Billing

In addition to the Commission's specific regulations regarding billing practices, the FCC has issued numerous orders regarding customer bill contents, known as Truth-in-Billing.[106]

---

[104] *Doyle v. AT&T Corporation*, 304 A.D.2d 521, 522 (2nd Dep't 2003).

[105] *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*, 540 US 398, 124 S.Ct. 872, 157 L.Ed.2d 823 (2004).

[106] *See, e.g., First Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, FCC 99-72 (Released May 11, 1999); *Order on Reconsideration*, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, FCC 00-111

The Commission initially adopted the Truth-in-Billing rules to improve landline consumers' understanding of their telephone bills. Among other things, §64.2401 of the FCC's Rules require that the telephone company's bill must:

(1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered;

(2) identify the service provider associated with each charge;

(3) clearly and conspicuously identify any change in service provider;

(4) contain full and non-misleading descriptions of charges;

(5) identify those charges for which failure to pay will not result in disconnection of the customer's basic local service; and

(6) provide a toll-free number for customers to call in order to lodge a complaint or obtain information.[107]

The FCC also determined that all telecommunications providers should use standard labels on bills when referring to line item charges relating to federal regulatory action, such as universal service fees, subscriber line charges, and local number portability charges. These Truth-in-Billing requirements were extended to wireless carriers in 2005.[108] This wireless

---

(Released March 29, 2000); and *Report and Order and Second Further Notice of Proposed Rulemaking*, In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237, NSD File No. L-00-72, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, FCC 02-329 (Released December 13, 2002).

[107] 47 CFR §64.2401.

[108] *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*, In the Matter of Truth-in-Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket 98-170, CG Docket No. 04-208 (Released March 18, 2005).

component was brought before the United States Supreme Court on appeal, where certiorari was denied on January 22, 2008.[109]

Issues regarding bills and their contents may be raised at either the PSC or FCC (for landline carriers), but only at the FCC for wireless providers.

V. Taxes and Surcharges

The PSC has issued an *Advisory Notic*e regarding how it wants taxes and surcharges to appear on customer bills, including differentiating between which line items are "taxes" and which are "surcharges." While the document is considered to be official Commission action, these are not specific requirements, but merely recommended actions.[110] Carriers that do not follow the recommendations in the *Advisory Notice* will be contacted by Commission Staff.

1. Application/Computational Issues

A list of all appropriate taxes and surcharges, a range of rates, how each is applied, and the statutory authority behind each was included in the Advisory Notice. This Appendix has been posted on the PSC's web page. Carriers were reminded that Commission-approved tariff charges, such as the Presubscribed Interexchange Carrier Charge, should not appear as a tax or surcharge.

---

109 See, *National Association of State Utility Consumer Advocates and National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, No. 05-11682, 11th Cir., July 31, 2006.

110 *Advisory Notice*, Proceeding on Motion of the Commission to Examine the Application of Taxes and Surcharges to Customer Bills by Telecommunications Carriers, Case 05-C-1455 (Issued November 6, 2006).

2. Customer Notice

The Commission strongly recommended that "companies include thorough and detailed descriptions of all taxes, surcharges and other fees on their web-sites, including the purpose of each item, and routinely remind customers (on bills or bill inserts) that this information is available."[111]

3. Improper Tariffs

The Commission also recommended "that each carrier carefully evaluate the propriety of their individual billing charges based on this notice, and consider bundling any such tax or surcharge into basic rates."[112]

4. Inclusions on Customer Bills

4.1 State and Local Sales Tax

State and local sales taxes are defined as taxes paid by consumers and directly submitted to appropriate state, county, or city authorities. City school district taxes are also collected under sales tax law provisions. The state sales tax rate is four percent in New York and the county sales tax rates are capped at three percent, but counties can seek legislative approval for higher rates. City school taxes are allowable up to three percent. An additional 0.375 percent MTA Tax Surcharge (*See:* Section 4.8) applies in the New York Metropolitan area and may be bundled with the state or local sales tax. Calls to entertainment and information services, such as

111 *Id.*, at p. 2.

112 *Id.*

those dialed using 500, 700, 800, or 900 telephone numbers, are taxed at an additional five percent.

The sales taxes are applied to all intrastate services, including all surcharges, except the E-911 Surcharge.[113]

4.2 Federal Excise Tax

The Federal Excise Tax was introduced in 1898 by the Federal government as a temporary tax to support the nation's efforts in the Spanish-American War. At that time, the three percent tax on long distance service was considered to be a luxury tax since primarily only the wealthiest people owned telephones. The tax revenue from the Federal Excise Tax went directly into the Federal General Fund. The tax was eliminated in 2006 for all telephone providers (landline and wireless) by the U.S. Treasury after five federal appeals courts declared it unlawful and should no longer appear on customer bills. A refund mechanism for customers was established for 2006 tax returns.

4.3 E-911 Surcharge

The purpose of the E-911 surcharge is to pay for the cost of the "Universal Emergency Number" so that all citizens throughout the United States can request emergency assistance. Consumers do not pay this fee in order to be provided with E-911 service. As a result, a consumer has access to E-911 whether or not the locality in which the consumer lives has imposed the monthly charge on their phone bill. There is no per-call charge for calling 911. The

[113] *See,* N.Y. Tax Law, §1101 *et seq.* (State Sales Tax and additional tax on entertainment/information services), §1201 *et seq.* (city school district taxes), and §1109 *et seq*. (MTA Surcharge on Sales Tax).

rate can not exceed 35 cents per access line per month on the consumers of every landline service provider within each municipality imposing the surcharge, other than the City of New York. The City has been authorized to impose a monthly charge of up to one dollar. The Surcharge can not be imposed on more than 75 exchange access lines per customer per location. Lifeline customers, public safety agencies, and any municipality which has enacted a local law regarding E-911 are exempt from this Surcharge.

The E-911 Surcharge is a flat fee paid by the consumer. The surcharge is required to be collected by the service provider and to be added to and stated separately in its billings to the customer.[114]

4.4 Municipal Surcharge

This Surcharge recovers telephone company expenses associated with municipal revenue taxes, which apply to calls originating and terminating within the village or municipality. The Surcharge can not exceed one percent except in Buffalo, New York City, and Yonkers, where the rate may not exceed three percent. Statements attached to tariff schedules indicate the surcharge percentage for each village or municipality.

The Municipal Surcharge applies to all local charges, LNP Surcharge, FCC Line Charge and Federal USF Surcharge.[115]

[114] *See,* N.Y. County Law §§301 through 307. This requirement does not address the E-911 surcharge that appears on wireless telecommunications service bills and imposed pursuant to County Law §308 and §309, and note that the authority for that surcharge is different from the authority granted to localities in County Law §303.

[115] *See,* N.Y. General City Law, §20-b and N.Y. Village Law, §5-530.

4.5 New York State Gross Revenue Tax Surcharge

This Surcharge recovers telephone company expenses associated with mandated New York State Transportation and Transmission Corporation Franchise Taxes (Section 184 Tax) and Excise Taxes on Telecommunications Services (Section 186-e Tax). The Commission has established maximum rates for this Surcharge, which vary according to the type of service provided and whether or not the carrier is principally engaged in local telephone business. For telephone corporations, including resellers, principally engaged in local telephone business, the maximum rates[116] are as follows:

$ Services provided for resale -- 0.3764%
$ IntraLATA toll and regional calling -- 2.8273%
$ All other services -- 2.9405%.

For telephone corporations, including resellers, not principally engaged in local telephone business, the maximum rate is 2.5641 percent and applies to all of these services.

This Surcharge is generally applied to all services except the E-911 Surcharge. Technically, companies are not required to pay Section 184 Taxes on interstate and international calls and services; however the Surcharge is not bifurcated in this manner. Since the 184 Tax is very small compared to the 186-e Tax, which is levied on interstate and international services, the amount of over-collection is minimal. Companies may file tariffs that provide for separate 184 and 186-e Tax Surcharges to more precisely collect the appropriate taxes.[117]

[116] Companies are allowed higher surcharge levels upon showing their inability to recover their costs based on the established Commission-approved levels.

[117] *See,* N.Y. Tax Law, §184; §186-e.

4.6 FCC Subscriber Line Charge ("SLC")

The FCC instituted this charge[118] as it developed its access charge regime after the break-up of AT&T in 1984, and caps the maximum price that a company may charge. This is not a government tax or surcharge, and it does not end up in the government's treasury. The SLC recovers some of the costs of the local network formerly recovered through interstate toll charges. While only ILECs are required to collect the SLC, the FCC explicitly affirmed the right of CLECs to impose a SLC on their customers. Thus, CLEC SLC rates are not capped in the same manner as ILEC SLCs.

A SLC for a primary residential line and a single-line business is currently capped at $6.50 per month per line. The cap for non-primary residential lines is $7.00 per month per line. Only one residential line is deemed to be the primary line. A cap of $9.20 per month applies to multi-line business users. CLECs are not required to apply these rates. This charge is a flat fee and is added to and stated separately in billings to the customer.[119]

4.7 Federal Universal Service Fund Recovery Charge

The FCC, as directed by Congress, developed the Federal Universal Service Fund ("USF"), which provides funding for low income services, schools and libraries, and high cost rural service. All telecommunications companies are required to pay a specific percentage of their interstate and international revenues into the USF to support these programs.

[118] The Subscriber Line Charge is also known as FCC Charge for Network Access, Federal Line Cost Charge, Interstate Access Charge, Federal Access Charge, Interstate Single Line Charge, or Customer Line Charge.

[119] The interstate charge was approved by the FCC under §47 USC §201, Docket No. CC 80-286.

The FCC calculates the quarterly percentage of the interstate and international revenue ("contribution factor") based on the ratio of total projected quarterly costs of the universal service support mechanism to contributors' total projected collected end-user interstate and international revenues, net of projected contributions. For example, the percentage for the fourth quarter of 2009 is 12.3 percent.[120] The quarterly percentage can be found on the FCC web site at www.fcc.gov.

Accordingly, the USF charge is a flat fee on the interstate and international revenues on a customer bill which may not exceed the FCC quarterly percentage.[121]

4.8 MTA Tax Surcharge

This Surcharge recovers telephone company expenses associated with the mandated New York State temporary metropolitan transportation business tax surcharge (Section 184-a Tax), and applies to customers located in the New York metropolitan area only.

The Commission previously established maximum rates for this Surcharge, which vary according to the type of service provided and whether the carrier is principally engaged in local telephone business. For telephone corporations, including resellers, principally engaged in local telephone business, the maximum rates are as follows:

$ Services provided for resale -- 0.1277%
$ IntraLATA toll and regional calling -- 0.6890%
$ All other services -- 0.73%.

[120] *Public Notice*, Proposed Fourth Quarter 2009 Universal Service Contribution Factor, CC Docket No. 96-45, DA 09-2042, Released September 14, 2009.

[121] *See*, 47 CFR §54.709(a).

For telephone corporations, including resellers, not principally engaged in local telephone business, the maximum rate is 0.5986 percent and applies to all of these services.

This Surcharge is generally applied to all services except the E-911 Surcharge. Technically, companies are not required to pay Section 184-a Taxes on interstate and international calls and services; however the surcharge is not bifurcated in this manner. Since the 184-a Tax is very small, the amount of over-collection is minimal.[122]

4.9 Local Number Portability Surcharge

Local Number Portability ("LNP") is a service that provides residential and business telephone customers with the ability to retain, at the same location, their existing local telephone numbers when switching from one local telephone service provider to another. LNP was mandated by the Telecommunications Act of 1996. In July 1996, the FCC issued a ruling in CC Docket No. 95-116 that LNP must be in place nationwide by January 1, 1998. Since each state is responsible for implementation of LNP, timetables vary; the specifics of the implementation vary as well.[123] The FCC allows, but does not require, local telephone companies to pass certain costs

[122] *See,* N.Y. Tax Law §184-a.

[123] LNP was extended to wireless providers in 2003 and VoIP providers in 2007. *See: Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116, FCC 03-284 (Released November 10, 2003) and *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis, Numbering Resource Optimization*, WC Docket No. 07-243, WC Docket No. 07-244, WC Docket No. 04-36, CC Docket No. 95-116, and CC Docket No. 99-200, FCC 07-188 (Released November 8, 2007).

of implementing and maintaining long-term number portability on to their customers. Additional information can be found on the FCC web site at www.fcc.gov.

For a period of five years from the date of LNP implementation, a local telephone company may recover its costs. The FCC allows ILECs to recover only costs directly related to providing long-term telephone number portability, which keeps the charges passed on to consumers, if any, as small as possible. Because the FCC neither regulates the rates nor dictates the maximum amount carriers can charge their customers, carriers may choose to recover their costs of providing long-term telephone number portability in any lawful manner consistent with their obligations under the Telecommunications Act of 1996.

Accordingly, the LNP charge is a fee on a customer's bill that varies by ILEC. This fee is based upon the ILECs internal costs of implementing long-term telephone number portability.[124]

4.10 Other Common Charges

The following charges are specific line items for services rendered but are not defined as a tax or surcharge. Therefore, they are taxable and may have surcharges applied to them. These charges are not mandated by state or federal authorities and are therefore not charged separately by all telephone companies. It should also be noted that some charges are specifically not allowed as a separate line item for the intrastate portion of bills, such as Regulatory Recovery Fees, but may be allowed as an interstate charge.

[124] *See,* 47 CFR §52.33.

(a) Presubscribed Interexchange Carrier Change Charges

The Presubscribed Interexchange Carrier ("PIC") Change Charge is a one-time charge imposed when customers presubscribe to their carrier of choice, which gives them the ability to make toll calls without having to dial an access code. The charge applies each time a customer requests a change, and separate charges may be imposed for changes to intraLATA and interLATA/interstate changes. Rates vary, but most are five dollars or less.

(b) Intrastate Access Recovery Charge

The Intrastate Access Recovery Charge recovers costs long distance carriers incur to connect to the local telephone network which are higher in New York State than the national average. The use of this charge allows long distance carriers the ability to offer uniform toll rates throughout the country. Rates vary from company to company as do the names given for this charge. The rates are included in each company's New York intrastate tariffs.

(c) Carrier Cost Recovery Charge

The Carrier Cost Recovery Charge (or Regulatory Recovery Fee) recovers national costs associated with various federal regulatory fees and programs. Rates vary from company to company as do the names given for this charge. Similar charges to recover New York State costs are not allowed.

4.11. Cramming

Cramming is the addition of charges onto a customer's local telephone bill for services or merchandise without the individual's authorization. This started to become a major issue in the mid- to late-1990s when a customer would place a call to an information service number (a

"900" number) or participate in a sweepstakes contest and unknowingly be enrolled in some service or product. The company providing the service or merchandise then would arrange for the billing through the local telephone company.

Through a collaborative effort between the Commission and New York's incumbent local telephone carriers, "Cramming Core Guidelines" were agreed to in February 1999. The Guidelines state that the carriers agree:

1. Cramming is the submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on customers' local telephone bills.
2. To provide local telephone bills to residential customers that include charges in a clear and understandable form and language.
3. To fully adjust charges on local telephone bills which meet the definition of cramming in these guidelines.
4. To address cramming issues through third-party billing and collection agreements.
5. To provide outreach and customer education as it applies to cramming.[125]

The FCC's Truth-in-Billing Rules, among other things, are intended to stop cramming from occurring. Because a customer's local telephone company may include charges incurred for another company's service on the bill, the company sending the bill must identify the service provider associated with each charge. If a bill contains charges in addition to basic local service, it must distinguish between charges for which non-payment will result in disconnection of basic local service and charges for which non-payment will not result in disconnection. Telephone

[125] The Cramming Core Guidelines were formally adopted by the Commission and apply to all local exchange carriers in its CLEC-to-CLEC Migration Guidelines. *Order Adopting Phase II Guidelines*, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Case 00-C-0188 (Issued and Effective June 14, 2002).

companies must also display, on each bill, one or more toll-free numbers that can be called to ask about or dispute any charge on the bill.[126]

Cramming complaints can be brought either to the PSC or FCC, but the local telephone provider should be approached first to provide them with an opportunity to correct the problem. Also, since the Truth-in-Billing rules have been extended to wireless providers, the FCC's anti-cramming rules apply to wireless as well.

VI. Slamming

The practice of changing a customer's telephone service – local or long distance – without permission is known as slamming. Should a slamming occur, the customer may call the slamming company to request that the problem be remedied. If the customer has not yet paid, he or she should tell the slamming company that the first 30 days of service will not be paid for. The customer may also call the authorized company to inform them of the slam and to request reinstatement to the same calling plan he or she had before the slam and that all "change of carrier charges" must be removed from the customer's bill. Complaints can also be filed with the appropriate government agency, either the FCC or the PSC.

If a customer has been slammed, and the bill of the slamming carrier has not been paid:

- The customer does not have to pay for service for up to 30 days after being slammed; neither the authorized telephone company nor the slamming company.
- The customer must pay any charges for service beyond 30 days to the authorized company, but at that company's rates, not the slammer's rates.

If the customer has paid the telephone bill and then discovers that he or she has been

126 *See,* 47 CFR §64.2401.

slammed:

- The slamming company must pay the authorized company 150 percent of the charges it received from the customer.
- Out of this amount, the authorized company will then reimburse the customer 50 percent of the charges paid to the slammer. (For example, if a customer was charged $100 by the slamming company, that company will have to give the authorized company $150, and the customer will receive $50 as a reimbursement.)
- The subscriber also has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges.

As a result, with these rules, the FCC has taken the profit out of slamming and protected consumers from illegal charges.[127] The rules also give states the option to become the primary forum for administering the liability rules and resolving slamming complaints. New York did so via a letter to the FCC and re-iterated its concern over fraudulent practices like slamming and cramming in its *Comp III Statement of Policy*.[128] Accordingly, slamming complaints against local exchange carriers or intrastate long distance carriers can be brought to the PSC or the FCC and slamming complaints against interstate long distance carriers or wireless providers can be brought to the FCC.[129]

VII. Wireless Consumer Protections

The rules detailed above, especially TFPA, were written and approved in an age where

[127] *See:* 47 CFR §§64.1100-1190 for the FCC's slamming rules.

[128] *Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings*, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Case 05-C-0616 (Issued and Effective April 11, 2006).

[129] Note that customers can select a different IntraLATA toll provider (regional long distance) and InterLATA toll provider (both in-state and interstate long distance) and can place a block on each so that any changes in providers can only occur with the customer's permission.

incumbent LECs controlled the marketplace. While competitive LECs are regulated in much the same manner as ILECs, wireless carriers are exclusively regulated by the FCC.[130] However, the FCC has, by and large, exercised a hands-off approach when it comes to wireless consumer protections. As a result, CTIA, the wireless industry association, has crafted a voluntary code of consumer protections for its members. Signatories to the CTIA Consumer Code have voluntarily pledged to uphold the following principles:

(1) Disclose rates and terms of service to consumers
(2) Make available maps showing where service is generally available
(3) Provide contract terms to customers and confirm changes in service
(4) Allow a trial period for new service
(5) Provide specific disclosure in advertising
(6) Separately identify carrier charges from taxes on billing statements
(7) Provide customers the right to terminate service for changes to contract terms
(8) Provide ready access to customer service
(9) Promptly respond to consumer inquires and complaints received from government agencies
(10) Abide by policies for protection of customer privacy

Since this is a voluntary code, there is no enforcement by the FCC. However, five wireless carriers have received from the FCC Eligible Telecommunications Carrier ("ETC") status for New York and, as a result, can offer Lifeline service and have agreed to abide by these principles.[131] Nextel, for example, in requesting ETC status pledged that it would follow the

[130] NY Public Service Law §5(6) suspends cellular services from PSC jurisdiction pending the outcome of a proceeding that regulation of cellular is in the public interest.

[131] Nextel Partners, Sprint PCS, Verizon Wireless, TracFone, and Virgin Mobile.

CTIA Consumer Code and the commitments laid out in the FCC's *Virginia Cellular Order*, including:

(1) annual reporting of progress towards build-out plans, unfulfilled service requests, and complaints per 1,000 handsets;

(2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage; and

(3) specific commitments to construct new cell sites in areas outside its network coverage.

Nextel made these additional promises to the FCC: (1) that it offers and will continue to implement E-911 access; (2) that it will comply with any minimum usage requirements required by applicable law (Nextel also stated that local usage is included in all of its calling plans); (3) that it will provide access to interexchange services, and is not required to offer equal access to those services; (4) that it offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services (Nextel stated that it intends to provide the supported services using its existing network infrastructure); and (5) that it is committed to specific methods to advertise the availability of the supported services and the charges for the services using media of general distribution.[132]

[132] *Order*, In the Matter of Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners, Petition for Designation as on Eligible Telecommunications Carrier in the state of Alabama, Petition for Designation as on Eligible Telecommunications Carrier in the state of Florida, Petition for Designation as on Eligible Telecommunications Carrier in the state of Georgia, Petition for Designation as on Eligible Telecommunications Carrier in the state of New York, Petition for Designation as on Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, Petition for Designation as on Eligible Telecommunications Carrier in the state of Tennessee, and Petition for Designation as on Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, DA 04-2667 (Released August 25, 2004).

Accordingly, many of the consumer protections expected from LECs, such as termination rights, DPAs, and protections for medical emergencies, the elderly, blind, and disabled, do not apply to wireless services. The PSC will not handle complaints against wireless providers and these will need to be addressed to the FCC or the state Attorney General.[133]

As previously stated, the Truth-in-Billing rules were extended to wireless providers in 2005. It was expected that competition among providers would prove to be a sufficient safety net for wireless customers, as they can "vote with their feet" and change carriers. Wireless LNP has made this transition easier; however, with the constant merging of wireless providers, there are fewer and fewer options for customers which have been wronged by a wireless carrier.

VIII. VoIP Consumer Protections

Interconnected VoIP service[134] falls into two categories. The first is offered by cable television providers and employs the digital coaxial cable network to provide service to all users connected to the public switched network. It is a "fixed" service, not unlike traditional wireline service. The second type of VoIP service is the "nomadic" Vonage model which employs telephone equipment connected to computers which, especially when that computer is a laptop, can be located anywhere. Both use Internet protocol in their networks and convert the calls back to analog for each end user of the conversation. Since the FCC has been unable to distinguish when a VoIP call is either intrastate or interstate, it has assumed exclusive jurisdiction over

[133] The General Consumer Complaint Form is available on the New York State Attorney General's web page at www.oag.state.ny.us/complaints/complaints.html#Forms.

[134] That is, VoIP services which are interconnected with the public switched network, as opposed to those types of VoIP services that can only be used to reach other users of the same VoIP service and not the general public.

interconnected VoIP.[135] It has not, however, gone so far as to deem VoIP a telecommunications service, but has applied much telecom regulation to VoIP.

For example, interconnected VoIP providers must contribute to the federal Universal Service Fund,[136] must provide access to 911,[137] must provide access to the relay service for the deaf,[138] and must provide LNP.[139]

---

135 *Memorandum Opinion and Order*, In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, FCC 04-267 (Released November 12, 2004). Note that on June 30, 2004, a federal court issued an injunction against the PSC preventing it from enforcing its decision to enforce some telecom regulations on Vonage. *Vonage Holdings Corporation v. New York State Public Service Commission*, 2005 U.S. Dist. LEXIS 33121, 04 Civ. 4306 (December 14, 2005).

136 *Report and Order and Notice of Proposed Rulemaking*, In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, and IP-Enabled Services, WC Docket No. 06-122, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92-237, NSD File No. L-00-72, CC Docket No. 99-200, CC Docket No. 95-116, CC Docket No. 98-170, WC Docket No. 04-36, FCC 06-94 (Released June 27, 2006).

137 *First Report and Order and Notice of Proposed Rulemaking*, In the Matters of IP-Enabled Services and E-911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36 and 05-196, FCC 05-116 (Released June 3, 2005). The Commission has proposed requiring interconnected VoIP providers to offer E-911 access as well. *See: Notice of Proposed Rulemaking*, In the Matter of Wireless E911 Location Accuracy Requirements, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling, 911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, FCC 07-108 (Released June 1, 2007).

138 *Report and Order*, In the Matters of IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, FCC 07-110 (Released June 15, 2007).

139 *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, In the Matter of Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, CTIA Petitions for

Accordingly, interconnected VoIP providers must collect the E-911 Surcharge and the USF Surcharge. In New York, they must collect sales tax on the intrastate portion of its service from its customers (if it can be determined; if not, the customer must pay sales tax on the entire amount billed, interstate and intrastate),[140] and may collect the LNP surcharge, if needed. However, TFPA does not apply to VoIP. Complaints would need to be brought to the FCC or state Attorney General.[141]

IX. New Developments

The Commission launched its so-called "Comp III" proceeding in June 2005 to revamp its telephone regulations in light of intermodal competition (wireless and VoIP). Since these intermodal competitors were not subject to any of the same regulations as LECs, the Commission wanted to examine the full panoply of regulations on LECs to see if any could be modified. While the final order did do some tweaking, very little has changed -- in fact, many of the directives have never even been fully implemented.[142]

The Comp III *Statement of Policy* talks about extending the TFPA provisions to VoIP and wireless, but does not explain how it will get past the Vonage injunction or Section 5(6) of the

---

Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis, Numbering Resource Optimization, WC Docket No. 07-243, WC Docket No. 07-244, WC Docket No. 04-36, CC Docket No. 95-116, CC Docket No. 99-200, FCC 07-188 (Released November 8, 2007).

140 *Taxation of Internet Telephony*, New York State Department of Taxation and Finance, Office of Tax Policy Analysis, Technical Services Division, NYT-G-07(2)C and NYT-G-07(3)S, Sales Tax, June 20, 2007.

141 The Internet-Related Complaint Form is available on the New York State Attorney General's web page at www.oag.state.ny.us/complaints/complaints.html#Forms.

142 *Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings*, Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Case 05-C-0616 (Issued and Effective April 11, 2006).

Public Service Law. It would also like to see these intermodal competitors voluntarily offer blocking options (such as to "chatlines" and 900 services). A Consumer Report Card was to be implemented which would provide comparison information on the Commission's web page about different types of carriers (LEC, wireless, and VoIP) and, even though industry meetings took place to discuss the proposal, no such guide has been implemented. The proceeding remains open, but attention has been directed to areas within the PSC's control -- applying Comp III changes to regulated utilities.

The PSC has launched a follow-up proceeding to Comp III to examine its current billing and collections rules and TFPA.[143] As mentioned previously in footnote 56, the Commission has a proposal on the table to change its partial payment rules. Currently, unless the customer dictates how its partial payment should be applied, carriers must first apply the payment to basic local service and then, if any money remains, apply the remainder to local company charges second, IntraLATA toll third, and IXC toll and other services fourth.[144] Should the proposal be approved, there would only be two such "buckets." One for basic local service and one "as determined by the telephone corporation." Such a change would provide much more discretion for the telephone company, but could result in more service blockages where, for example, the company chooses to apply payments to IXC toll rather than IntraLATA toll if the customer owes money for IntraLATA toll.

[143] *See, Notice Concerning Service Quality and Consumer Protection Regulations*, Proceeding on Motion of the Commission Providing for the Examination of Service Quality and Consumer Protection Regulations, Including Parts 602, 603, and 609, Case 06-C-0481 (Issued April 21, 2006).

[144] 16 NYCRR §606.5.

The same proceeding is looking to make subtle changes to TFPA as well. Notices for termination or suspension would be permitted to be sent electronically (in addition to regular mail) should the customer agree. In addition, it would be clarified that late payment charges, service restoral charges, and dishonored check charges could not be applied to Lifeline customers, customers with serious illnesses, or customers that have notified the company of amounts in dispute. Further, late payment charges could not be assessed on customers under quarterly billing plans or deferred payment agreements.

Any action regarding consumer protections for intermodal competitors, that is, wireless and VoIP services, will have to come from the national level. In fact, the U.S. Congress is stepping into the issue regarding consumer protections and wireless services. Senators Amy Klobuchar (D-MN) and Jay Rockefeller (D-WV) introduced legislation on September 6, 2007 to protect cell phone users. The bill, entitled "The Cell Phone Consumer Protection and Empowerment Act of 2007" would require wireless service providers to share simple, clear information on their services and charges with customers before they enter into long-term contracts. There would also be a 30-day window in which a customer could exit a contract without early termination fees and face pro-rated termination fees for the remainder of the contract. A major provision of the legislation would require wireless providers to distinguish between legitimate taxes and surcharges and other charges which are created by the carrier to help pay operating costs.

X. Conclusion

While TFPA has provided some protections for consumers for many years, since it does not apply to the intermodal competitors, customers of the fastest growing service technologies are not covered. In the very near future, the majority of telephony users will have no recourse for actions taken by, for example, their VoIP provider which would have been covered if the provider was a LEC. Consumers may need to look to the Federal government for assistance.