STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 5903

Investigation into Service Quality Standards,)
Privacy Protections, and other Consumer)
Safeguards for Retail Telecommunications)
Service)

Order entered: 7/2/99

PRESENT: George E. Young, Hearing Officer

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Ludlow Telephone Company
Northfield Telephone Company
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Perkinsville Telephone Company
Shoreham Telephone Company
Topsham Telephone Company
Waitsfield-Fayston Telephone Company, Inc.
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1. At the time of the hearings, Champlain Valley Telecom, Inc. and Waitsfield-Fayston Telephone Company, Inc. were separate entities. Since that time, the two companies have merged into a single entity. The appearances reflect the status at the time of hearings.

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I. INTRODUCTION

The provision of telecommunications services continues to evolve from one in which service was provided primarily by companies with a monopoly within their service territories to a competitive marketplace. This evolution offers the potential to benefit consumers in many ways. Competitive pressures are expected to force lower prices, while at the same time expanding the range of service offerings available to customers as the competitors seek to differentiate their products and add value to entice consumers. Competition also drives market entrants to deploy new capabilities, enhancing the capabilities of the network and enabling an even broader spectrum of services.

The benefits of competition prompted Vermont to embrace competitive entry over ten years ago. But a competitive telecommunications environment also brings risks. As firms seek to reduce costs, staff responsible for ensuring superior service quality and interacting with customers may be reduced, potentially leading to a lower overall quality of service.[2] Competitive entry also brings competitors that will seek to differentiate their products, in some cases by offering service quality and consumer protections that vary from those provided by incumbent service providers. Such product differentiation is perfectly reasonable and to be expected, as well as desired, in a competitive marketplace. Yet as consumers transition from the monopoly environment, the Public Service Board ("Board") is faced with the questions of whether clear standards may be necessary to ensure that service quality (defined broadly to encompass consumer protection and privacy rights) meets acceptable levels and consumers are protected from trade practices less prevalent in a monopoly environment and, if so, how to establish those limitations.

In this docket, the parties' identification of the needs and desires of customers coincided to a large degree. This substantial agreement is most obvious in the area of service quality. Here,

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2. Parties to this proceeding have argued that cost-cutting measures do not necessarily lead to a diminishment of service quality. As Bell Atlantic explained, "workforce reduction, if done prudently by streamlining work processes, is good management when it produces equal or better service." Exh. NYNEX-1. This point is valid. Nonetheless, any workforce reduction also entails the risk that quality may be diminished; the trend in cost-cutting among larger telecommunications firms thus raises the potential for lessened service quality. See tr. 6/30/97 (Usher) at 11 (workforce reductions at US West contributed to service quality problems).

the parties have reached a Stipulation that, once approved, will establish for the first time service quality standards for all telecommunications providers operating within the state, along with specified numeric criteria by which the Board, the Department of Public Service ("Department"), the industry, and, more importantly, the public, can assess performance. The Stipulation also includes consequences for failure to adhere to the service quality performance measures. The Stipulation will provide a sound framework for continuing to ensure that customers continue to receive high quality services and I, therefore, recommend that the Board approve the Stipulation.

The continuation of slamming, cramming and similar practices also demonstrates the need for consumer protection standards in the changing telecommunications environment. The competitive market will likely produce many consumer benefits, but it also raises increased potential for competitive abuses. Therefore, I recommend that the Board adopt a "Consumer Bill of Rights" setting out the basic principles that will guide the interaction between providers and their customers and delineate what constitutes acceptable service under Vermont law. To implement these basic guidelines, the record also demonstrates the need for a limited range of specific consumer protection standards, which I also recommend.

Collectively, the service quality performance measures and consumer protection standards will establish a framework that ensures that Vermont consumers will maintain high service quality during the transition to competition.

II. BACKGROUND

A. Procedural History

The Board opened this investigation on July 31, 1996, to examine whether the Board should adopt service quality standards applicable to providers of telecommunications carriers within the State. In addition, the Board stated that the investigation would consider the

possible institution of standards for consumer protection and customer privacy. The Order required all local exchange providers ("LECs") to become parties.[3]

A prehearing conference occurred on August 13, 1996. At that time, the parties to the proceeding requested clarification of the scope of the investigation, asserting that the Board's opening Order was not sufficiently specific. Following the submission of briefs, I issued a procedural Order of January 30, 1997, further delineating the scope of the proceeding. Specifically, the Order concluded that:

> the principal focus of this proceeding is the establishment of service quality standards for those retail intrastate telecommunications services that have heretofore been provided by local exchange carriers either exclusively or on a competitive basis. Practically, this means that the docket will examine primarily basic exchange service. But the Board and parties also may seek to encompass services that depend upon the basic exchange, such as toll, directory assistance, and operator services or that have been in the past provided by the monopoly service provider.[4]

Thus, although the proceeding would focus on local exchange services, standards for toll and other ancillary services were specifically included as well. Evidence presented by the parties, particularly in the area of consumer protection standards and privacy, addressed basic exchange service and these other services.

The January 30, 1997 Scope Order also set out a number of issues that were expected to be addressed during the proceeding. The evidence submitted by the parties generally contained recommendations on these subjects.

To facilitate the exchange of information, I conducted workshops addressing service quality issues and consumer protection and privacy aspects of this investigation on November 20 and 21, 1996, and January 15, 1997.

Technical hearings took place on May 21, 22, 27, and 28, June 30, and July 1, 1997. Additional technical hearings were held on August 11, 1997.

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3. Order of 7/31/96 at 4. Copies of the Order were also sent to all certified telecommunications carriers within the state. At the time of the Order, no company had received approval to operate as a competitive LEC ("CLEC"), so the Order applied only to the incumbent LECs. To ensure that the results of this docket applied to CLECs, each CLEC Certificate of Public Good ("CPG") has specifically conditioned issuance of the CPG upon compliance with the outcome of this proceeding.

4. Order of 1/30/97 at 3-4. This conclusion effectively excluded cellular service providers. The Order also made clear that service quality encompassed consumer protection and privacy issues.

Several partial Stipulations were filed. On July 1, 1997, AT&T Communications of New England, Inc. ("AT&T"), MCI Communications Corporation ("MCI"), Hyperion Telecommunications of Vermont, Inc. ("Hyperion"), nine independent Vermont telephone companies,[5] New England Telephone and Telegraph Company d/b/a Bell Atlantic - Vermont ("Bell Atlantic"),[6] and Vermont Telephone Company, Inc. ("VTel") filed a "Joint Stipulation Regarding Code of Conduct for Telecommunications Providers" (the "Code of Conduct").[7] These same parties entered into a second Stipulation, which was filed on July 14, 1997, addressing service quality issues. The August 11 hearings considered these Stipulations and the response of the Department thereto.

The parties engaged in additional discussions following the close of hearings, culminating in a Stipulation of all of the parties, except VTel, on service quality issues (unless otherwise specified, "Stipulation" as used in this Order refers to the Service Quality Stipulation). VTel raised objections to part of the Stipulation.

Subsequent to the filing of briefs and the Stipulation, staff members of the New England Conference of Public Utility Commissioners ("NECPUC") held some discussions related to the possible consumer protection rules. The working group, which included representatives of the Board and Department, produced a set of model rules applicable to interexchange carriers ("IXCs"). The Hearing Officer was not involved in this process, nor even aware of it until the draft rules were nearly complete.[8] However, because of the possible relationship of the model rules to this docket, parties were provided an opportunity to comment on the rules, their relationship to this docket, if any, and the desirability of consistent standards within New England. Several parties objected to consideration of the rules in this docket and observed that

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5. The nine independent telephone companies are: Northland Telephone Company, Perkinsville Telephone Company, Champlain Valley Telecom, Shoreham Telephone Company, Waitsfield Telecom, Topsham Telephone Company, Franklin Telephone Company, Northfield Telephone Company, and Ludlow Telephone Company.

6. At the time of the technical hearings, Bell Atlantic conducted business as NYNEX. Hence, exhibits introduced in the hearing were identified as NYNEX-1, etc. Prior to the filing of briefs, NYNEX merged with Bell Atlantic and began operating as Bell Atlantic within Vermont. Except for the exhibits, this document uses the newer tradename.

7. These parties are collectively referred to in this Proposal for Decision as the "Industry."

8. The Board itself also did not participate in the discussions related to drafting of the model rules.

if the Board were to consider the Model Rule as part of the record, further evidentiary hearings were necessary.[9] These objections are well-taken. Parties have not had an adequate opportunity to examine the model rules, present testimony and cross-examine witnesses on them. It would, therefore, be inappropriate to now include them as part of the record on which the Board will base its decision, unless the record is reopened, which I am wont to do. Accordingly, I will not and have not considered the Model Rules in any way during the formulation of this Proposal for Decision.

B. Vermont Law and Policy

Vermont law makes very clear that high quality telecommunications service is a primary objective of state policy. One need look no further than 30 V.S.A. § 202c, which enunciates one of these goals as "to protect basic local exchange telephone service to Vermont residents . . . at reasonable cost and *superior quality*."[10] Section 226b (alternative forms of regulation) also embodies this concept, requiring that the Board find an alternative regulation plan "is consistent with the public's interests relating to appropriate quality telecommunications services."[11] Section 226a, which authorizes contract regulation for basic exchange carriers, goes further, requiring that such a contract provide "specified service quality levels for telecommunications services."[12] As the Board observed in its Order opening this investigation, previous decisions implementing these sections have echoed the importance of maintaining high service quality performance.[13]

The Vermont Telecommunications Plan, adopted by the Department in 1996, also stresses the importance of superior quality, which "means that the network will meet and exceed the needs and expectations of customers."[14] Consistent with the statutory objectives, the Plan

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9. At this time, Sprint Communications Company also requested to intervene in this proceeding. That Motion is granted.

10. 30 V.S.A § 202c(b)(1) (emphasis added).

11. 30 V.S.A. § 226b(c)(4).

12. 30 V.S.A. § 226a(b)(3).

13. Order of 7/31/96 at 1-2.

14. *Vermont Telecommunications Plan* at 1-15 (1996). During hearings, I took administrative notice of the Plan pursuant to 3 V.S.A. § 810(4). No party objected. Tr. 5/28/97 at 77.

observes that "[i]n a competitive telecommunications environment, it is imperative that quality of service be ensured for all consumers."[15]

Based on the testimony and evidence presented in this proceeding, I hereby report, in accordance with 30 V.S.A. § 8, the following findings of fact and conclusions.

III. FINDINGS AND DISCUSSION RE: SERVICE QUALITY

A. Introduction

The term "service quality" encompasses a number of different aspects. Customers look to the availability of the service, including prompt connection to the network. Once connected, the reliability of the service becomes paramount; customers seek the ability to use the telecommunications network and complete calls, with few service troubles and rapid correction of any problems or outages that may arise.[16] In addition, customers look for choice and the range of services available to them to meet their needs. Consumers also seek security, which includes not only assurances that calls will be private, but a broader range of privacy concerns (for example, unlisted and unpublished numbers, and call blocking services).[17]

Traditionally, service quality standards for retail consumers of telecommunications services have focused on the first two aspects: availability and reliability. Most states that have established specific service quality performance measures have focused on these aspects, as has the Department in prior proceedings. This is not surprising as it is in these two aspects that objective measurements of quality can be developed and used to assess performance.

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15. *Vermont Telecommunications Plan* at 1-15 (1996).

16. Tr. 6/30/97 at 43 (Usher); Exh. NYNEX-1 at 8. As the Department explained "the provisioning of service orders is probably one of the cornerstones of customer service today. . . . Whether it be a residential consumer or whether it be a business class consumer, their reliance on the telecommunications networks is becoming tantamount [sic], and if that service is not provided in a timely and efficient way, it's making life extremely difficult for people." Tr. 6/30/97 at 170 (Murray-Clasen).

17. See *Telecommunications Service Quality*, National Regulatory Research Institute (1996). This study also considers simplicity (i.e., ease of use) and assurance (customer satisfaction) as service quality aspects. Additional consumer concerns are encompassed within the rubric of "consumer protection" issues and discussed in Part IV.

Vermont does not presently have in place and, except during the period of the Vermont Telecommunications Agreement ("VTA"),[18] has not historically set forth specified service quality performance measures. Instead, service quality has been assessed on a case-by-case basis, with few instances brought to the Board's attention.[19] Most witnesses expressed their views that Vermont's service quality is generally good, implying that the absence of proceedings reflected a generally positive service quality.[20] However, the lack of quality measurements has made objective assessment by regulators and consumers of the quality of retail telecommunications services difficult.[21] Even where data on service quality exists, the Board and companies have not set benchmarks delineating acceptable quality. Compounding the absence of standards is the fact that companies measure and track service quality in different ways.[22] Thus, persons seeking to assess service quality are generally left with anecdotal evidence.

Some of the data that exist suggest possible diminishment in service quality. Since 1991, telecommunications complaints in Vermont have increased 40% compared to a 7% access line growth. Consumers complain more about their telephone service than about any other utility service. The increase in complaints has occurred with respect to service provisioning and repair, line extensions, new service and repair service, all concerns that fall within traditional service quality definitions.[23] Yet even these trends remain episodic and do not permit us to assess whether the increasing complaint numbers reflect change in the underlying service quality, short term blips, or increased consumer awareness.

As noted above, Vermont law and policy place great importance on deploying and maintaining a high-quality telecommunications network within the state. And high service

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18. The Board approved the VTA, an agreement between the Department and Bell Atlantic (then NYNEX) in 1988 in *Investigation of Proposed "Vermont Telecommunications Agreement,"* Docket 5252, Order of 7/12/88 and *Investigation of Proposed modified "Vermont Telecommunications Agreement,"* Docket 5282, Order of 12/30/88. The VTA expired on December 1, 1993, after having been extended twice.

19. See *Investigation into quality of Service offered by New England Telephone and Telegraph Company*, Docket 5386, Order of 6/20/90.

20. See e.g., Exh. NYNEX-1 at 6; exh. Independents-1 at 24; tr. 6/30/97 at 163-164 (Murray-Clasen).

21. Exh. DPS-SQ at 3; tr. 6/30/97 at 163-164 (Murray-Clasen).

22. *Id*.

23. Exh. DPS -SQ at 1, 4.

quality is increasingly important as consumers rely more upon the telecommunications network.[24] Well-documented changes in the global marketplace and the explosion of the internet have both increased the importance of connectivity and reliable service.[25] Quality telecommunications services also aid economic development, enabling Vermont businesses to compete effectively and increasing the potential to encourage other businesses to relocate to the state.[26] The increasing importance of service quality to the economic well-being highlights the need to take steps to ensure that the competitive telecommunications market does not lead to a diminishment of the quality consumers and businesses rely upon.

B. The Service Quality Stipulation

The Department originally proposed the adoption of several specific service quality benchmarks that would enable assessment of the performance of the state's local exchange carriers. Under their proposal, the Board would not adopt specific criteria under each performance measure, but would first engage in a period of monitoring. After the initial hearings on the Department's proposal and objections thereto, the Industry parties filed a stipulated Service Quality Commitment[27], which included numeric quality commitments.[28]

Following the close of hearings, all of the parties in this proceeding, except VTel and the Department of Aging and Disabilities, filed a Stipulation on Service Quality issues. VTel raised objections to one aspect of the Stipulation, which I will address below. In that Stipulation, the parties agree to certain specified service quality criteria (described in the Stipulation as "performance areas") and specific numeric standards implementing those criteria.

Specifically, the Stipulation defines nine Performance areas by which the companies and the Board will assess service quality for Vermont retail telecommunications consumers.

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24. Exh. DPS-SQ at 9.
25. Tr. 6/30/97 at 12 (Usher).
26. Exh. DPS-SQ at 11; exh. Independents-1 at 25.
27. Exh. Industry-2.
28. The Department countered by proposing numeric criteria that were generally more stringent. Exh. DPS-Reply-1.

(1) Network Trouble Report Rate ("NTRR") measures the customer reported troubles of regulated services to their provider of service. Companies will compile this data monthly and report the results quarterly to the Board and Department.[29]

(2) % Troubles Cleared Within 24 Hours - Out of Service measures the percentage of Vermont business and residence exchange out-of-service troubles which are repaired within 24 hours from the time of receipt of the initial trouble report. Companies will compile the data monthly and report the results quarterly to the Board and Department.[30] The companies will also report, but will not be measured on, residential and business troubles by each separate business class.

(3) Call Answer Time - Residence measures the percentage of calls to the residential customer service and repair call centers answered within 20 seconds. Companies will compile this data monthly and report the results quarterly to the Board and Department. Companies that do not use an automated call administration system and/or a computerized call answering record keeping system and that have fewer than 10,000 Vermont access lines are exempt from this performance measure.[31]

(4) Installation Appointments Met - Residence measures the percentage of customer-initiated requests for new, additional or transferred residential service that are completed on or before the original customer-negotiated appointment date. Companies will compile this data monthly and report the results quarterly to the Board and Department.[32]

(5) Installation Appointments Met - Business is the same as the previous measure, except that it applies to businesses with less than six lines. Companies will compile this data monthly and report the results quarterly to the Board and Department.[33]

(6) Average Delay Days for Missed Appointments - Company Reasons - Residence measures the number of business days elapsed between the original appointment negotiated with residential customers and the completion date, when the original appointment is missed due to conditions within the control of the company. This measure only applies, however, if a company fails to meet the Baseline Standards for the "Installation Appointments Met - Residence" standard for any

29. Stipulation, Exhibit 1, at 1.
30. Stipulation, Exhibit 1, at 1.
31. Stipulation, Exhibit 1, at 2.
32. Stipulation, Exhibit 1, at 2.
33. Stipulation, Exhibit 1, at 2-3.

quarter, five consecutive months in the calendar year, or for the twelve months immediately following the month which triggered the failure.[34]

(7) Average Delay Days for Missed Appointments - Company Reasons - Business is the same as the previous standard, except that it applies to business customers.[35]

(8) Network Reliability measures major service failures that affect a significant number of customers, such as service outages (more than 5000 access lines or 10% of a company's Vermont access lines out of service for more than 30 minutes), interoffice facility failure (interoffice call blockages affecting 30,000 access lines or 10% of the company's Vermont access lines for more than 30 minutes), or signaling system failure (failure of Signaling System 7 for more than 30 minutes). Companies are obligated to report any failures in these categories to the Department and Board.[36]

(9) Special Services measures the installation and repair of specified high-end intrastate services.[37] Companies are required to track and report on-time provisioning and the mean time to restore service, with reports submitted annually.[38]

The parties agree that all service providers will track these performance areas monthly, submitting periodic (generally quarterly) reports to the Board and Department.

For seven of the performance areas, the Stipulation defines "Baseline" and quarterly "Action" levels that provide an "acceptable base level of service quality" to retail consumers.[39]

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34. Stipulation, Exhibit 1, at 3.

35. Stipulation, Exhibit 1, at 3-4.

36. Stipulation, Exhibit 1, at 4-5.

37. 56 kbps or DS0 circuits, 1.544 mbps or T1/DS1 circuits and channelized DS1 facilities capable of 24/56 kbps. Stipulation, Exhibit 1, at 5.

38. *Id*.

39. Stipulation at 3. Two of these performance areas – "Average Delay Days – Residence" and "Average Delay Days – Business" – apply only if a company exceeds the performance criteria for installations. Stipulation, Exhibit 1, at 3-4.

Standard	Baseline	Action Level
NTRR (troubles per 100 lines)	4	6
% Troubles Cleared within 24 hours	60% in year one 65% in year two 70 % in year three and beyond	50% in year one 55% in year two 60 % in year three and beyond
Call Answer Time - Residence	75% within 20 seconds	60% within 20 seconds
Installation Appointments Met - Residence	90 % Met	75 % Met
Installation Appointments Met - Business	90 % Met	75 % Met
Average Delay Days – Residence	10	15
Average Delay Days – Business	10	15

The parties request that the Board adopt the Baseline and Action Level Report triggers specified in the Stipulation. The definitions and Baseline and Action Level standards for each performance area will apply to all regulated industry service providers, including facilities-based providers, resellers, and those providers utilizing unbundled elements of the telecommunications network.[40]

The Stipulation also defines certain consequences that flow from the failure to attain acceptable service quality as defined by the Stipulation. Company performance will generally be measured against the Baseline Standards, and may be subject to penalties in accordance with 30 V.S. A. § 30. Providers may, however, seek a waiver due to exceptional circumstances (such as force majeure). The Stipulation also provides that, to the extent carriers offer service quality guarantee programs, they shall "diligently offer those guarantees to customers who suffer out-of-service troubles and missed service installations if applicable under the tariffed guarantee."[41]

If a provider triggers the Action Level Report in any quarter or in any five or more months in any calendar year, the provider must furnish the Board with a full explanation for the failure and submit a plan (and schedule) for correcting the problems, although the company will not

40. *Id*. at 2-3.
41. *Id*. at 3-4.

be subject to penalties under 30 V.S.A. § 30 if its calendar-year performance meets the Baseline standard.[42]

Because providers that offer service through resale or the use of unbundled network elements must rely, at least in part, on the adequacy of the service provided them by the underlying carrier, the parties agree that the Board should adopt carrier-to-carrier service quality standards. The Stipulation also enunciates several issues that the Board must consider when setting those standards. The parties propose that the Service Quality plan embodied in the Stipulation does not take effect immediately, but rather it shall commence "immediately following the Board's order setting forth carrier-to-carrier service quality standards in Docket No. 5713."[43]

On balance, the Stipulation represents a solid initial service quality program that would apply to Vermont providers of retail telecommunications services. The plan set out in the Stipulation contains objective and measurable criteria that will allow the Board, Department, companies, and the public to objectively and validly assess the quality of telecommunications services provided within the state of Vermont.

The service quality stipulation is not, nor does it purport to be, a comprehensive service quality monitoring and reporting plan. The Department's original proposal called for approximately 13 service quality performance measures.[44] Although the industry commented that certain of these measurements were duplicative,[45] the revised range of criteria in the Stipulation nonetheless represents a narrowing of the performance standards. Nonetheless, the Stipulation does contain valid measurements addressing each of the primary areas of consumer concern. Held Orders will assess companies' ability to meet customer expectations

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42. This provision seems to conflict with the explicit recognition in Paragraph 8 that penalties may be assessed pursuant to 30 V.S.A § 30 for companies that do not meet Baseline Standards. Interpreting the two provisions together, it appears that the Board may impose penalties for violation of the Baseline standards in any event. However, for purposes of penalties, exceeding the Action Level is not considered a violation if the Baseline Level for the year is met.

43. *Id*. at 6.

44. Exh. DPS-SQ-1 at 13.

45. See e.g., Independents -1 at 27.

for timely provision of service.[46] Similarly, service reliability can be measured through the NTRR and "Percentage of Troubles Not Cleared" standards. Through the "Call Answer" measurement, the Stipulation also allows tracking of a company's responsiveness to consumer complaints and inquiries. By measuring each of the primary areas of consumer concern, the service quality standards should provide a meaningful assessment tool.

After considering all of these factors, I find the Stipulation represents a reasonable method for assessing service quality in Vermont and recommend that the Board approve the Stipulation and implement the service quality monitoring and reporting requirements set out therein. My recommendation, however, is not without some reservations.

Primary among these is concern that the performance measures may not be sufficiently stringent to reflect either the present service quality or reasonable consumer expectations. For example, the Baseline and Action Levels set out in the Stipulation establish a method by which the performance of companies can be objectively measured. The Stipulation sets the Baseline Level for NTRR at an average of 4 reports per month, with the Action Level at 6. Over the period of 1990-1995, virtually every local exchange carrier in Vermont achieved an NTRR well below this level, with most below 2 Reports per month on average.[47] Companies could thus see an increase in network troubles without triggering even the Baseline Level.

In addition, the repair standard sets as a baseline 60 percent of lines returned to service within 24 hours. By contrast, the state of Ohio requires 90 percent of out-of-service trouble reports to be cleared within the same period, with adjustments required to customer accounts for any customers not cleared within 24 hours.[48] It is likely that the latter more closely represents the reasonable expectations of consumers, who simply want a functional telephone and should expect speedy repair of an essential service.

The second reservation relates to the fact that the Stipulation does not take effect until after the Board has established wholesale service quality standards. This means that

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46. Significantly, the Stipulation recognizes the importance of service provisioning. If a company fails to provide adequate service as measured by Held Orders, the company will then need to track Delay Days as well.

47. Exh. DPS Cross-25 through DPS Cross-31; exh. DPS-Reply-1 at 35-36.

48. Ohio Admin. Code, § 4901:1-5-24(C)(8).

notwithstanding the parties' view that the proposed performance measures are reasonable and should be used to assess service quality performance, no standards will apply for a period of time. Given the need for delineation of which company bears the service quality responsibilities in the competitive environment, where the service provider may be dependent on the LEC for the loop, switch, or even the entire service, the delay in establishing measurable standards appears appropriate.

In the interim, however, the Board should require all companies providing services in Vermont covered by the Stipulation to begin collecting data for each of the performance measures set out in the Stipulation. Evaluation of service quality has been hampered by the absence of consistent information on the performance of Vermont telecommunications service providers; the Department's original proposal to track service quality was predicated on the need to understand the actual performance of the companies providing service.[49] That need remains unchanged today.

VTel generally supports the Stipulation, although it objects to the provisions in paragraph 8 that require carriers to "diligently offer" service guarantees in certain circumstances. VTel, relying upon representations that this language requires that companies affirmatively inform each customer that may be eligible for service guarantees of that fact, complains that the provision is overly intrusive and unsupported by the evidence.[50] The Department counters that neither objection is valid.

I find VTel's claim unfounded for two reasons. First, Paragraph 8 of the Stipulation does not, by its own terms, require a company to notify each of its customers of a service quality guarantee each time circumstances that trigger that guarantee occur. Instead, the plain language of the Stipulation simply states that companies must "diligently offer" the guarantees, without specifying the actions that meet that standard. I would expect that, in the event of a service outage, the Department and affected company will work together and decide the actions needed to meet Paragraph 8's standard. If these parties cannot agree, the Board can resolve the issue relying on the language in the Stipulation.

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49. Tr. 6/30/97 at 161 (Lackey).
50. VTel Comments on Stipulation and Agreement at 2.

Second, as the Department points out, the record demonstrates that companies have selectively applied their service guarantee programs. Although an affirmative offer to all affected customers may not be necessary, arbitrary application of the service guarantee program may constitute unjust discrimination.[51] The Stipulation constitutes a reasonable response.

IV. FINDINGS AND DISCUSSION RE: CONSUMER PROTECTION AND PRIVACY

A. Consumer Bill of Rights

One of the fundamental questions posed by the Board in its Order initiating this investigation was whether the Board should adopt a "consumer bill of rights" setting out basic consumer protection principles. In contrast to the substantial agreement among the parties in the more traditional areas of service quality, the Department and the other parties exhibited divergent views on how best to approach consumer protection and privacy. The heart of the disagreement revolved around their views of whether the telecommunications marketplace would itself provide sufficient protection for consumers. Put simply, the Industry representatives maintained that companies operating in a competitive environment would take steps that assured adequate protection for consumers, largely because of their belief that customers would police the market by voting with their feet. Thus, in the industry view, companies that failed to meet consumer expectations would lose customers. Consistent with this perspective, the Industry advocated adoption of general principles rather than specific standards.

The Industry approach is embodied in a Stipulation filed by those parties setting out an Industry Code of Conduct and proposal for Consumer Inquiry and Dispute Resolution (the "Dispute Resolution Proposal"). The Code of Conduct delineates certain trade practices that consumers have a right to expect.[52]

The Department, by contrast, recommends that the Board adopt a Consumer Bill of Rights, applicable to all telecommunications carriers, that sets out the basic consumer

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51. Exh. DPS-SQ-1 at 8; tr. 7/1/97 at 39-40 (Murray-Clasen).
52. Exh. Industry-1 at 2-4.

protection and privacy policies of the State.[53] According to the Department, the Bill of Rights would be directly enforceable by the Board, with the Board issuing an opinion that would bind "virtually all telecommunications companies doing business in the state."[54] In addition to the adoption of the Bill of Rights, the Department advocates that the Board establish various specific consumer protections that would enhance the principles set out in the Bill of Rights.

The contrasting approaches to consumer protection of the Department and the Industry mask a significant degree of agreement on the basic principles that should guide telecommunications providers in a competitive agreement. A comparison of the Bill of Rights itself (not the specific implementation standards) to the principles embodied in the Code of Conduct shows substantial similarity, with the differences often semantic rather than substantive. In fact, the Industry substantively disagrees with only one of the proposals in the Bill of Rights – the proposal that a customer could not be disconnected from basic exchange service if he or she fails to pay his or her bill for toll and ancillary services.[55]

Greater disagreement (indeed the bulk of it) relates to the Department's proposals to further delineate the basic consumer principles outlined in the Bill of Rights. The Industry generally characterized these standards as overly intrusive and unnecessary. By contrast, the Department viewed each proposal as necessary to ensure fair treatment of consumers in a competitive environment.

Before discussing the merits of the specific proposals, it is appropriate to consider the basic need for consumer protection standards. All parties recognize that the telecommunications marketplace is becoming more competitive; all parties support a transition to such a marketplace. The parties disagree over the effect that the increased competition may have on consumers, however.

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53. DPS Brief at 5-6; exh. DPS-CP/P.

54. DPS Brief at 6. The Department's proposed Bill of Rights is quite similar to one that the Department proposed in Docket 5954 (relating to electric restructuring), which was supported by other parties and adopted by the Board. *Investigation into Restructuring of the Electric Industry in Vermont*, Docket 5854, Order of 12/30/96 at 97-98.

55. Tr. 5/21/97 at 90-91; exh. Hyperion-1 at 2; tr. 5/28/97 at 6 (Rozycki). See also tr. 5/22/97 at 89 (Friar) (AT&T's support for the basic principles).

As the Industry parties have argued, in a competitive market, consumers have the option of voting with their feet; if they do not like the services offered by a provider, other providers, with the same or different service offerings, exist to fulfill their needs. Competitive markets also exhibit more choices for consumers as companies seek to differentiate their products. According to the Industry, these trends warrant a decrease in regulation.

The Industry view that, in general, competitive markets require less regulation, is valid.[56] Competitive markets are not a panacea, however. Evidence abounds that these markets do not always provide protection for consumers or offer services that respond to consumer demand. Seat belts and air bags in cars were deployed on a widespread basis not because the competitive market responded to consumer requests, but due to federal mandates. This pattern extends to the provision of information. Accurate information for consumers is generally considered essential to the smooth functioning of a competitive market. Nonetheless, the nutritional labeling of foods, essential for many persons with health needs, necessitated federal intervention rather than occurring as a market response to consumer demand.[57] The telecommunications market is not immune to companies acting other than in the public interest. The FCC, states, and many companies have expended significant resources to address the problems of slamming and cramming. Even after the establishment of rules proscribing the practice and the amendment of those rules, it continues.

These examples, and many others amply demonstrate that competitive markets alone are not self-policing nor consistently responsive to consumer needs and demands; even in markets in which competitors operate consistent with generally accepted standards, the market itself does not necessarily provide adequate protection for and information to consumers. Competitive markets also raise the potential for entry by companies that operate outside of the industry norms, in some cases offering valuable new ideas; in others, engaging in practices generally considered unacceptable. As the Board explained in Docket 5854 (in the context of the electric industry) "movement toward a more open and competitive market creates concerns,

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56. Bell Atlantic Brief at 3-5.
57. The same is true of price stickers on all automobiles.

not only about the potential loss of existing protections, but also about other competitive abuses arising from a restructured industry."[58]

Consumers in competitive markets also bear greater responsibility for investigating service offerings and soliciting information. Consumers will need to adapt to a multi-vendor environment and take a more active role in soliciting information. Yet they also need protection from unethical treatment by overly aggressive companies that would not have occurred in a regulated environment.[59] With the changes, consumer rights and responsibilities are unclear.[60]

Enunciation of a consumer Bill of Rights that sets out the basic consumer protection principles will guide market participants and consumers as to acceptable practices in Vermont's competitive telecommunications environment. The Bill of Rights proposed by the Department meets this standard and I recommend that the Board adopt it. As explained by AT&T, the Bill of Rights represent a "pretty nice statement of how a company should do business."[61] These principles, while establishing the foundation for relationships between companies and their customers, do not limit the flexibility for competitors.[62] And, with the exception of the no-disconnect policy, the standards are consistent with the Industry-recommended Code of Conduct.

The Bill of Rights recommended here, and set out in Part III, A, 3, below, also is substantially similar to the one adopted by the Board for the electric industry.[63] Adoption of the same basic consumer protection principles thus facilitates consumer comprehension of their rights as monopoly utility services transition to competition.[64]

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58. *Investigation into Restructuring of the Electric Industry in Vermont*, Docket 5854, Order of 12/30/96 at 95.

59. Exh. DPS-CP/P-1 at 2.

60. *Id*. at 2-3.

61. Tr. 5/22/97 at 89 (Friar).

62. Industry representatives have leveled more significant objections to the consumer protection standards discussed below, particularly as those standards may unnecessarily prescribe behavior. In some instances, the Industry objections are well taken.

63. Docket 5854, Order of 12/30/96 at 97-98.

64. Industry parties argue that the telecommunications and electric industries are different, so that consumer protection may be warranted in the latter, but not the former. However, as Bell Atlantic correctly observes, telecommunications is much more complex than the gas and electric utilities to which it has been

(continued...)

1. Form of Consumer Protection Standards

To be effective and equitable, the consumer protection standards and Bill of Rights adopted by the Board must apply to all providers of intrastate telecommunications.[65] Hyperion, therefore, argues that, to the extent the Board decides to adopt particular standards, that the Board implement those standards through rulemaking. Hyperion and the Independents also suggest that the Board does not have the authority to apply the consumer protection standards to parties that are not participants in this proceeding absent rules.[66] The Department disagrees, asserting that the Board has the requisite authority.

Section 209 of Title 30 grants the Board extensive jurisdiction over the matters at issue in this proceeding. Subsections (a)(1), (3), (5), and (6) extend that jurisdiction to matters related to the "purity, quantity, quality of any product," the "manner of operating and conducting any business . . . , so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public," the "sufficiency and maintenance of proper systems, plants, conduits, appliances, wires and exchanges," and to "restrain any company . . . from violations of law, unjust discriminations, usurpation or extortion." This legislative grant of authority extends to all aspects of service quality and consumer protection raised in this proceeding.[67] And, as the Supreme Court has previously recognized:

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64. (...continued)
compared. Exh. NYNEX-1 at 6. This increase complexity makes consumer comprehension of the choices available more difficult and the possibilities for abuse by competitors more likely, thus meriting at least the same degree of consumer protection.

65. At the present time, this Order does not apply to providers of cellular telecommunications services, based upon the earlier ruling on the Scope of this proceeding. See Order of 1/30/97. It would apply to all providers of basic exchange services, including competitive local exchange companies, and to companies offering toll and ancillary services. *Id.*

66. Hyperion Brief at 9-13; Independents Brief at 5-6.

67. Although the Supreme Court has not specifically considered the subsections of 30 V.S.A. § 209 cited above, the Court has consistently ruled that the Public Service Board's authority is quite broad. See *e.g.*, *In re Investigation of November 15, 1990 Rate Design Filing of Vermont Power Exchange*, 159 Vt. 168 (1992) (recognizing the Legislature's grant of authority as "very broad") (cited herein as "*VPX*").

> The statutory basis of the Board's regulatory authority is extremely broad and unconfining with respect to means and methods available to that body to achieve the stated goal of adequate service at just and reasonable rates.[68]

Green Mountain Power also makes clear that the Board has significant discretion in carrying out its responsibilities. Certainly, under Section 209, the Board can fulfill its responsibilities through the issuance of Orders. Alternatively, the Board may use rulemaking to carry out these duties.[69]

A second issue raised by Hyperion concerns the applicability of this docket to non-parties. Hyperion correctly states that to create a competitive framework, the same standards should apply to all market participants. This proceeding includes all incumbent local exchange carriers, one competitive local exchange carrier, and several interexchange carriers. Other competitors are not parties.

The Board has, however, provided notice of the initiation of this proceeding and the issues to be considered, including the possible adoption of consumer protection and service quality standards.[70] Subsequently, in a letter dated February 4, 1997, the Board provided copies of the Order Opening Investigation and the Hearing Officer's Scoping Order issued on January 30, 1997, to all companies authorized to provide intraLATA toll services in Vermont. That letter invited those carriers to intervene. In addition, the Board has specifically conditioned each certificate of public good ("CPG") issued to competitive local exchange carriers on a requirement to comply with the outcome of this proceeding.[71] The CPG conditions ensure that all providers of local exchange carriers have notice and will bound by the outcome of this proceeding, thus placing entrants on an equal footing. The other notification cited provides adequate notice to all competitors of the issues in this proceeding, thus allowing the Board to require these companies to comply with the outcome.[72]

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68. *In re Green Mountain Power*, 142 Vt. 373, 380, 455 A.2d 823, 825 (1983).

69. 30 V.S.A. § 2(c); *VPX*, *supra*, 159 Vt. at 175-176; *Petition of Department of Public Service*, 161 Vt. 97 (1993).

70. See Order Opening Investigation and Notice of Hearing dated 7/31/96.

71. See, *e.g.*, *Petition of Quintelco, Inc. for a certificate of public good to operate as a local and long distance non-facilities based reseller of telephone services in Vermont*, Docket 5994, Order of 8/10/98.

72. See *In re Hot Spot, Inc.*, 149 Vt. 538, 540, 546 A.2d 799, 801 (1988).

For the most part, the consumer protection principles and specific standards set out in this document do not require further action to implement. The Bill of Rights represents the principles the Board will apply to implement the statutory responsibilities outlined in 30 V.S.A. § 209, essentially defining what constitutes adequate service. As to the consumer protection standards set out below, generally, no further rulemaking is needed for the Board to implement the changes.[73] It may, nonetheless, be useful to convert some or all of the standards set out below into rules in the future. Parties are invited to propose rules consistent with this Order.

2. Disconnection of Local Service

In 1986, soon after the Board opened the intrastate telecommunications market to entry by competitive local exchange carriers, this Board considered the question of whether New England Telephone and Telegraph Company ("NET") could disconnect its customers for non-payment of the portion of their telephone bills attributable to long distance services provided by AT&T. The Board concluded that NET could do so, finding that (1) the practice was not new; (2) denial of local service was non-discriminatory (as NET would disconnect customers of other carriers); and (3) ratepayers would benefit from the billing and collection revenues.[74] Since that time, local exchange carriers have had the authority to disconnect basic service for non-payment of toll charges where the LEC also performs billing and collection for that carrier.[75]

The Department requests that the Board modify this policy and recommends that the Board enunciate, through the Bill of Rights, a policy that essentially treats toll and local services separately for purpose of disconnection. The proposed element of the Bill of Rights would read as follows:

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73. The primary exception concerns possible amendments to the Board's deposit and disconnection rules. A more detailed explanation of any needed implementation steps is set out below in the discussion of each individual standard.

74. *Complaints of various customers vs. New England Telephone and Telegraph Company regarding disputes relating to disconnection of service for AT&T charges*, Docket 5060, Order of 10/2/86 at 8-9.

75. During the course of this proceeding, it became apparent that LECs also bill on occasion for charges to interexchange carriers even though the IXC performs its own billing and collection. Tr. 5/21/97 at 138-139 (Nishi). This practice was not reviewed and approved in Docket 5060.

> Consumers shall have the right of access to basic local exchange service as long as basic local exchange service charges are paid, regardless of whether they have paid any charges for non-basic local exchange services.

The Industry parties oppose the Department's recommendation on several grounds. According to Bell Atlantic, adoption of the no-disconnect policy will place in jeopardy the companies' intraLATA toll revenues and revenues from ancillary services. The policy will also increase uncollectibles, while not accomplishing one of the Department's goals: improvement of telephone penetration rates.[76] As an alternative, the Industry proposes Code of Conduct #15, which states the Industry agreement to "facilitate network access for customers in ways that are just and reasonable."[77]

For a number of reasons, I conclude that it is reasonable to change the existing policy and adopt the Department's proposal. The no-disconnect policy offers several potential benefits. It may lead to an increase in the percentage of customers connected to the public switched network.[78] The FCC recently reached the same conclusion in its Universal Service Order.[79] Keeping basic service customers on the network may also increase revenues from

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76. Bell Atlantic Initial Brief at 16-22; exh. NYNEX-1 at 18-19.

77. Exh. Industry-1 at 3.

78. Tr. 5/21/97 at 43 (Guite). Although the evidence suggests that the no-disconnect policy may have some effect, the magnitude is unclear and may be rather small. The Department maintains that subscribership will likely increase. Tr. 5/27/97 at 15 (Murray-Clasen) (citing a study by the National Telecommunications and Information Administration). By contrast, Exhibit NYNEX-3 shows no strong connection between the states that presently have such a policy and telephone penetration rates. However, such a comparison has little probative value, as a multitude of factors, including the presence or absence of a no-disconnect policy, could affect penetration rates from state to state. Tr. 5/28/97 at 178 (Murray-Clasen). A more accurate analysis, which entails a "before" and "after" comparison of penetration rates within an individual state would provide a valid benchmark, but no party presented such evidence.

79. Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) at ¶ 390. The Department requested that the Board take administrative notice of the FCC's Order in accordance with 3 V.S.A. § 810(4). DPS Brief at 12. Bell Atlantic opposes the Department's request. Bell Atlantic Reply Brief at 8. Vermont law authorizes the Board to take official notice of "judicially cognizable facts," which the Supreme Court has defined as "one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *In re Handy*, 144 Vt. 610, 612 (1984). In this proceeding, I conclude that the Board cannot take official notice of the conclusions that the FCC reached as "facts." Thus, that the FCC found that a no-disconnect policy would increase subscribership is not an accepted fact, particularly since neither the Board nor the parties can evaluate the basis for that decision. The FCC's decision is an Order of an administrative agency, which the Board can consider in making its decision. Here, I simply observe that other entities, including the FCC, have reached the same factual conclusion that I do.

basic exchange service as customers that were heretofore disconnected remain on the network.[80]

More importantly, the market today is quite different than that in existence at the time of Docket 5060 and shows further signs of transition, meriting changes to the policies adopted previously. In 1986, no competition existed for local exchange service and only a limited number of companies provided intraLATA toll service. The interLATA toll market had been opened to competition only a few years. NET's billing and collection for toll service providers, including those that provided interLATA toll, led to significant revenues to offset basic exchange rates.[81]

With the advent of local competition and the explosion of competitors in the toll market, it is increasingly likely that toll service will be provided by a company other than the basic exchange carrier.[82] Some of these companies will seek to provide their own billing and collection services. The LEC that performs billing and collection for other companies serves two roles: service provider and collection agent. The latter role, however, is made possible only by leveraging the former. Companies that choose to bill through local exchange carriers can take advantage of this blurring, receiving an edge over companies that do not because the former can augment their own collection mechanisms with the threat of disconnection. The practice, which the FCC recently described as a "vestige of the monopoly era,"[83] thus discriminates against companies that provide their own billing and collection. Elimination of the current disconnection policy will make the telecommunications marketplace more competitively neutral.

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80. Exh. DPS-CP/P-4 at 4220-4221; exh. NYNEX-6 (Bell Atlantic testifying in New York that access line growth in that state was due, in part, to not disconnecting customers that did not pay toll charges); tr. 5/27/97 at 20-22 (Murray-Clasen).

81. The evidence demonstrates that even today, with more companies providing their own billing and collection, LECs derive significant revenues from billing and collection contracts, which is used to offset other costs of providing service. Tr. 5/21/97 at 82 (Nishi). Bell Atlantic asserts that the revenue it receives is unregulated and thus does not provide this offset. Tr. 7/1/97 at 169-170 (Wood). If correct, it would mean that Bell Atlantic's regulated ratepayers receive no benefit from the present policy.

82. As the market evolves and companies begin offering bundled alternatives, it is possible that the present trend will change.

83. *Universal Service Order* at ¶ 391.

Moreover, as companies, including those appearing in this proceeding, argue correctly that services are severable from one another, continuation of the current disconnection policy sends the opposite signal. Basic service is a different service from toll service, even if the latter only functions if a customer has the former.[84] The ability to disconnect local service for failure to pay other charges blurs this distinction between services.[85]

The Industry criticisms of the no-disconnect policy, while raising some valid financial concerns, do not warrant continuation of the present policy. The Industry suggests that the no-disconnect policy will place in jeopardy intraLATA toll revenues and revenues from ancillary services, questioning the public benefit of "protecting a few recalcitrant or dishonest customers."[86] It is possible that the no-disconnect policy may undermine existing billing and collection contracts,[87] encouraging AT&T and others to perform their own billing and collection.[88] It is also possible that no-change will occur, as interexchange carriers would then need to develop a billing and collection infrastructure that may not exist. In fact, several of the Industry representatives expect no change in the existing practices.[89]

Nor is it clear that the policy will benefit merely a small number of "recalcitrant customers." Toll service now accounts for the majority of customer complaints and inquiries[90] and the bulk of the revenues owed by consumers that are disconnected.[91] Most of these customers are not persons attempting to abuse the system, but rather customers that for one reason or another incur toll charges that they cannot pay at that time.[92] The no-disconnect policy will allow these customers to retain basic exchange service.

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84. Tr. 5/27/97 at 185 (Murray-Clasen). The Board's Order in Docket 5713 also differentiates basic service from toll service, defining basic service as including *access to toll service*. *Investigation into NET's tariff filing re: Open Network Architecture, including the unbundling of NET's network, expanded interconnection, and intelligent networks, Phase I*, Docket 5713, Order of 5/29/96 at 65. *See Universal Service Order* at ¶¶ 28 and 384 (adopting a similar basic service definition and distinguishing interexchange service from local service).

85. In fact, the Industry arguments make clear that the main benefit of the existing policies is the ability to leverage basic service as a means to collect toll bills. Tr. 5/22/97 at 84 (Friar).

86. Bell Atlantic Brief at 17.

87. Tr. 5/21/97 at 26-27 (Guite).

88. Tr. 5/21/97 at 63-64 (Guite).

89. Tr. 5/21/97 at 81-82, 113.

90. Tr. 5/21/97 at 87-88.

91. Tr. 5/21/97 at 146-147 (Gates).

92. *Id.* at 147-148 (Gates, Sawyer).

At the same time, customers that do not pay their bills for toll and ancillary services still owe their relevant carrier; assuming the charges are legitimate, customers should not be excused from paying for them. The toll provider (or LEC, in the case of ancillary services), can, as permitted by the Board's rules, disconnect the customer that does not pay his or her bills.

Industry also argue that the no-disconnect policy will lead to an increase in uncollectible revenues from toll services. The evidence suggests that such a result is possible.[93] At the same time, however, uncollectible revenues from basic exchange service are likely to decline. It is unclear that adoption of the policy will lead to a net increase of uncollectible revenues, particularly from the local exchange carriers.[94]

The arguments put forward by the Industry have one theme in common: a desire to use the basic exchange service as a vehicle for collecting revenues.[95] However, while continuation of the existing policy may assist in the collection of revenues owed for toll and ancillary services, the Industry has not demonstrated why, in a competitive, multi-vendor environment, LECs should be permitted to essentially act as collection agents for separate services.

Adoption of the no-disconnect policy is also consistent with the recent FCC Order on Universal Service. In that Order, the FCC adopted a policy prohibiting carriers from disconnecting basic service for Lifeline customers for non-payment of toll charges.[96] The FCC reached similar conclusions to those expressed above. In addition, the FCC found that prohibiting disconnection of basic service for non-payment of toll charges "advances the principles of Section 254 of the Federal Act that 'quality services should be available at just,

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93. Exh. NYNEX-1 at 18.

94. The Board does not generally review the rates of competitive toll providers, so the effect of changes in uncollectible revenues on rates is unclear. Certainly, increasing uncollectible revenues translates to increased costs. Yet as the Board has seen, changes in interexchange carrier cost structures do not necessarily translate to retail rates. For example, following the decrease in access charges in Docket 5700/5702, competitors did not lower their intraLATA toll rates. *Tariff Filings of New England Telephone and Telegraph Company*, Docket 5853, Order of 2/13/96 at 7-8.

95. See fn. 85.

96. *Universal Service Order* at ¶ 390. The FCC allowed the states discretion to grant a limited waiver of the no-disconnect rule if the carriers show that it would entail substantial costs to comply with the requirement, that the carrier offered toll-limitation services, and that the telephone subscribership in the area is at least as high as that for low income customers nationwide. *Id.* at ¶ 396. No company has requested a waiver in Vermont.

reasonable, and affordable rates,' and that access to telecommunications services should be provided to 'consumers in all regions of the nation, including low-income consumers.'"[97] The FCC also notes that it expects adoption of the no-disconnect rule will make the market for billing and collection services competitively neutral.[98]

I also conclude that there is no demonstrated technical impediment to adoption of this policy. The evidence presented here demonstrates that telecommunications carriers have the capability to block access to toll calls from customers that are disconnected from their toll providers.[99] These toll blocks are effective in blocking both 1+ and 0+ calls.[100] Moreover, the FCC has already ordered all companies to implement the no-disconnect policy for lifeline customers. In reaching this conclusion, the FCC echoed the testimony presented here, observing that "although this may have been impossible with the switching technology used in the past, it is achievable now."[101]

The no-disconnect policy also must recognize the changes in the telecommunications industry that may lead to an increase in the number and variety of bundled services. Companies are likely to offer bundled groups of services, with larger discounts for customers that purchase more services.[102] In some instances, companies will offer one price for the combined service, without a separate price for the basic service and other services (e.g., toll). The no-disconnect policy should apply to customers purchasing bundled services. In the absence of specified prices for each component of a bundled service, it is reasonable to continue to require customers to pay their tariffed basic exchange service rate (rather than the discounted rate) to avoid disconnection of basic service.[103]

It is also reasonable to expect that customers paying less than the full amount of a bill will not specify the services for which payment is made. Consistent with the policy set out herein, companies should apply all payments to the basic exchange service charges first.

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97. *Universal Service Order* at ¶ 390.
98. *Universal Service Order* at ¶ 391.
99. Tr. 5/21/97 at 85 (Nishi, Sawyer); exh. DPS-CP/P-3.
100. Tr. 5/21/97 at 101-102 (Sawyer).
101. *Universal Service Order* at ¶ 394.
102. Tr. 5/22/97 at 75-76 (Friar).
103. See tr. 5/27/97 at 113 (Lackey).

3. The Bill of Rights

Based upon the foregoing discussion, the following Bill of Rights will apply to all providers of basic telecommunications services and providers of services that rely upon the underlying basic exchange service, such as toll and ancillary services.

(1) Consumers shall have the right to know and control what they are buying.[104]
(2) Consumers shall have the right to know from whom they are buying.
(3) Consumers shall have the right to know the full price of the goods and services that they are purchasing.
(4) Consumers shall have the right to reasonable payment terms.
(5) Consumers shall have the right to fair treatment by all providers.
(6) Consumers shall have the right to impartial resolution of disputes.
(7) Consumers shall have the right to reasonable compensation for poor service quality.[105]
(8) Consumers shall have the right of access to basic local exchange service as long as basic local exchange service charges are paid, regardless of whether they have paid any charges for non-basic local exchange services.[106]
(9) Consumers shall have the right to be free of improper discrimination in prices, terms, conditions, or offers.
(10) Consumers shall have the right to privacy by controlling the release of information about themselves and their calling patterns and by controlling unreasonable intrusions upon their privacy.
(11) Consumers shall have the right to join with other consumers for mutual benefit.

B. Consumer Protection Standards

The Department proposes to go beyond the establishment of the basic consumer protection principles set forth in the Bill of Rights by creating specific, enforceable standards.

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104. The Independents describe this right as "an essential right of the consumer and obligation of the telecommunications provider." Exh. Independents-1 at 4.

105. The analogous provision adopted by the Board in the context of electric restructuring referred to reasonable compensation for "service failures and missed appointments." Docket 5854, Order of 12/30/96 at 98. The formulation proposed by the Department in this proceeding, extending the right to "poor service quality," is reasonable in the context of the more complex telecommunications industry where, as this docket demonstrates, service quality has many aspects. The standard adopted does not specifically delineate what constitutes "reasonable compensation," instead leaving these principles to be fleshed out over time. Therefore, adoption of this provision is not intended to mandate any particular level of compensation or even to conclude that existing provisions in company tariffs are insufficient. Similarly, the principle does not define "service quality," which I interpret to include the broader definitions of service quality explored in this docket (i.e., including consumer protection standards).

106. See Discussion in Part IV. A. 2, above.

In many instances, the proposed standards address what the Department claims are particular abuses. The Industry argues, as stated above, that the Department's proposals are overly restrictive. The Industry also points to the limited number of instances of abuse cited by the Department as evidence that the Department's approach is unnecessary.[107] Accordingly, through the Code of Conduct, these parties recommend a more flexible approach.

The Industry's concern that, to the degree possible, the market should operate with minimum intervention is well-taken. The standards the Board adopts must attempt to balance these two considerations: consumer protection interests and the desires of telecommunications providers for flexibility. As explained by the Industry in the Code of Conduct:

> a set of consumer guidelines must be rigid enough to give guidance to telecommunications providers as to the minimum levels of corporate conduct expected to be provided to consumers in Vermont, but flexible enough to permit these providers to adopt their practices to the evolving needs of the intrastate telecommunications market in Vermont.[108]

It is this standard that I apply in evaluating each of the specific consumer protection standards recommended by the Department and the analogous provisions in the Code of Conduct.[109] These recommendations are discussed below.

One issue, however, cuts across all issues: cost. Industry representatives have argued that implementation of the Department's consumer protection standards will be costly, accusing the Department of ignoring these costs.[110] The Department acknowledges that it did not attempt to evaluate the costs of individual proposals, suggesting that this proceeding was to establish policy, in which cost should be irrelevant.[111]

The costs that companies may incur to revise systems and comply with specific consumer protection standards is a legitimate issue that needs to be balanced against the consumer benefits of adopting particular standards. In this proceeding, however, Bell Atlantic has not analyzed the costs of complying with either the service quality proposals or the

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107. See Bell Atlantic Reply Brief at 2.

108. Exh. Industry-1 at 1.

109. It is fair to say that the disagreement between the Department and the Industry relates less to the standard for evaluating the need for particular consumer protection, than to the application of that standard.

110. Bell Atlantic Brief at 22-26.

111. Tr. 5/22/97 at 168-170 (Murray-Clasen); tr. 5/21/97 at 203 (Larkin).

consumer protection standards.[112] The same is true of the Independents.[113] The absence of specific cost data makes it more difficult to conduct the balance outlined above.[114] Nonetheless, to the extent possible given the record and the Board's expertise, this Order attempts to consider the implementation costs.

A second cross-cutting theme is the Industry's assertion that adoption of consumer protection standards is inappropriate because the Department's proposals are not based upon a significant number of known complaints. This complaint misses the mark to some degree. The degree to which actual abuses have occurred is a relevant factor, but should not be dispositive. The purpose of this proceeding is, at least in part, to be proactive rather than reactive, establishing the basic standards of conduct. It is not necessary or even reasonable to wait for a series of perceived abuses to identify practices that would be found unacceptable. Moreover, even a relatively few instances of behavior can point to the need for some standard to prevent recurrence.

1. Consumer Information

Smooth functioning of any competitive market requires accurate and complete information for all consumers. Consumers that do not have complete information are more likely to make choices that are less than optimal for themselves, such as by purchasing standard use measured service when the customer's actual usage pattern would make low use a more cost-effective solution for the customer. From an economic standpoint, these suboptimal selections lead to inefficient consumption of societal resources. Business customers without

112. Tr. 6/30/97 at 37 (Usher).

113. Tr. 6/30/97 at 89-90, 114-115, 119 (Reed, Flaherty).

114. The Department and other parties disagree on the responsibility for presenting and evaluating cost data, with the Department requesting that I infer no costs from the utilities' failure to present such data. DPS Reply Brief at 7-8. The Board has traditionally placed the burden of production on the entities with the best access to information, in this case the Industry parties. It would have been reasonable to expect that the Industry would have put forth evidence identifying the anticipated costs of changing systems and adopting new practices. Still, I decline to apply the inference requested by the Department; it is clear that many of the Department's proposals will incur some cost; adoption of standards that achieve the desired results while mitigating or eliminating those costs is appropriate.

adequate access to information may be placed at a competitive disadvantage to similar customers who receive and make use of greater information on rates and services.[115]

The evidence presented suggests that information getting to consumers is today inadequate to fully inform them of the choices available.[116] As the competitive market evolves and more carriers offer service, the number of options for consumers becomes mind-boggling. Even today, Bell Atlantic's tariff contains many different optional calling plans, ancillary services, and usage packages. Other LECs and competitors offer a broad range of options, although more limited than Bell Atlantic. In the face of this information, it is no surprise that many consumers are confused.[117]

These factors point to the need to ensure that customers receive reliable and complete information, allowing them to make the best purchase decision.[118] The Department proposes several consumer protection standards designed to implement the first several standards in the Bill of Rights, namely the right to know and control what and from whom they are buying and to know the full price of the goods and services that they are purchasing.

a. Information at Time of Service Order

Customers seeking to initiate service or change their existing services contact customer service representatives ("CSRs") of their chosen telecommunications provider. The CSR's assess the needs of the customer, how the customer is likely to use the service, and recommend services that they conclude are reasonable and appropriate.[119] The CSR's role provides the CSR with substantial control over the customer's access to information, which can influence the service choices consumers ultimately make.[120]

The Department, finding the availability of information unbalanced, proposes that the Board require the following:

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115. Exh. DPS-CP/P-1 at 7.
116. Tr. 5/27/97 at 149-150 (Murray-Clasen).
117. *Id*. at 7; tr. 5/22/97 at 108 (Friar); tr. 5/27/97 at 124-125 (Shapiro).
118. Exh. DPS-CP/P-1 at 11.
119. Tr. 5/22/97 at 108-110 (Friar); tr. 5/22/97 at 45 (Rutherford).
120. Exh. DPS CP/P-1 at 8; tr. 8/11/97 at 63 (Wood).

> At the time of the service order, companies shall provide clear and understandable description of the terms, conditions, rates, and charges for all requested services and the least cost alternatives to the requested service.[121]

The Department also recommends requiring that, if a service entails a termination liability, that liability must be disclosed.[122]

The Industry generally agrees with the requirement to provide information, although the Code of Conduct recommends that instead of providing information on the "least cost alternatives," the Board require CSRs to notify customers of "appropriate alternative services."[123]

Both the utilities and the Department raise valid concerns. Despite the considerable expertise of the CSRs and clear incentives for companies in a competitive market to provide accurate information,[124] a CSR's role in the evaluation process is quite subjective. Consumers lacking adequate information on the full range of services must rely on the CSRs. On occasion, this may create situations in which consumers are not fully informed of the service alternatives available to them.[125] With increasingly complex service offerings, particularly the range of optional calling plans for toll service, there is an increased potential for customers not to receive accurate information on the least cost alternatives available to them, despite the best efforts of CSRs to assist the consumer.[126] Nonetheless, little value derives from requiring companies to inform a customer of services that the service provider's discussions with the customer reveal are inappropriate or inapplicable.

The parties presented little evidence on the amount of information that must be disclosed to meet their proposed standards. Disclosure of the charges should include, at a minimum, any non-recurring installation or other charges for the type of service, any charges to

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121. DPS Brief at 30.

122. Exh. DPS-CP/P-1 at 14.

123. Exh. Industry-1 at 2.

124. Tr. 5/22/97 at 81 (Rutherford).

125. Tr. 5/28/97 at 146 (Murray-Clasen) (citing instances in which consumers did not receive information on low measured use options); tr. 5/21/97 at 170-171 (Murray-Clasen).

126. Parties presented no evidence on particular plans. However, aggressive advertising by interexchange carriers makes clear that for many, if not most, customers such plans will be more economical. Some of these customers, unaware of the range of optional calling plans, may still pay basic, undiscounted toll rates.

change that service (including to downgrade to a lesser level of service), and any recurring charges.[127] Therefore, I recommend that the Board adopt the following standard, which blends these concepts.

> At the time of the service order, companies shall provide a clear and understandable description of the terms, conditions, rates, and charges for all requested services and appropriate alternatives, which shall include the least cost alternatives to the requested service. The description of the services shall also include an identification of the existence and amount of any termination liability. Companies shall disclose, at a minimum, an identification of any non-recurring charges, such as for installation, the recurring charges for the services, and any charges that apply to a change in service (such as fees for a downgrade in service).

b. Generic Rate Display Matrix

To aid consumers in comparing services, the Department believes that it would be useful to generate a "generic rate display matrix." The Department requests that the Board direct companies to provide it with the information necessary to compile this rate matrix, which the Department plans to post on its web site.[128]

The development of a generic rate display will provide valuable information to consumers that, as this docket has demonstrated, remain confused about the range of service options available to them, allowing them to compare services.[129] Even informed consumers may find it difficult to compare service offerings between companies as companies offer services that contain different rate designs. The Department's decision to actively fill this void and provide information is thus commendable.[130]

I conclude, however, that it is not necessary at the present time to direct companies to provide the information to the Department. The Department routinely requests and receives information from companies. State law requires companies to provide information to the

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127. Exh. DPS-CP/P-2 at 1.

128. Exh. DPS CP/P-1 at 9; DPS Brief at 32-33.

129. Although as the Industry points out, such a display could become very complex.

130. To aid consumers, it may be helpful to require companies to develop a "standard offer" or to provide the Department with information necessary to calculate a typical bill for consumers (with separate calculations for low, moderate, and high use customers). Parties presented no evidence on how such a standard offer would be prepared. This issue should be evaluated further in the future.

Department upon request.[131] Companies that fail to provide the requested information are subject to potentially substantial penalties.[132] These sections already require telecommunications companies operating in Vermont to provide the information the Department needs to compile a generic rate display, as well as other useful information. A Board Order in duplicating the statute is presently unnecessary.[133]

c. Written Confirmation of Service Order

Most contact between customers seeking to initiate or modify their services occurs by telephone communication between the customer and a company's CSRs. Generally, these communications are verbal. Following agreement on the services the customer plans to order, most companies have no formal mechanism for providing a written confirmation of the service order.[134] Instead, they generally notify customers of the services on the bill, so that customers receive a written itemization for the first time after having taken service. For example, Bell Atlantic provides information on the bill that "includes all services requested along with their associated recurring and non-recurring charges, and the date the services were installed."[135] Industry representatives seek to continue this practice, with Code of Conduct Item A2 committing companies to "Furnish timely oral or written confirmation of all requested services."[136]

The Department requests that the Board direct companies to provide written confirmation within 10 days of the verbal service order.[137] The Department observes that oral

131. 30 V.S.A. §§ 18, 29, 206. Section 206 specifically refers to the provision of information concerning the "rates charged for service."

132. 30 V.S.A. § 30.

133. If the Department finds that specific companies do not respond to its request for rate information, the Department may petition the Board for sanctions, which could include a directive to provide information, penalties under § 30, or other actions authorized by Title 30.

134. MCI, for example, already provides written confirmation of service orders. Exh. DPS-CP/P-2 at 2.

135. Exh. NYNEX-1 at 10.

136. Exh. Industry-1 at 2.

137. Exh. DPS-CP/P-2 at 2; exh. DPS-CP/P-1 at 9; exh. DPS-Reply at 11.

confirmation is inadequate and that written confirmation at the time of the first bill after a service order is untimely.[138]

The previous discussion highlights customers' lack of a full understanding of service offerings,, including their rates, terminology, and terms and conditions. This imperfect knowledge creates the risk of miscommunication between customers and CSRs during the ordering process or even with perfect communication, unintended service orders simply because of the consumer's state of knowledge.[139] Most markets address these risks by providing written confirmation of the sales, either through a receipt at the time of purchase or by providing customers access to electronic records of the transaction.[140] In Vermont, the Consumer Fraud Act requires sellers in a home solicitation sale to furnish consumers with a fully completed receipt or a copy of any contract pertaining to such sale at the time the consumer agrees to the transaction.[141]

Consumers ordering telecommunications services need information equivalent to consumers of other services and should be entitled to receive confirmation of verbal service orders. I conclude that oral notification, an alternative proposed by the Industry, is inadequate. In fact, oral confirmation suffers from the same potential for ambiguity that characterizes the initial service order process. Consumers unaware of terminology or the precise services ordered are unlikely to receive any benefit from a subsequent verbal confirmation.

Written confirmation of all service orders through an additional mailing, however, will entail cost to companies to generate an additional, individualized mailing.[142] These costs must be weighed against the benefits to consumers. Consumers that do not receive confirmation until the first bill following a service order change may incur costs for services that they did not

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138. Exh. DPS-CP/P-1 at 9; exh. DPS-Reply-1 at 10.

139. Tr. 5/27/97 at 47-49 (Murray-Clasen).

140. Exh. DPS-CP/P-1 at 9; tr 5/27/97 at 167-168 (Murray-Clasen).

141. 9 V.S.A. § 2454(b)(1) ("the seller shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale at the time the consumer signs an agreement or offer to purchase relating to such sale, or otherwise agrees to buy consumer goods or services from the seller." The Consumer Fraud Act does not apply to utilities regulated by the Board or the FCC. 9 V.S.A. § 2451a(d)(8).

142. Tr. 5/22/97 at 82-83 (Rutherford). The Industry did not provide any cost data.

intend to order or that are inconsistent with the prices quoted by the CSRs.[143] The magnitude of that harm is unclear, but the duration of the harm is likely to be relatively short and, except for customers seeking more expensive services,[144] is unlikely to be large. Moreover, even under the Department's proposal, notice to consumers can occur as late as 10 days after the service order;[145] waiting until the first bill following the service order amounts to at most another 20 days.

Thus, on balance, the benefits of requiring immediate confirmation of service orders do not outweigh the costs of an additional mailing when coordination with the billing cycle will still protect consumers; utilities should retain the flexibility to provide the written confirmation of service orders as late as the first bill produced after the service order change.[146] One exception is appropriate. If a Customer requests written confirmation prior to the required notice, that customer should be entitled to receive it.[147]

The Department also recommends that customers be entitled to cancel their service order within 15 days of receipt of the written confirmation, although they would be obliged to pay for services previously ordered.[148] No party disputes this right.

I recommend that the Board should adopt the following consumer protection standard:

> Companies shall furnish written confirmation of all service orders, describing the requested service(s) and associated rates, no later than the first billing cycle following that order.[149] The notice shall also inform consumers of significant terms and conditions affecting the rates.[150] The notice may be included with or on the customer's first bill if that bill is sufficiently detailed. If a customer

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143. Exh. DPS-Reply-1 at 11.

144. Consumers of high-end services are, of course, more likely to conduct their communications in writing to avoid miscommunication.

145. Exh. DPS-CP/P-2 at 2. This is consistent with the practice in California. *Id.* at 2 and n.3.

146. Customers that believe they were charged for services they did not order or were charged at prices different from those quoted by the CSRs retain the right to seek redress of those grievances with the service provider, the Department, or the Board.

147. Some customers that had sought written confirmation were either denied that request or did not receive it. Exh. DPS-Reply-1 at 10. This practice is unacceptable.

148. Exh. DPS-CP/P-1 at 9; tr. 5/21/97 at 177-178 (Murray-Clasen).

149. Obviously, this standard would apply any time a customer changes its service provider, such as changing interexchange carriers.

150. For example, local measured service varies in price by time of day. For many consumers, the beginning or end of the peak period are important terms and conditions.

requests a written confirmation prior to that time, companies shall provide that confirmation within 5 days of the request. Customers may cancel any service within 15 days of receipt of written confirmation. If a customer cancels the service, he or she remains responsible for any recurring and usage charges incurred prior to cancellation.

d. Service Options Guide

To provide information to customers, the Department recommends that all telecommunications providers develop a Service Options Guide. This guide would provide all the pertinent services, options and rates that a company offers.[151] The purpose of the Guide is to allow customers to examine the range of service offerings and make an independent assessment of whether their current service is best for them.[152] The Department requests that companies be required to inform customers on an annual basis of the availability of the Service Options Guide or other rate information.[153]

The Industry, agreeing that information for consumers is needed, proposes Code of Conduct Item A3, which provides that companies will "inform consumers that service and rate information is available in phone directories or in other media such as brochures, upon request."[154] This, according to Bell Atlantic, will achieve the Department's goals of facilitating access to information, without requiring companies to produce a special options guide.[155]

The two issues presented by the Department's recommendation are the form of the information to be provided consumers and the manner in which companies tell customers of its availability. On the first issue, I conclude that there is no reason to require telecommunications service providers to develop a separate document containing the information requested by the Department. To some degree, this information already exists, particularly for the local exchange carriers. For example, telephone directories provide

151. Tr. 5/27/97 at 172 (Murray-Clasen).
152. Tr. 5/27/97 at 172-174 (Murray-Clasen).
153. DPS Brief at 38; tr. 5/27/97 at 176-177 (Lackey); exh. DPS -CP/P-2 at 2.
154. Exh. Industry-1 at 2.
155. Bell Atlantic Brief at 29.

information about services and rates.[156] Companies have developed other documentation explaining services that is made available to customers upon request.[157] Provided that companies continue to make available at no charge this information, it is unnecessary to direct these companies to prepare a separate document that may, as the companies have suggested, become dated.

As to notice of the availability of the information, the Department proposes regularized (annual) notices. The Industry finds such notice unnecessary, proposing instead that the information be available simply "upon request." I agree with the Department that a regular reminder to consumers is valuable. Inclusion of the notice on the bill is adequate.

The following modified version of the Code of Conduct is recommended:

> Companies shall annually inform customers in writing that service and rate information is available in phone directories or, upon request, in other media, such as brochures. Companies may meet this notice requirement by providing information on the customer's bill or as a bill insert.

e. Advance Notification of Changes in Rates, Terms and Conditions of Service

The Department recommends that the Board require all companies to provide notice in advance of changes in rates or the terms and conditions of service.[158] The Industry instead proposes Code of Conduct A4, which states that providers will "announce changes in service terms, conditions, rates, or charges, consistent with Vermont law."[159]

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156. Tr. 5/27/97 at 177 (Lackey); exh. NYNEX-1 at 10.

157. For example, Bell Atlantic now has in place practices that require CSRs to provide customers with brochures and pamphlets, at no charge, upon request. Bell Atlantic's monthly bills also contain a toll-free number that customers can call to request service-related materials, discuss matters related to their account or request information on rates and service. Exh. NYNEX-1 at 10.

158. Exh. DPS-CP/P-1 at 10.

159. Exh. Industry-1 at 2; exh. DPS-Reply-1 at 12. The Industry proposal is somewhat circular. As described below, Vermont law does not specify the requisite notice, instead consigning notice requirements to the Board's discretion. The Industry proposal to comply with Vermont law (i.e., Board-directed notice) thus does not address the question of what form that notice should take.

Both proposals seeks to address the notification that telecommunications companies must provide their customers when instituting rate changes. Under existing Vermont law, companies seeking to change their rates and other terms and conditions of service must file tariffs setting out those changes. Unless the tariff filing entails a decrease in rates, the filing must occur at least 45 days prior to the proposed effective date of the change. Section 225(a) does not specifically require advanced notice of rate changes to customers or individual notice, as recommended by the Department. Rather, it directs companies to provide customers "such notice as the Board may require."[160]

Industry parties have stressed that in a competitive market, consumers that do not like the service provided by a particular company can "vote with their feet," opting to switch carriers. However, for consumers to vote in this fashion, they must know of the changes in service and receive the information in a timely fashion.[161] Consumers that do not have this information, particularly for rate increases or other terms and conditions that may affect the decision to take service cannot exercise this option prior to taking service at the changed rates.[162] As in any market, the absence of such essential information makes informed decision-making by consumers difficult if not impossible.

The evidence in this proceeding, although anecdotal, reveals the potential hardship for consumers.[163] For example, MCI raised its rates in 1996 without advance notice to consumers, affecting as many as 25,000 Vermont residents.[164] Deprived of advance notice, these consumers incurred excess costs that could have been avoided by advance notice that would have permitted customers to select another carrier. Other consumers face the prospect of

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160. 30 V.S.A. § 225(a).

161. Exh. DPS-CP/P-1 at 10.

162. The consumer can, of course, change service after learning that his or her rates have increased. But this consumer has already taken service and must pay rates at higher prices than he or she knew. The ability to switch providers later does not redress these increased consumer costs.

163. The Department cited a significant number of consumer complaints aimed at lack of notice of rate changes. Tr. 5/27/97 at 50-51 (Murray-Clasen).

164. Exh DPS-CP/P-1 at 25.

automatic cancellation of toll optional calling plans if they fail to pay their toll charges, again without advanced notice.[165]

These practices are harmful to Vermont consumers. Therefore, I conclude that all customers need to have information on any changes in the price and terms and conditions of service that could increase a customer's costs to the consumer prior to taking service. This notice should be provided individually to consumers far enough in advance of the onset of price increases to allow the customer to explore other options and switch service providers. This practice is also consistent with current Board rulings affecting companies that employ rate bands; the Board recently concluded that these companies should notify their customers of changes to the prices within a rate band at least 30 days in advance of a proposed rate change.[166]

In general, the 30-day notice is reasonable. However, requiring service providers to conduct a separate mailing may increase costs. Therefore, it is reasonable to allow companies that provide notice of rate change through inserts in customer bills to coordinate the notice with the bill, so long as consumers still have sufficient time to evaluate the changed rates, terms and conditions and pursue other options if they find the changes unacceptable. These companies must provide notice at least 15 days prior to the effective date in the change of rates, permitting companies to avoid the cost of separate mailings.[167] Two exceptions to the notice requirement should exist. Companies need not provide advance notice of rate decreases, although the customer's first bill or other material disseminated individually to affected customers shall occur no later than the first bill after the rate decrease. Similarly, if the Board allows a rate increase or a change in terms and conditions that may increase rates to take effect

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165. Tr. 5/22/97 at 26-31 (Nishi). For customers of toll service providers that do not use LEC billing and collection services, Illuminet serves as an intermediary between the toll provider and the LEC. If a customer does not pay his or her toll charges, Illuminet then places a charge on the LEC bill, and terminates, without notice, the optional calling plans. The record did not demonstrate whether this practice is described in the tariffs of either the LECs or the toll providers. However, for intrastate charges, an automatic adjustment in toll rates that is not described in tariffs would appear to be inconsistent with Vermont law.

166. Docket 5713, Order of 2/4/99 at 49.

167. Today, notice of rate changes for telecommunications providers is often performed by placing notices in newspapers. Newspaper notice, however, is unlikely to reach many, if not most, of a company's affected subscribers. Tr. 5/22/97 at 123-124 (Friar). Such notice does not, therefore, meet the needs of consumers and is not an adequate substitute for individualized notice.

in less than one month, the companies shall provide notice concurrent with the implementation of the changed tariffs.[168] These principles are embodied in the following requirement.

> Telecommunications companies shall provide notice of any change in rates or other terms and conditions of service directly to each consumer that may be affected by the change in rates. If the change may increase the cost of service for a consumer, notice shall be provided at least 30 days in advance of any change in rates or terms and conditions of service, except that companies may provide notice through bill inserts provided that customers are notified at least 15 days in advance of the effective date of the change. If the Board allows a rate increase to take effect on less than 30-days' notice, the companies shall instead provide notice no later than the date on which the change is implemented. In the case of a rate decrease, companies shall notify each affected consumer no later than the first bill following implementation of the rate change.

This recommendation is consistent with Section 225(a), which allows the Board to direct the notice that companies shall provide their customers of rate changes, and thus does not require further rulemaking to be implemented.[169] It ensures adequate notice to consumers. At the same time, it is tailored so that companies need not notify consumers that are unaffected by the rate change.

The advanced notice requirement may reduce the flexibility of companies to rapidly deploy new products. Vermont law, however, already requires that tariff changes be filed at least 45 days in advance of the intended date for implementing service. The advance notice requirement thus should not inhibit companies from changing services.[170] At the same time, it ensures that customers are provided with the information necessary to allow them to make informed choices.

f. Fair Marketing Practices

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168. Exh. DPS-CP/P-2 at 3.

169. The notice requirement also is consistent with the practices of several other states. For example, New Hampshire requires notice of rate changes no later than 30 days from the date of filing with the Public Utilities Commission. N.H. Code Admin. R. PUC 403.08. See also Or. Admin. R. 860-034-0310.

170. It is possible that tariff requirements will be modified or relaxed in the future under 30 V.S.A §§ 226a, 226b, or 227a. If the Board reduces the tariff filing requirements or the review of those tariffs, advance notice to consumers may be the only way by which consumers are notified that rates are changed – until they receive a bill reflecting those changes.

Consumers not only need accurate information, but also should be free from unfair and deceptive practices. All parties agree that companies in the competitive marketplace must engage in honest and fair marketing practices.[171] To implement these principles, the Industry, through Code of Conduct Item A5, proposes that the Board require companies to "engage in honest and fair marketing practices, consistent with all applicable laws and regulations of the State of Vermont, Federal Communications Commission, and Federal Trade Commission."[172] In addition, the Industry proposes Code of Conduct Item A6, which requires companies to "require authorization from consumers before changing their primary local exchange or intraLATA toll provider, consistent with FCC rules for changing interLATA toll providers."[173]

By contrast, the Department recommends that the Board adopt several specific standards to prevent unfair and deceptive trade practices.[174] The Department believes that, notwithstanding the existing laws designed to prevent unfair marketing practices, the Board should adopt a specific standard so that companies and consumers can understand what constitutes acceptable marketing conduct.[175]

As the Industry argues, at both the federal and state level, statutes and regulations exist designed to curb unfair and deceptive trade practices. These statutes and rules, and cases interpreting them, have created a body of law defining inappropriate marketing and sales practices that need not be duplicated.

Nonetheless, I recommend that the Board adopt the standard set out below. Under Vermont law, the Board remains primarily responsible for overseeing most activities of telecommunications providers within Vermont, including the adequacy of the service they provide. The marketing practices of new and existing market participants falls within that jurisdiction. Adoption of a specific standard proscribing unacceptable practices will provide the Board with greater ability to fulfill these responsibilities and allow consumers to seek

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171. Exh. DPS-CP/P-1 at 11; exh. Independents-1 at 6; exh. NYNEX-1 at 11.

172. Exh. Industry-1 at 2.

173. *Id*. at 3.

174. Exh. DPS-CP/P-1 at 11. The Department originally recommended that the Board adopt an additional standard requiring companies to comply with Board Rule 4.700. Exh. DPS-CP/P-1 at 12. The Department now believes that the Board Rule is adequate. DPS Brief at 44.

175. Exh. DPS-Reply-1 at 13.

administrative remedies before a body with special expertise rather than requiring aggrieved customers to pursue civil remedies in Court.[176] I recommend the following standard:

> No provider of telecommunications service shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction. No provider shall make any offer for services in any public media, including print, television, radio, or promotional literature without stating clearly, conspicuously, and in close proximity to the words stating the offer whether any material exclusions, reservations, limitations, modifications, or conditions and either identifying those exclusions or providing a toll-free contact number by which consumers may learn of the restrictions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific to be readily comprehended by the consumer.[177]
>
> Unless specifically authorized by the Board, providers may not employ "negative enrollment" in which consumers become enrolled in a service without an affirmative selection by the consumer.

The Department also recommended that the Board require that all telecommunications providers comply with the guidelines issued by the Better Business Bureau concerning the use of the term "free" in advertising.[178] These guidelines represent a useful set of criteria for limiting one particular form of deceptive trade practice and may well be used in future Board proceedings determining whether a company's trade practices are consistent with the standards set out above. For purposes of the basic consumer protection standards, however, the standard set out above proscribing unfair or deceptive marketing practices is sufficient.[179]

Finally, I do not find it necessary for the Board to adopt Code of Conduct Item A6 concerning change of primary interexchange carriers. The Board has adopted Rule 4.700, which sets out requirements concerning changes in a consumer's primary local exchange carrier and/or interexchange carrier. All companies must adhere to those rules. There is no reason to duplicate that requirement here.

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176. Section 209(a) provides the Board authority to act even without the establishment of a particular consumer protection standard. Adoption of that standard will inform all providers of the practices that are acceptable under Section 209.

177. See *In Re Establishment of Local Exchange Competition*, No. 95-845-TP-COI, Guideline XVIII(B) (Ohio P.U.C., Nov. 7, 1996).

178. DPS Brief at 46; exh. AT&T 1, Exhibit 1.

179. If the Department finds further clarification necessary, it may propose the adoption of specific rules. At the present time, endorsement of the basic principles is adequate.

g. Information on Bills

The need for consumers to receive complete and accurate information extends to the bills that consumers receive. The Industry commits, through Code of Conduct Item A8, to "render reasonably detailed billing statement itemizing services, usage, and charges."[180] In addition, Item A7 commits companies to "identify each service provider name, address, and telephone number(s) or provide a primary number for consumers to contact on the billing statement."[181]

The Department asserts that the Industry proposal fails to specify at what level of detail services, usage, and charges will be listed, and instead recommends that bills include the name of the product or service, the applicable rate for the relevant service class, the units of service consumed, the per-unit rate (for usage services), and the resulting charge for that billing period.[182] According to the Department, bills also need to inform consumers of the identity, location, and telephone number of their telecommunications providers, which would also require a company sending the bill to identify the names of companies for which the billing company is providing billing and collection services..[183] Finally, the Department recommends that termination liability for early disconnection of service should be ratable.[184]

Current LEC practices are consistent with the principles proposed by the Department,[185] which I recommend the Board adopt. Charges for telecommunications services generally are not a single price, but rather consist of non-recurring charges (one-time charges such as for installation or initiation of new services), recurring charges (such as the basic service charge) and usage charges (e.g., toll service charges). For consumers to understand their bill, it is essential that the bill sent to a customer delineate charges in a clear manner that allows consumers to readily ascertain the price and charges for each component of

180. Exh. Industry-1 at 3.
181. Exh. Industry-1 at 3.
182. Exh. DPS-CP/P-1 at 13.
183. *Id*. at 12.
184. *Id*. at 14; exh. DPS-Reply-1 at 16.
185. Tr. 5/27/97 at 181 (Murray-Clasen); exh. NYNEX-1 at 12; exh. Independents-1 at 7.

the service.[186] The policy of having customer bills contain information on the pricing of components also should not undermine the availability of bundled services. To the extent that companies offer bundled services, it is not necessary for companies to separately define the price of each component of the service package.[187]

As to rating the termination liability, consumers fall into two classes of service. Many customers enter into special contracts that contain termination liability penalties. These customers tend to be larger, more knowledgeable customers fully capable of understanding the liabilities. In addition, the termination liability provisions are often one component in a special contract in which the service provider and the consumer negotiate below-tariff prices and other special terms and conditions. I find no reason to mandate the ratability of termination liabilities for these consumers.[188]

The record does not reveal the extent to which termination liability charges apply to other customers, thus making the establishment of a definitive policy difficult. In general, termination liability provisions exist to ensure that the service provider that incurs up front costs to install facilities can recover the costs of those investments. It is reasonable to expect that over time, the termination liability amount will decrease as the provider recovers its investment through rates.[189] However, in the absence of a more complete record, I cannot recommend that the Board require all early termination liabilities be ratable.

I also concur with the Department's recommendation that bills identify the name, location, and telephone number of the telecommunications provider.[190] Full disclosure of from whom a customer is buying service (see Bill of Right #1) requires that the provider that

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186. Exh. DPS-CP/P-1 at 13. Vermont's rate design, particularly the use of local measured service, differs from that in many states. Absent clear delineation, consumers that relocate to Vermont will experience significant confusion.

187. Exh. DPS-CP/P-1 at 14. For example, a company offering a bundling of two ancillary services for a single price need not separately identify the price of each of those ancillary services. Even in bundled service offerings, companies must clearly identify all usage rates, units consumed, and charges, however.

188. The operation of the termination liability provisions in special contracts to resold special contracts is now being examined in Docket 6121.

189. Tr. 5/27/97 at 181-182 (Murray-Clasen). See, for example, Bell Atlantic Tariff P.S.B. - Vt. - No. 20, Part C, Section 9.4.5 (for Digipath II Service). I hereby take administrative notice of Bell Atlantic's tariff No. 20, in accordance with 3 V.S.A. § 812. Any party that objects to the taking of administrative notice shall file those objections along with comments on this Proposal for Decision.

190. Exh. DPS-CP/P-1 at 12. The Industry agrees with this concept.

bills for services performed by other telecommunications providers, identify on the bill the name, address, and telephone number of each company that is providing the services included on the bill.[191]

I recommend that the Board adopt the following standards:

> Companies shall provide reasonably detailed billing statements that, at a minimum, itemize services, usage, and charges at a unit level (including the number of units consumed and the rates charged per unit). Non-recurring, recurring, and usage charges shall be separately identified.
>
> A telecommunications provider shall identify on the bill the name, address, and telephone number of itself and each company for whom it is providing billing and collection services in conjunction with that bill. Providers shall also provide on the billing statement a primary telephone number for consumers to contact.

2. Customer Service Standards

The Department proposes the adoption of several standards designed to represent "minimum levels of customer service."[192]

a. No Retaliation

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191. Exh. DPS-CP/P-1 at 17. The Department also requested that the billing company be required to serve as the "ultimate consumer contact point for questions and dispute resolutions." Exh. DPS-Reply-1 at 15. I find listing of the essential information allowing the consumer to know the company providing service and to enable the consumer to contact that company to resolve billing disputes to be adequate, without directing the billing company, which will generally be the LEC, to be responsible for coordinating resolution of inquiries and complaints.

192. DPS Brief at 53. The Department originally proposed a sixth standard calling for the addition of language to tariffs that would effectively alter the limitations on liability in company tariffs. Exh. DPS-CP/P-1 at 21-22. In its Brief, the Department states that it no longer recommends such a change, so it is unnecessary to address the issue here. As the transition to a monopoly environment continues, however, the Board may need to examine in what circumstances companies should be able to rely upon tariffs to unilaterally limit their liability for service failures, limitations that do not tend to exist in competitive markets. Conversely, it may not be appropriate for telecommunications providers to be responsible for consequential damages when a relatively minor service outage could have severe financial or other effects upon system users. These issues should be studied at such time as the Board relaxes tariff filing requirements for companies.

The Department expresses concern that customers will be deterred from participating in Board proceedings, or complaining about service to a company, the Department, or Board because of fear of retaliation.[193] This concern could be addressed, according to the Department, by a clear statement prohibiting such retaliation.

The Industry agrees with the principle enunciated by the Department.[194] However, these parties propose Code of Conduct A11 as an alternative, which states that companies will "accord fair and equitable treatment to all consumers participating in the complaint process via Board proceedings and Rule 2.300."[195]

Retaliation against customers that avail themselves of their rights to complain about service to a company, the Board, or the Department is clearly inappropriate. I recommend the Board adopt the following standard, based upon the Industry's recommended Code of Conduct:

> All companies will accord fair and equitable treatment to all consumers, and will not in any way retaliate in any way against consumers that complain to the company, the Department or the Board or that participate in the complaint process via Board proceedings and Rule 2.300.

b. No Disconnection for Harassing Company Personnel

Some companies provide in their tariffs that the company may disconnect a customer due to harassment of company personnel.[196] For example, Bell Atlantic's tariff specifically authorizes disconnection or refusal of service "because of abuse or fraudulent use of service, which includes use of the facilities to "frighten, abuse, torment or harass another."[197] Under this tariff, Bell Atlantic has disconnected customers due to harassment of company personnel.[198]

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193. Exh. DPS-CP/P-1 at 17.
194. Exh. Independents-1 at 10; exh. NYNEX-1 at 13-14.
195. Exh. Industry-1 at 3.
196. Exh. DPS-CP/P-1 at 17.
197. Exh. NYNEX-1 at 14; tr. 7/1/97 at 125 (Wood); Bell Atlantic Tariff P.S.B. Vt. No. 20, Section 1.3.1.
198. Tr. 7/1/97 at 125 (Wood). Other companies take the position that disconnection for harassment of company personnel should be limited to situations in which the harassment is severe or violent. Exh. Independents-1 at 11; tr. 5/21/97 at 120-122 (Sawyer).

The Department finds this practice unacceptable, arguing that the tariff provisions are overly subjective and "allow providers to disconnect certain subscribers without following the Board rules on disconnection."[199] In addition, the Department argues that because Vermont law already defines telephone harassment in 13 V.S.A. § 1027(a) and provides a specific remedy, telephone service providers should not be authorized to establish an additional remedy.[200]

The Department actually raises two issues. The first is a policy question of whether the Board should allow disconnection due to harassment of company personnel. The second issue, not discussed by the parties, is whether the company tariffs authorizing such disconnection are consistent with Public Service Board rules.

As to the policy issue, adoption of the Department's recommendation requires a conclusion that it is never appropriate for a telecommunications service provider to disconnect service or refuse service to a customer because of harassment of company personnel.[201] I cannot conclude, based upon the evidence presented in this proceeding, that the Board should adopt such a policy. It is possible that, in an extremely limited number of circumstances, disconnection of customers for harassing or abusive practices may be appropriate. The evidence suggests that, to date, disconnections in the cited circumstances have been rare.[202] I would expect that the limited frequency would continue.

The policy as written in the tariffs is subjective, as the Department suggests. This does not mean, however, that each utility retains absolute discretion to determine what constitutes behavior warranting disconnection; companies seeking to disconnect customers for harassment must act reasonably. If customers or the Department believe that a particular disconnection is inappropriate, they retain the right to seek relief from the Board, which maintains jurisdiction

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199. Exh. DPS-CP/P-1 at 17-18; DPS Brief at 55.

200. DPS Brief at 56.

201. The Department recognizes a limited exception to this rule allowing a company not to connect or reconnect a customer who threatens physical harm where the connection requires physical entry to the customer's property. DPS Brief at 56.

202. See tr. 7/1/97 at 125 (Wood); tr. 5/21/97 at 120-123 (Sawyer, Gates). The testimony does not provide precise information of the number of affected customers. Also, no party presented evidence suggesting that, considering the facts of the individual cases, disconnection was inappropriate.

to interpret each company's tariff and determine whether a particular action is consistent with that tariff.

More problematic is the consistency of the company tariffs with Board rules. Rules 3.302 and 3.402 specifically limit disconnection to instances in which "payment of a valid bill or charge is delinquent and notice of disconnection has been furnished to the ratepayer." The practices described in this docket fit neither circumstance. It, therefore, appears that the company tariffs do not comply with Board rules. Other than the replacement of the company tariffs with the general prohibition proposed by the Department, the parties did not put forward a solution to this inconsistency nor even recognize it. To redress this inconsistency, I recommend that the Board initiate rulemaking to revise Rules 3.300 and 3.400.[203] Following that rulemaking, companies should be required to submit tariff revisions consistent with the rule changes.[204]

Finally, I find no conflict between the disconnection of service for harassment and 13 V.S.A. § 1027. The latter statute designates telephone harassment as a crime and specifies a criminal remedy. As is well known, civil and administrative remedies as well as private rights of action regularly co-exist with criminal statutes, often with different standards applying in each case. The existence of 13 V.S.A. § 1027 thus should not limit the availability of other, non-criminal remedies.[205]

c. Prompt, Courteous, Competent and Convenient Customer Service

Consumers should expect that all telecommunications service providers will provide prompt, competent and timely service, including responses to consumer inquiries.[206] The Industry agreement with this principle is represented in the Code of Conduct which provides

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203. Elsewhere in this Order, I recommend a similar rulemaking to address other aspects of the Board's disconnection rules.

204. In that proceeding, the Department may seek to further limit or proscribe the disconnection flexibility of companies. In addition, it may be appropriate to consider changes in the minimum amount required for disconnection, based upon the adoption of the no-disconnect policy. Tr. 5/27/97 at 127-128 (Murray-Clasen, Lackey).

205. I also note that the practices the Department finds offensive may not occur through telephone calls and thus may not be covered by the statute.

206. Exh. DPS-CP/P-1 at 19.

that companies will "deliver courteous, competent and timely service, as defined in the service quality standard."[207]

By contrast, the Department recommends several specific standards to address consumer complaints that have occurred previously. Specifically, the Department asks that the Board require (1) companies that use automated wait queues to handle consumer complaints must provide information to consumers on their wait time, including how to speak to a live representative, (2) that companies ensure that CSRs are familiar with Vermont service offerings, and (3) companies to provide convenient payment locations.[208]

Each of the Department's recommendations is thus likely to benefit consumers. There is little question that some consumers find call waiting queues annoying and frustrating, preferring to have consumer inquiries responded to immediately.[209] Many companies, including Bell Atlantic and AT&T attempt to ameliorate consumer reactions by providing some indication of the amount of time the customer can expect to be on hold.[210] Consumers would likely benefit from the establishment of additional payment locations around the state.[211] However, the Department has not been persuasive as to the need for the Board to adopt the specific standards. Instead, these recommendations can better be characterized as additional conveniences to consumers, rather than needs. As such, it is more appropriate to establish the basic principle, as espoused by the Industry, and allow companies to determine how best to provide service meeting those principles, as the LECs have done to date.

It is also not clear that the Department's standards will ultimately benefit Vermont ratepayers. Companies may incur significant costs to revamp their call waiting queues and insure live CSRs for every caller.[212] New market entrants required to institute payment locations may find the establishment of such locations overly expensive, particularly if they intend to serve only a niche market, and thus be deterred from offering service. These

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207. Exh. Industry-1 at 3 (Item A13).
208. DPS Brief at 60-62; exh. DPS-CP/P-1 at 19.
209. Tr. 5/28/97 at 146-147 (Murray-Clasen).
210. Exh. DPS-Reply-1 at 18; exh. NYNEX-1 at 15.
211. Based upon surveys, Bell Atlantic has established 13 such locations for its customers. Exh. NYNEX-1 at 15.
212. Exh. AT&T-1 at 12.

additional costs may unnecessarily deter potential new entrants or lead to higher rates for all customers, without providing sufficient offsetting benefits.

As to the issue of CSRs' knowledge of Vermont service offerings, all companies providing service in Vermont should ensure that their CSRs can provide consumers with accurate and complete information about services, including the rates, terms, and conditions of service, offered within Vermont. It is unreasonable for a company that seeks to conduct business in Vermont to have CSRs unable to respond to customer inquiries. I do not, however, believe it necessary to establish a specific standard requiring such knowledge. To some degree, the competitive marketplace will punish companies that fail to have in place knowledgeable CSRs as consumers unable to receive accurate information will be forced to use other providers. In addition, the general standard, set out below, to provide competent service will likely be violated by any company unable to provide accurate information.[213]

I recommend that the Board adopt the following standard:

Companies shall deliver courteous, competent, and timely service.

d. Consumer Complaints and Dispute Resolution

Consumer complaints relating to telecommunications services have been on the rise, increasing nearly 40 percent over the past six years.[214] Doubtless the rise of competition and the increased complexity described previously have played a significant role in this increase. The Department finds the current complaint processes inadequate, stating that "consumers need additional protections to receive a comprehensive right to fair and impartial resolution of their disputes."[215] The recommended protections consist of a requirement that companies (1) record and track all complaints and (2) notify customers about the DPS dispute resolution process when service is first initiated and then periodically.

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213. In addition, if a company continually fails to provide knowledgeable CSRs so that Vermont consumers are harmed, it may be appropriate for the Department to seek revocation of that company's Certificate of Public Good.

214. Exh. DPS-CP/P-1 at 3. This figure measures only consumer complaints referred to the Department's Consumer Affairs and Public Information Division. Information has not been presented that would allow an assessment of the rate of consumer complaints that do not reach the Department.

215. Exh. DPS-CP/P-1 at 19.

The Industry recommends the adoption of a standard requiring companies to "address consumer complaints and requests for impartial resolution of disputes in a responsible way."[216] In addition, the Industry parties have developed a Consumer Inquiry and Dispute Resolution process designed to address the Department's concerns, while providing companies some flexibility as to their individual complaint-handling procedures.[217] This process outlines the steps each company and the Department will follow in evaluating customer complaints and inquiries.

Existing Board Rule 2.300 defines the process by which consumers can seek Board resolution of complaints regarding their utility service. That rule does not, however, address the vast majority of complaints and customer inquiries. These are generally handled by the telephone service providers themselves, although a subset of complaints is escalated to the Department for resolution. The parties here present several principles and procedures to further define portions of that process.

The establishment of a better-defined procedure for responding to consumer complaints will enable customers to better understand the mechanisms available to consumers to seek redress of their complaints and permit a more consistent process, primarily when the consumer is dissatisfied with attempts to resolve the complaint by the CSR. The Industry's Dispute Resolution process, with some changes,[218] achieves this goal, by defining the means by which consumers can seek further review within a company or raise their complaints to the Department of Public Service.

The Department's request that companies be required to notify their customers periodically about the availability of the Department's complaint resolution process is also reasonable. The Dispute Resolution process will ensure that customers raising complaints will be able to obtain this knowledge. But greater consumer knowledge of an independent dispute resolution mechanism may aid other consumers that have not heretofore raised complaints.[219]

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216. Exh. Industry-1 at 3 (Code of Conduct Item A12).

217. *Id*. at 4-5; Bell Atlantic Brief at 37.

218. The primary changes from the Industry's proposal are the elimination of mandates upon the Department of Public Service.

219. This is not to suggest that there exist a large number of dissatisfied customers waiting to complain.

At the present time, consumers are only required to be informed of the Department's role at the time a disconnection notice is sent.[220]

The benefits of tracking consumer complaints are less obvious. Tracking of complaints offers some potential benefits, allowing companies to identify trends in complaints, and inconsistencies in company policies, responses and performance.[221] It may also speed resolution of consumer complaints.[222] Tracking of complaints may also facilitate the evaluation of each company's service quality.[223]

Despite these potential benefits, I conclude that the Board should not require companies to track all complaints as requested by the Department. First, it is unclear what constitutes a consumer complaint. The Department proposes an expansive definition that would include almost all consumer inquiries to their telecommunications provider.[224] This definition appears overbroad. No party presented evidence on a more limited definition, however. In addition, the tracking of complaints will obviously entail some cost to companies. Finally, the dispute resolution process will achieve a large part of the Department's goals, but establishing a more defined mechanism by which customers can seek redress of their complaints.

I recommend the following standards:

> All telecommunications providers shall address consumer inquiries, complaints and requests for impartial resolution of disputes in a responsible manner. Companies shall employ the following dispute resolution process.
>
> 1. Each telecommunications provider shall list on the bill the telephone number(s) at which the customer may reach representatives of the provider for information or the resolution of any dispute that may arise.
> 2. Each telecommunications provider shall provide customer service representatives (CSRs) through whom consumer complaints and inquiries can be registered.

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220. Exh. DPS-CP/P-1 at 20 and n.18. Board Rules 3.303(E) and 3.403(D).
221. Tr. 5/28/97 at 50-51 (Larkin).
222. Tr. 5/28/97 at 50 (Murray-Clasen).
223. Tr. 5/28/97 at 48-49 (Murray-Clasen).
224. Tr. 5/28/97 at 90, 124-125 (Murray-Clasen).

3. Each telecommunications provider shall provide a response to a customer inquiry or complaint within seven (7) business days of receipt of the inquiry or complaint.

4. Each telecommunications provider shall notify a customer that, if the customer is not satisfied with the resolution offered by the provider, the customer may seek further review of the dispute by higher management within the company (if available) or may contact the Department of Public Service.

   a. The provider shall provide the customer with the telephone number of the Department of Public Service's Consumer Affairs and Public Information Division.

   b. If a customer seeks review of a dispute by higher management with a company, the company shall respond within ten (10) business days of the date the original dispute resolution was appealed.

5. If a customer elects to contact the Department of Public Service, either directly or upon exhaustion of their provider's internal dispute resolution process, the Department should, within a reasonable time, notify the affected company of the receipt of the consumer complaint.[225]

6. If, following receipt of a customer complaint, the Department needs further information or a response from the company, the service provider shall investigate the complaint and provide a response to the consumer and the Department within ten (10) business days of its receipt of the consumer complaint from the Department.

   a. If the complaint raises complex issues or issues that require more time to resolve than provided above, the telecommunications provider shall provide the consumer and the Department with an interim status report within ten days of its receipt of the complaint from the Department.

   b. The telecommunications provider shall submit a final report within ten (10) business days of the submission of its interim status report. If a final resolution cannot reasonably be achieved within the time frames provided herein, the provider shall notify the Department and the consumer and keep both apprised of the Company's progress towards reaching final resolution.

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225. If the Department concludes that a particular complaint should remain confidential, the Department does not need to inform the affected company. However, it is hard to envision resolution of most justified complaints without discussions with the service provider.

7. Nothing in this dispute resolution procedure shall prevent a customer from contacting the Public Service Department's Consumer Protection and Public Information Division directly at any point in this process (including at the outset), or otherwise limit a customer's statutory or other legal right to dispute all or a portion of his or her telephone bill.

8. At the time a customer initiates service, and then at reasonable periods, each telecommunications provider shall notify a customer about the availability of the Department of Public Service's complaint resolution process. This notice may occur through telephone bills or telephone directories.

e. Compensation for Directory and Directory Assistance Errors

The Department recommends the adoption of several specific measures to address occasions in which a customer's name, phone number, or address is erroneously listed or omitted. First, the Department recommends that the Board require corrected information to be placed in the Directory Assistance and with Intercept Operators within twenty-four hours of the discovery of an error.[226] For an incorrect listing of a telephone number in the directory, the Department proposes that service providers furnish the correct number, using intercept service, until a new directory containing the subscriber's telephone number is published.[227] Finally, the Department requests that where a subscriber's number has been omitted from the directory, the telecommunications provider be required to provide a new number for a period of time.

The Industry proposes to require companies to "ensure prompt correction of directory assistance and phone directory errors and omissions."[228]

If a company has errors or omissions from telephone directories or the directory assistance services, customers deserve prompt correction of these omissions. Absent efforts to correct the errors, customers that do not know the correct telephone number will be unable to contact the person whose number was not properly listed. The consumer protection standards should reflect the need for companies to correct these errors.

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226. Exh. DPS-CP/P-1 at 20; DPS Brief at 62-63.

227. Exh. DPS-CP/P-1 at 21. If the incorrect number has been assigned, the Department requests that subscribers be provided a new number free of charge.

228. Exh. Industry-1 at 3 (Code of Conduct Item A14).

The evidence is not persuasive, however, as to the need or desirability of adopting the specific measures put forward by the Department. Companies should take steps to correct erroneous Directory Assistance listings promptly. However, the Independents generally rely upon Bell Atlantic for Directory Assistance and while they can notify Bell Atlantic of the error, they cannot control the underlying provider.[229] CLECs that choose not to perform their own Directory Assistance will doubtless find themselves in a similar situation. For correction of Directory Assistance errors, it also is not necessary to prescribe a single approach. Use of intercept service to divert calls from the incorrectly listed number to the subscriber's actual telephone number, without charge, often will be appropriate.[230] But requiring all companies to use intercept service and call forwarding will restrict companies from offering alternative solutions that may better aid a particular consumer.

The following standard is proposed:

> All companies shall ensure prompt correction of directory assistance and phone directory errors and omissions, including, if practicable, the institution of measures that will allow customers to receive calls placed to the erroneously listed number. Whenever possible, companies shall make available the correct number through directory assistance within two business days.[231]

f. Non-discrimination Code of Conduct

The principle of non-discrimination is embedded in the Vermont regulatory framework and reflected in the Consumer Bill of Rights set out above.[232] The Department recommends adoption of six specific measures to further implement the non-discrimination principle.[233]

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229. Exh. Independents-1 at 13. As new providers enter the market and continue to rely upon Bell Atlantic to provide Directory Assistance, this problem may expand.

230. Bell Atlantic follows this approach. Exh. NYNEX-1 at 16.

231. As with other standards, if a company fails to take adequate steps to ensure compliance with this standard, the Department remains free to seek sanctions under Vermont law. Thus, although I do not recommend that the Board mandate the use of intercept service recommended by the Department, if a company fails to provide affected consumers with equivalent functionality, notwithstanding the customer's request, it may not be in compliance with the principle enunciated above.

232. See, *e.g.*, 30 V.S.A. §§ 218(a) and 226b(c)(11).

233. Exh. DPS-CP/P-1 at 28; exh. DPS-CP/P-2 at 7-8.

Several of these standards are reasonable and I recommend their adoption, with some revisions by the Board.[234]

> A service provider shall apply tariff provisions in the same manner to the same similarly situated entities if there is discretion in the application of the provision.[235]
>
> A service provider shall apply tariff provisions consistently.
>
> A service provider shall process all similar requests for a product or service on a non-discriminatory basis.
>
> A service provider shall not condition or tie the provision of any product, service or price agreement subject to regulation by the Board on the purchase of any product or service by its competitive affiliates.

The Department proposed two additional provisions that primarily relate to the bundling of services between a company and its unregulated affiliates.[236] I believe that these issues require further exploration before recommending specific policies.

3. Disconnection – Rule 3.300 Changes

The Board established basic requirements governing disconnection of telecommunications service, which are set out in Rules 3.300 (applicable to residential gas, electric, telephone and water servcie) and 3.400 (which applies to non-residential customers of these services and customers of cable companies). The Department recommends changing the rules in the following areas:

(1) clarifying what constitutes a reasonable payment plan (Rule 3.300(B)(6));

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234. Except for AT&T, no party objected to the specific standards enunciated by the Department during hearings. Exh. NYNEX-1 at 21; exh. Independents-1 at 16. The standards recommended above address AT&T's concerns. See AT&T-1 at 14-15; tr. 5/22/97 at 129-130 (Rutherford). Bell Atlantic, however, in its Reply Brief, raised significant objections to the Department's proposed standards for the first time. Bell Atlantic Reply Brief at 23-24.

235. These standards would allow companies to offer discounts for bundled services without extending the same discounts to customers that do not take bundled service.

236. Tr. 5/28/97 at 43-44 (Lackey). The two standards are (1) "If a service provider provides a customer of its Competitive Affiliate any product or service other than general and administrative support services, it shall make the same products or services available to all customers on a non-discriminatory basis" and (2) "If a service provider provides a customer of its Competitive Affiliate a discount, rebate or fee waiver for any product or service, it shall make the same available on a non-discriminatory basis to similar customers." Exh. DPS-CP/P-1 at 28.

(2) requiring telecommunications providers to offer customers facing potential disconnection with additional options, such as toll blocks or debit cards;
(3) clarifying Rule 3.301(B) to require a specific due date at least 30 days from the date the bill is mailed; and
(4) requiring companies to credit customers with payment on the date the company arrives.[237]

The Department, however, also states that these rule revisions are "necessary only if the Board does not adopt a no-disconnect policy."[238]

Industry counters with Code of Conduct paragraph A9, which provides that companies will "offer payment terms and intervals consistent with Board Rule 3.300." As to the specific rule recommendations put forward by the Department, Bell Atlantic objects to the changes that would specify a 30-day from mailing due date, recommending instead a 25-day period.[239]

The evidence presented by the parties suggests that there is a need to revisit Board Rules 3.300 and 3.400 to take into account changes in the telecommunications market and clarify customer and company responsibilities. Although the Department states that its recommended changes are necessary only if the Board rejects the no-disconnect policy, the issues it raises, such as the due date for bills, remain even after adoption of that policy as recommended above. For example, clarification of what constitutes a reasonable payment plan may be useful, particularly as new entrants, unfamiliar with existing practices, appear in the Vermont market.[240] It may also be reasonable to clarify the minimum time that providers must offer customers to pay their bills, although the Department and other parties disagree as to the length of this period.[241]

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237. DPS Brief at 67-69; exh. DPS-CP/P-1 at 15-16.

238. DPS Brief at 69.

239. Exh. NYNEX-1 at 12.

240. The no-disconnect may reduce what the Department describes as the "draconian" steps of falling behind. However, even with the adoption of the no-disconnect policy that is likely to affect the rate of basic service disconnection, consumers face the potential disconnection of toll and ancillary services that they may view as essential.

241. One possible change is to require companies to specify a due date on the bill, rather than having bills due a certain number of days after mailing. Exh. DPS-CP/P-1 at 16.

I recommend, therefore, that the Board initiate a rulemaking proceeding to consider changes to the disconnection rules in 3.300 and 3.400.[242] The Department and other parties are invited to submit specific proposals addressing the issues discussed herein.[243]

4. Customer Deposits – Fair Application of Rule 3.200

Rule 3.200 governs deposits that companies may seek from customers requesting service, placing restrictions on both the circumstances in which a company may request a deposit and the amount of that deposit. The existing rule limits the deposit that a company may require to the estimated customer bills for two months, but it does not dictate how companies calculate this amount. The Department finds this discretion too broad and recommends that the Board amend Rule 3.200 to "standardize" the deposit practices.[244] As part of these changes, the Department requests that the Board modify the deposit calculation so that the estimate of a customer's usage over the ensuing twelve months of service is based upon a company-wide average for that class of customers rather than on customer-specific information. According to the Department, Rule 3.200 also requires change so that it is clear that business customers are covered by the rule. Finally, the Department requests that the Board adopt toll caps or selective toll restriction as an alternative to customer deposits.[245]

Industry proposes Code of Conduct Item A15, which provides that companies will "facilitate network access for customers in ways that are just and reasonable."[246]

The current deposit and disconnection requirements are set out in the Board's rules. And while this Order can clarify ambiguous provisions in those rules, any changes to the rule

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242. This rulemaking should also consider the issue of the consistency of existing company tariffs allowing disconnection for harassment of company personnel with the present Board Rules. See Part IV, 2, B, above.

243. A final issue raised by the Department relates to the crediting of customer payments. Rule 3.301(E) requires that companies credit customers for payments on the date the payment arrives "at the company's business office or authorized payment agency." The Department asserts that not all companies comply with this rule. Exh. DPS CP/P-1 at 16; exh. DPS-Reply-1 at 17. I agree with the Department that customers should not be adversely affected because of a company's failure to comply with the Board's rules. One possible remedy, if the Department determines that this practice continues to occur, is for the Department to seek enforcement of the Board's rules under 30 V.S.A. § 30.

244. DPS Brief at 75.

245. *Id*. at 74-75; exh. DPS/CP-1 at 28-32.

246. Exh. Industry-1 at 3.

will require rulemaking consistent with the Vermont Administrative Procedures Act. The issues raised by the Department, as explained below, demonstrate the need to initiate such a rulemaking, which can be coordinated with the rulemaking on Rules 3.300 and 3.400 recommended elsewhere.

As the Department states, the deposit practices of incumbent LECs vary widely. Some companies, exercising their discretion, do not require deposits.[247] Among companies that continue to require deposits, the percentage of new service orders subject to deposit range from 1 percent (Northland) to 32 percent (Franklin in 1995).[248] Similarly the calculation of the deposit varies from LECs that calculate the deposit amount based upon the previous usage at the premises, which may bear little relationship to the usage pattern of the subsequent occupant,[249] to providers that use a company-wide average bill.[250] These facts support the need for a review of the deposit practices and the possibility of standardizing at least the deposit calculation.[251]

Toll caps, which establish a cap on either customer toll usage or the total communications bill, and selective toll restrictions, in which customers can elect to have a provider allow access to a limited number of exchanges while blocking access to others, may represent reasonable alternatives to the present deposit rules.[252] Use of these options may allow customers that could not meet deposit requirements to nonetheless connect to the

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247. Exh. DPS-Cross-10 at 7; exh. DPS-Cross-12 at 6; exh. DPS-Cross-13 at 7; exh. DPS-Cross-19.

248. Exh. DPS-Cross-9 at 7-8; exh. DPS-Cross-12 at 6.

249. Exh. DPS CP/P-1 at 28-29; tr. 5/22/97 at 186-187 (Murray-Clasen).

250. Exh. DPS-Cross-8 at 8; exh. DPS-Cross-9 at 8; exh. DPS-Cross-10 at 7; exh. DPS-Cross-12 at 6; exh. DPS-Cross-13 at 7; exh. DPS-Cross-14 at 10; exh. DPS-Cross-15 at 6; exh. DPS-Cross-16 at 8.

251. It is not clear that, absent a showing that the deposit practices vary due to discrimination or stereotypes, that the Board needs to mandate the collection of deposits as a means of standardization. The purpose of these consumer protection standards and the Board rules is to prescribe minimum standards that all companies must meet when providing service to customers. In general, there is no reason to limit companies from providing more benefits to customers. Allowing customers to take service without requiring a deposit appears to fall within this category. As the Vermont Telecommunications Plan makes clear, initial deposit payments undermine universal service goals because they deprive some consumers of the ability to connect to the network. *Vermont Telecommunications Plan* at 3-23.

252. Exh. DPS-CP/P-1 at 30-31. Toll caps may also help consumers budget their telephone usage. However, it is not clear that all companies presently have the ability to implement such caps. *Id.* at 30-32.

network by either eliminating (under the Department's proposal) or lowering the deposit amounts.[253]

Clarification of the deposit rules is also necessary to align those rules to the marketplace in which toll service may be purchased from a different company than that which provides basic exchange service. With the separation of basic service from toll service, which underlies the need to adopt the no-disconnect policy, customers seeking basic exchange service will likely see relatively small deposit amounts if they select a different carrier for toll service. Yet they may face a higher deposit amount if they seek to have the same company provide both basic exchange and toll service. Such discrepancies may not be consistent with a competitively neutral environment.[254]

The Board should initiate rulemaking efforts following issuance of the final Order in this docket. The Department and other parties are encouraged to submit proposed amendments to Rule 3.200 that can serve as a foundation for development of the rules and discussions with affected stakeholders.

5. Cooperatives

The Department, in its proposed Bill of Rights, recommends that consumers have the right to join with other consumers for mutual benefit.[255] To implement this right, the Department recommends that the Board adopt a policy that no restrictions should be placed on the right of consumers to join with other consumers for mutual benefit.[256]

It is reasonable to expect that as consumers in the competitive environment will seek to work together in some circumstances, possibly forming buyers cooperatives that can aggregate call volumes and obtain better rates.[257] However, at the present time, prognosticating the form of those cooperatives, and thus the desirability of the policy the Department espouses, is

253. Toll blocks and toll restriction may be very useful tools to accompany the no-disconnect policy in which toll and basic exchange service are considered separate.

254. The parties did not raise the issue of multiple deposits or competitive neutrality, which requires further exploration in the subsequent rulemaking.

255. As explained above, I recommend that the Board adopt this uncontested principle.

256. Exh. DPS-CP/P-1 at 42.

257. Exh. DPS-CP/P-1 at 41-42.

premature.[258] At such time as the market begins to evolve towards the formation of buyers cooperatives in Vermont, the Board should reconsider whether to adopt the Department's recommendation or an alternative thereto.

6. Visual and Hearing Impairments

The Department of Aging and Disabilities ("DAD") recommends that the Board adopt several consumer protection standards to benefit consumers who are deaf, hard of hearing, or blind and visually impaired. These standards include (1) the adoption of mandatory discounts for calls by TTY users within Vermont, (2) extension of the discount for TTY users to calling plans, not solely usage charges, and (3) a mandate that companies offering directories also offer directory assistance for free to consumers that are blind or visually impaired.[259]

Vermont law has consistently recognized the specific needs of individuals that are deaf, hard of hearing, blind or visually impaired when using the telecommunications network. For years, the state has had in place the Vermont Telecommunications Relay Service, designed to facilitate (at reasonable cost) telecommunications between these consumers and those that can speak and hear.[260] But the relay service does not fully address the difficulties faced by deaf and hard of hearing consumers. Approximately 2000 persons within the state communicate with one another using TTY devices.[261] For these users, the additional time required to type messages means that a typical telephone call takes four times longer than an equivalent conversation between hearing and speaking users, causing more costly telecommunications services for TTY users.[262]

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258. See Exh. NYNEX-1 at 27 (raising a number of potential issues that may need to be considered).

259. Exh. DAD-1; DAD Brief at 1.

260. 30 V.S.A. § 218a. Prior to the statutory mandate for the Vermont Telecommunications Relay Service, the Board had approved the operation of a similar system. *Board investigation into the adoption and implementation of "Lifeline" telephone rates - as it relates to Transitional Voice Relay Communications Network*, Docket 5028, Order of 6/20/90.

261. Exh. DAD-1 at 1. A TTY is used by consumers with hearing impairments to communicate. Often these conversations occur between persons with hearing impairments, requiring that each user have a TTY. If a TTY user seeks to communicate with a hearing person, that person will use the relay service. TTY's transfer data slowly, which is one of the reasons that calls to the relay service have a 50 percent discount. Tr. 5/22/97 at 12-13 (Pellerin).

262. *Id.*; tr. 5/22/97 at 8(Pellerin).

To aid deaf and hard of hearing consumers, most telephone companies offer some discounts for TTY users.[263] For example, Bell Atlantic, Champlain Valley Telecom, VTel, Ludlow, Northfield, and Perkinsville all offer discounts.[264] However, other companies do not. In some instances, the discounts are vague and confusing to customers.[265] To eliminate the confusion and establish uniformity, DAD recommends that the Board adopt a 40 percent flat rate discount for all TTY users.[266]

I find DAD's recommendation, which no party opposed, reasonable and recommend that the Board require all telecommunications providers to offer deaf and speech impaired or hearing impaired consumers that use TDD/TTY or other technology to convey telecommunications messages, a 40 percent discount on intrastate services offered in Vermont.[267] The discount should apply to all usage services, such as local measured service minutes of use[268] and intraLATA toll minutes of use. In addition, the discount should apply to the usage components of optional calling plans (generally the overtime minutes). The recommended discount recognizes the differences between conversations of hearing customers and those of the deaf, speech or hearing impaired.

There are approximately 6500 blind and visually impaired persons within the state.[269] Blind individuals are unable to use phone books to look up phone numbers. As a result, they tend to make, on average, more use of directory assistance than consumers without such impairment.[270] Almost all Vermont telephone companies have responded to the special needs

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263. Tr. 5/22/97 at 9 (Pellerin). The most common discount changes a person's rate period to the next less expensive so that day calls are rated as if the calls were made in the evening. *Id*. at 13-14 (Pellerin); exh. DPS Cross-8; exh. DPS Cross-10; exh. DPS Cross-11; exh. DPS Cross-12; exh. DPS Cross-13; exh. DPS Cross-14; exh. DPS Cross-16; exh. DPS Cross-20.

264. Tr. 5/28/97 at 143 (Murray-Clasen); tr. 5/22/97 at 15 (Pellerin). AT&T also offers discounts to hearing impaired customers. Tr. 5/22/97 at 58 (Friar).

265. Exh. DAD-1 at 1; tr. 5/22/97 at 16 (Pellerin).

266. Tr. 5/22/97 at 17 (Pellerin).

267. The discount should also apply.

268. The discount would not apply to any cap on local measured service (as offered by most local service providers).

269. Tr. 5/22/97 at 13 (Pellerin).

270. Tr. 5/22/97 at 8 (Pellerin).

of this community by offering free directory assistance.[271] I recommend that the Board require all providers of intrastate telecommunications services within Vermont to maintain this practice and offer free directory assistance to customers that are blind or visually impaired.

These recommended discounts are consistent with Vermont policy as enunciated in the Vermont Telecommunications Plan. That Plan stresses the importance of accessible communications for all consumers, proposing that Vermont review existing access and pricing arrangements so that pricing of services for customer requiring accessible communications assures "such customers a reasonably comparable service value for the price of using the network."[272] In this vein, the Plan specifically recommends the usage discounts for deaf and hearing impaired consumers and free directory assistance for blind and visually impaired persons.[273]

The proposed standard is as follows:

> All telecommunications service providers shall provide a 40 percent discount on intrastate services to customers that are deaf, speech impaired or hearing impaired. The discount shall apply to all usage services, including the usage components of optional calling plans. All telecommunications providers shall offer directory assistance to customers that are blind or visually impaired without charge.[274]

C. Privacy

The changes in the telecommunications marketplace also have significant potential affects upon customer privacy. As the Department has stated in the Vermont Telecommunications Plan, "the introduction of new services and new service providers into the telecommunications market has the potential to create a steady erosion of important privacy interests."[275] Modern computing and telecommunications technologies have brought about a

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271. Tr. 5/22/97 at 18 (Pellerin).

272. *Vermont Telecommunications Plan* at 3-6 and 3-24(1996); tr. 5/22/97 at 10 (Pellerin).

273. *Id*. at 3-24.

274. Companies that do not presently offer these discounts may need to file revised tariffs consistent with this Order.

275. *Vermont Telecommunications Plan* at 3-67.

rapid drop in the costs of collecting , storing, manipulating, and transferring data.[276] Services such as Caller ID enable consumers to obtain information through the telecommunications network (in this case, the telephone number) that had previously been private. The ability to collect information on customer usage patterns, generally referred to as customer proprietary network information ("CPNI"), creates the potential for additional privacy intrusions.

At the same time, the same growth in technology that may erode customer privacy has the potential to solve the possible intrusions. Turning again to the Caller ID service, the introduction of per-call and per-line blocking served to balance the privacy and other interests of the calling and called parties.[277]

As the Board previously observed, "the technology associated with Caller ID service, like other technological changes in modern society, present customer privacy issues that resist simplistic treatment. . . . we are highly unlikely to find a perfect solution that addresses both interests in a way that satisfies all consumers."[278] The Board has also recognized the importance of maintaining existing privacy protections and safeguards as multiple providers enter the market.[279]

In this docket, the Department presents several specific proposals that will protect consumer's privacy interests over time.

1. Consumer Control Over the Use of Their Private Information

Telecommunications providers presently have the ability to collect a significant amount of information about customers. Through the customer relationships, companies obtain information such as name, address, and telephone numbers as well as credit history. This information may be shared with other companies, such as collection agencies.[280]

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276. *Id*.; exh. DPS-CP/P-1 at 32.

277. *Id*. at 3-68-69; *Investigation of New England Telephone & Telegraph Company's Phonesmart Call Management Services*, Docket 5404, Order of 2/12/92 at 34.

278. Docket 5404, Order of 2/12/92 at 34.

279. Docket 5713, Order of 5/29/96 at 69 (Phase I). State law also recognizes the importance of customer privacy. 30 V.S.A. §§ 226a and 226b(c)(8).

280. Bell Atlantic uses NEExchange, a database service, as a tool to collect unpaid final bills. Exh. DPS-CP/P-1 at 37; exh. NYNEX-1 at 24.

A second group of information is classified as customer proprietary network information ("CPNI"), which is defined as

> (A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier solely by virtue of the carrier-customer relationship; and
> (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.[281]

CPNI includes such things as information on customer calling patterns.[282]

A third set of information falls under the category of automatic number identification ("ANI"). ANI is a series of codes that transfers the telephone number of the caller.[283] It is necessary for the proper billing and routing of calls. [284] When consumers place telephone calls to 800, 888, and 900 numbers, the telecommunications network transfers ANI to the call recipient. Unlike the similar information transferred to call recipients by services such as Caller ID, ANI transfer cannot be blocked by the caller.[285] Once the call recipient obtains the information, it can use the data for its own purposes, such as for marketing or the generation of mailing lists.

The Department recommends several policies designed to provide consumers with more information about the data collected about them and greater control over its dissemination. These recommended standards are (1) adoption of certain federal rules governing interstate ANI so that those same rules will apply to intrastate carriers and services, (2) requiring providers to notify customers about the release of their billing number to call recipients when an 800, 888, or 976 number is called, (3) requiring providers to inform customers, at least annually, about the information they collect about customers and where that information is shared, and (4) requiring providers to distribute annual privacy notice and

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281. 47 U.S.C. § 222(f)(1).

282. Exh. DPS-CP/P-1 at 35.

283. Most telecommunications companies can use the ANI to offer services such as Caller ID that will display the information for subscribers. Exh. DPS-CP/P-1 at 34.

284. Exh. DPS-CP/P-1 at 34.

285. *Id*.

consent forms to all their customers by which customers could prevent a provider from furnishing customer information to other companies.

The Industry offers as an alternative requirements that companies "enable consumers to control the level of privacy of their telephone number(s)"[286] and "preserve, to the extent possible, the privacy of non-published and non-directory listed listings between, among and across interconnected networks and competing, interconnected service providers."[287]

Federal law has already placed some limitations on the use of the information collected about consumers. Section 222 of the Telecommunications Act of 1996 specifically restricts the use of CPNI, including aggregate customer information.[288] The FCC has promulgated rules implementing the Act.[289] Subpart P of Part 64 of the FCC's Rules (47 C.F.R.) contains various limitations on the use of ANI and Calling Party Number information. That Subpart also mandates periodic subscriber notice concerning the dissemination of customers' telephone numbers. Rather than creating new standards governing the use of ANI and CPNI, it is reasonable to simply extend the application of these standards to intrastate carriers (to the extent they do not already apply).

Customer notification concerning transmittal of customer-specific information on 800, 888, and 976 calls is also valuable. It is unlikely that many consumers comprehend that most consumers understand that their calls to these services automatically provides the call recipient with their telephone number.[290] And to the extent that consumers do understand that their number is transmitted, they may not know that blocking services are ineffective for these calls. Companies should work with the Department to develop an accurate, clear, and concise means of conveying this notification.[291]

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286. Exh. Industry-1 at 3 (Code of Conduct A17).

287. Exh. Industry-1 at 3 (Code of Conduct A18).

288. 47 U.S.C. § 222(c).

289. *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order, CC Docket Nos. 96-115 and 96-149, FCC 98-27 (rel. Feb. 26, 1998) (amending 47 C.F.R. Part U).

290. Customer knowledge has undoubtably increased, however, with the advent of Caller ID service that enables other consumers to obtain the same information.

291. Bell Atlantic recommends this approach to the notice requirement. Bell Atlantic Brief at 45.

I do not, however, recommend that the Board adopt the Department's other two recommendations. Although the Department points out the possibility that certain private information could be disseminated inappropriately, companies have many legitimate uses, including collection of unpaid bills or providing data to publishers of telephone directories. By requiring each telecommunications provider to notify the customer of all distribution of information about the customer, the notification of the entities to whom a telephone company releases information may create the impression that such distribution should not be occurring, thus creating confusion rather than providing clear benefits. In addition, federal laws governing CPNI already place limitations on the use of CPNI and other information. The same analysis applies to the Department's proposal to allow consumers to block distribution of information.

I recommend adoption of the following standards:

> The requirements of 47 C.F.R, Part 64, Subpart P shall apply to all telecommunications providers within the state providing calling party number, ANI or charge number services on intrastate calls in the same manner as those rules apply to interstate carriers. The requirements of 47 C.F.R, Part 64, Subpart U shall apply to all telecommunications providers of intrastate services. Each telecommunications provider shall provide, individually or in conjunction with other companies, notice at least annually to all customers describing the information that is released to call recipients when the customer places a call to an 800, 888, or 976 telephone number. Companies shall work with the Department on the form of the notice.
>
> Each telecommunications service provider shall enable consumers to control the level of privacy of their telephone number(s) and shall preserve, to the extent possible, the privacy of non-published and non-directory listed listings between, among and across interconnected networks and competing, interconnected service providers.

2. Regular Advertising of Line and Call Blocking

The Department recommends that the Board order all providers to make free per-line blocking available to all customers with unpublished numbers.[292] For other customers, the Department recommends allowing the customer to purchase per-line blocking at a reasonable

292. Docket 5404, Order of 2/12/92.

price. In addition, the Department requests that companies be required to regularly (annually) notify customers of the availability of per-line and per-call blocking. Finally, the Department requests that all companies be directed to provide a toll free number to allow customers to determine whether the line blocking is working.[293]

In Docket 5404, the Board required that, as part of the introduction of Caller ID and other Phonesmart services, Bell Atlantic provide per-call blocking to all customers, thus allowing those customers to prevent the passage of their telephone number on any individual call.[294] In addition, the Board required that for particular consumers that had safety concerns, Bell Atlantic provide per-line blocking that would block the transmission of the caller's telephone number absent an affirmative effort to block the call. Other companies that have introduced Caller ID since that time have followed these practices.

In that Docket, the Board also decided against mandating the availability of per-line blocking. The Board's decision to rely primarily on per-call blocking represented a balance between the privacy interests of the calling and called parties and constituted a "workable middle ground that would not hinder the usefulness of Caller ID service to called parties while at the same time maintaining a means of control over their telephone number for calling parties."[295] The Board also recognized the need to reevaluate the balance it struck in that decision.

The evidence in this proceeding is not persuasive as to the need to modify this policy. While the Department's proposal would enable other customers to seek per-line blocking, for a cost, additional per-line blocking also diminishes the value of the service to subscribers. Moreover, the Department has not presented evidence suggesting that per-call blocking does not provide a satisfactory alternative for most consumers. I recommend that the Board maintain the existing policies, which I reiterate and clarify below.

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293. DPS Brief at 98. Bell Atlantic now complies with the Department's recommendations. NYNEX-1 at 25-26.

294. The Caller ID service, unblocked, provides the call recipient with the calling party's telephone number. Two network-based options exist to prevent the number from being passed on to the call recipient. Per-call blocking requires the customer to dial a 3-digit code (*67) before dialing a telephone number. Use of this code blocks the transmission of the telephone number. Per-line blocking blocks the transmission of the number for all calls, unless the caller affirmatively dials a 3-digit code to unblock the call.

295. Docket 5404, Order of 2/12/92 at 34.

The Department's remaining two proposals, customer notification and the availability of a cost-free means by which customers can verify that the per-line blocking functions, both have merit. Customer notification has minimal costs and can be included in telephone directories, but provides the only means by which consumers are regularly reminded of the availability of blocking. The toll-free number (or an equivalent method, such as a local dial-up line) by which customers can verify the functionality of per-line blocking will allow customers that have already demonstrated a heightened privacy or safety interest to ensure that the network solutions designed to protect that interest continues to function.

Based upon the previous discussion, I recommend the following standards:

> All local exchange carriers shall make free per-call blocking available to all customers. In addition, all local exchange carriers shall provide per-line blocking, at no charge, to any customer demonstrating a heightened safety interest and any customer with non-published number service that requests per-line blocking.
>
> All local exchange carriers shall, at least annually, notify customers of the availability of per-line and per-call blocking. The notification shall inform customers of the criteria for obtaining per-line blocking and the means by which per-call blocking can be activated. Publication of this information in a directory will satisfy the annual notification requirement.[296]
>
> All local exchange carriers shall provide a telephone number by which customers that have per-line blocking can, at no cost, verify that the per-line blocking is functioning properly.

3. Prevention of Privacy Intrusions by Telemarketers

Telemarketing has become commonplace, even though many consumers consider it an intrusion and would prefer to avoid it.[297] The Department, acknowledging that the practices of telemarketers is largely beyond the Board's control, recommends the adoption of two measures. For Vermont telecommunications providers, the Department requests that providers inquire of customers within the first 30 seconds whether they would like to hear the solicitation. In addition, the Department proposes that all telecommunications providers with

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296. The FCC already requires such notification by companies providing interstate services. 47 C.F.R. §64.1603.

297. Exh. DPS-CP/P-1 at 40.

directories include a notice informing consumers of steps they can take to reduce telemarketing and junk mail.

The Industry offers as an alternative Code of Conduct Item A17, quoted above.[298] However, the parties commenting specifically on the Department's proposal generally supported it.[299]

The Department's recommendations, with minor changes, are reasonable and should be adopted. Customers faced with a barrage of telemarketing over the telephone lines should be provided with information on how to diminish the intrusions. While I have no illusion that notification by the local exchange carriers will be sufficient, as the telephone provided by the LECs makes possible telemarketing, notification by telephone companies nonetheless represents a useful means by which to reach customers. Bell Atlantic, however, raises a valid concern with respect to the Department's proposal to notify customers of how to reduce junk mail. Many consumers would find this information valuable. However, unlike telemarketing, which depends upon the telephone connection (thus justifying placing the notification requirement on LECs), the Department has not demonstrated any relationship between junk mail and telemarketing (and telephone service). Absent such a relationship, there is no reason that telephone companies should bear the responsibility for informing consumers about junk mail, no matter how annoying it may be to consumers.

I recommend the following standards:

> All local exchange carriers shall provide the following notice (or an equivalent)to customers through the telephone directory:
>
> > There are three things you can do about telemarketing. First, you can write to the following address to get your name off the list of all names called by telemarketers: Telephone Preference Service, PO Box 9014, Farmingdale, NY 11735-9014. Second, upon receiving a call from a particular telemarketer, ask them to identify themselves clearly and then tell them you want your number taken off the list. Third, remember that it is not impolite to hang up on such an unwanted caller. After informing the caller you do not wish to be called back, simply say goodbye.

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298. Exh. Industry-1 at 3.

299. Exh. Independents-1 at 19; exh. NYNEX-1 at 26-27 (although Bell Atlantic disagrees with certain details of the Department's proposed notice).

> All telecommunications companies operating in Vermont that conduct telemarketing shall, within the first 30 seconds of the telemarketing call, ask the customer whether the customer wishes to hear the solicitation.

4. Board Review of New Service Offerings with Privacy Implications

It is possible that new services deployed by service providers will have affects upon the privacy of telecommunications consumers. The Department recommends that the Board specifically prohibit the introduction of, and advertising for, any new product or service that could impair privacy until the product has been reviewed by the Board and Department.[300]

Industry representatives also observed that they agreed with the principles recommended by the Department.[301] However, the Industry proposed an alternative in Code of Conduct Item A19, which requires companies to "notify the Board, 30 days prior to introduction, of new regulated services that transmit a customer's name or telephone number."[302]

At the present time, the Board has the ability to examine new tariff filings, including those that may affect customer privacy.[303] However, the Board has not required companies to identify potential privacy implications of new filings nor to provide promotional and other materials. In addition, as the marketplace changes, it is possible that the review of tariffs will be modified or relaxed, so that the companies may be authorized to introduce new services without prior review.[304] Board policies should be adopted to address these concerns. Accordingly, I recommend the following privacy standard:

> At the time a company files a tariff, or at least 30 days prior to the time a company introduces or modifies a service or implements a technology change that may affect the privacy interests of consumers, the company shall file a statement of foreseeable privacy impacts on customer privacy expectations. The

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300. Exh. DPS-CP/P-1 at 38-39. The Department requests that companies also provide copies of all marketing materials.

301. Bell Atlantic Brief at 50; exh. NYNEX-1 at 25; exh. Independents-1 at 18.

302. Exh. Industry-1 at 3.

303. Exh. NYNEX-1 at 25.

304. See 30 V.S.A. §§ 226a, 226b, and 227a; tr. 5/2897 at 61-62 (Murray-Clasen).

statement shall describe any options the company proposes to make available to customers to address privacy concerns.[305]

I do not believe it is necessary to require companies to provide all customer education and marketing materials they plan to use as part of the initial filing. In many cases, review of the initial filing and potential privacy implications will render such material superfluous. Companies must be prepared to provide the additional material upon request.

D. Summary of Recommendations

The specific consumer protection standards outlined in this Part are repeated here.

Bill of Rights

(1) Consumers shall have the right to know and control what they are buying.

(2) Consumers shall have the right to know from whom they are buying.

(3) Consumers shall have the right to know the full price of the goods and services that they are purchasing.

(4) Consumers shall have the right to reasonable payment terms.

(5) Consumers shall have the right to fair treatment by all providers.

(6) Consumers shall have the right to impartial resolution of disputes.

(7) Consumers shall have the right to reasonable compensation for poor service quality.

(8) Consumers shall have the right of access to basic local exchange service as long as basic local exchange service charges are paid, regardless of whether they have paid any charges for non-basic local exchange services.

(9) Consumers shall have the right to be free of improper discrimination in prices, terms, conditions, or offers.

(10) Consumers shall have the right to privacy by controlling the release of information about themselves and their calling patterns and by controlling unreasonable intrusions upon their privacy.

(11) Consumers shall have the right to join with other consumers for mutual benefit.

Consumer Protection Standards

305. This recommendation is consistent with the Board's Order in *Investigation of Proposed Vermont Price Regulation Plan*, Docket 5700/5702, Order of 10/5/94 at 146-148.

1. Notice at Time of Service Order: At the time of the service order, companies shall provide a clear and understandable description of the terms, conditions, rates, and charges for all requested services and appropriate alternatives, which shall include the least-cost alternatives to the requested service. The description of the services shall also include an identification of the existence and amount of any termination liability. Companies shall disclose, at a minimum, an identification of any non-recurring charges, such as for installation, the recurring charges for the services, and any charges that apply to a change in service (such as fees for a downgrade in service).

2. Written Confirmation of Service Order: Companies shall furnish written confirmation of all service orders, describing the requested service(s) and associated rates, no later than the first billing cycle following that order. The notice shall also inform consumers of significant terms and conditions affecting the rates. The notice may be included with or on the customer's first bill if that bill is sufficiently detailed. If a customer requests a written confirmation prior to that time, companies shall provide that confirmation within 5 days of the request. Customers may cancel any service within 15 days of receipt of written confirmation. If a customer cancels the service, he or she remains responsible for any recurring and usage charges incurred prior to cancellation.

3. Notice of Services: Companies shall annually inform customers in writing that service and rate information is available in phone directories or, upon request, in other media, such as brochures. Companies may meet this notice requirement by providing information on the customer's bill or as a bill insert.

4. Notice of Changes in Rates, Terms, and Conditions of Service: Telecommunications companies shall provide notice of any change in rates or other terms and conditions of service directly to each consumer that may be affected by the change in rates. If the change may increase the cost of service for a consumer, notice shall be provided at least 30 days in advance of any change in rates or terms and conditions of service, except that companies may provide notice through bill inserts provided that customers are notified at least 15 days in advance of the effective date of the change. If the Board allows a rate increase to take effect on less than 30 days' notice, the companies shall instead provide notice no later than the date on which the change is implemented. In the case of a rate decrease, companies shall notify each affected consumer no later than the first bill following implementation of the rate change.

5. Fair Marketing Practices: No provider of telecommunications service shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction. No provider shall make any offer for services in any public media, including print, television, radio, or promotional

literature without stating clearly, conspicuously, and in close proximity to the words stating the offer whether any material exclusions, reservations, limitations, modifications, or conditions and either identifying those exclusions or providing a toll-free contact number by which consumers may learn of the restrictions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific to be readily comprehended by the consumer. Unless specifically authorized by the Board, providers may not employ "negative enrollment" in which consumers become enrolled in a service without an affirmative selection by the consumer.

6. Content of Bills: Companies shall provide reasonably detailed billing statements that, at a minimum, itemize services, usage, and charges at a unit level (including the number of units consumed and the rates charged per unit). Non-recurring, recurring, and usage charges shall be separately identified.

   A telecommunications provider shall identify on the bill the name, address, and telephone number of itself and each company for whom it is providing billing and collection services in conjunction with that bill. Providers shall also provide on the billing statement a primary telephone number for consumers to contact.

7. Customer Service: Companies shall deliver courteous, competent, and timely service. All companies will accord fair and equitable treatment to all consumers, and will not in any way retaliate in any way against consumers that complain to the company, the Department or the Board or that participate in the complaint process via Board proceedings and Rule 2.300.

8. Correction of Directory Assistance and Telephone Directory Errors and Omissions: All companies shall ensure prompt correction of directory assistance and phone directory errors and omissions, including, if practicable, the institution of measures that will allow customers to receive calls placed to the erroneously listed number. Whenever possible, companies shall make available the correct number through directory assistance within two business days.

9. Non-discrimination principles: A service provider shall apply tariff provisions in the same manner to the same similarly situated entities if there is discretion in the application of the provision.

   A service provider shall apply tariff provisions consistently.

   A service provider shall process all similar requests for a product or service on a non-discriminatory basis.

A service provider shall not condition or tie the provision of any product, service or price agreement subject to regulation by the Board on the purchase of any product or service by its competitive affiliates.

10. Discounts for Persons who are Deaf, Speech Impaired, or Hearing Impaired: All telecommunications service providers shall provide a 40 percent discount on intrastate services to customers that are deaf, speech impaired or hearing impaired. The discount shall apply to all usage services, including the usage components of optional calling plans.

11. Discounts for Persons who are Blind, or Visually Impaired: All telecommunications providers shall offer directory assistance to customers that are blind or visually impaired without charge.

Dispute Resolutions

All telecommunications providers shall address consumer inquiries, complaints and requests for impartial resolution of disputes in a responsible manner. Companies shall employ the following dispute resolution process.

1. Each telecommunications provider shall list on the bill the telephone number(s) at which the customer may reach representatives of the provider for information or the resolution of any dispute that may arise.

2. Each telecommunications provider shall provide customer service representatives (CSRs) through whom consumer complaints and inquiries can be registered.

3. Each telecommunications provider shall provide a response to a customer inquiry or complaint within seven (7) business days of receipt of the inquiry or complaint.

4. Each telecommunications provider shall notify a customer that, if the customer is not satisfied with the resolution offered by the provider, the customer may seek further review of the dispute by higher management within the company (if available) or may contact the Department of Public Service.

    a. The provider shall provide the customer with the telephone number of the Department of Public Service's Consumer Affairs and Public Information Division.

    b. If a customer seeks review of a dispute by higher management with a company, the company shall respond within ten (10) business days of the date the original dispute resolution was appealed.

5. If a customer elects to contact the Department of Public Service, either directly or upon exhaustion of their provider's internal dispute resolution process, the Department should, within a reasonable time, notify the affected company of the receipt of the consumer complaint.[306]

6. If, following receipt of a customer complaint, the Department needs further information or a response from the company, the service provider shall investigate the complaint and provide a response to the consumer and the Department within ten (10) business days of its receipt of the consumer complaint from the Department.

   a. If the complaint raises complex issues or issues that require more time to resolve than provided above, the telecommunications provider shall provide the consumer and the Department with an interim status report within ten days of its receipt of the complaint from the Department.

   b. The telecommunications provider shall submit a final report within ten (10) business days of the submission of its interim status report. If a final resolution cannot reasonably be achieved within the time frames provided herein, the provider shall notify the Department and the consumer and keep both apprised of the Company's progress towards reaching final resolution.

7. Nothing in this dispute resolution procedure shall prevent a customer from contacting the Public Service Department's Consumer Affairs and Public Information Division directly at any point in this process (including at the outset), or otherwise limit a customer's statutory or other legal right to dispute all or a portion of his or her telephone bill.

8. At the time a customer initiates service, and then at reasonable periods, each telecommunications provider shall notify a customer about the availability of the Department of Public Service's complaint resolution process. This notice may occur through telephone bills or telephone directories.

Privacy

1. Customer Proprietary Network Information, Automatic Number Identification and Calling Party Number: The requirements of 47 C.F.R, Part 64, Subpart P shall apply to all telecommunications providers within the state providing calling party number, ANI or charge number services on

306. If the Department concludes that a particular complaint should remain confidential, the Department does not need to inform the affected company. However, it is hard to envision resolution of most justified complaints without discussions with the service provider.

intrastate calls in the same manner as those rules apply to interstate carriers. The requirements of 47 C.F.R, Part 64, Subpart U shall apply to all telecommunications providers of intrastate services.

2. Notice re: 800, 888, and 976 Telephone Numbers: Each telecommunications provider shall provide, individually or in conjunction with other companies, notice at least annually to all customers describing the information that is released to call recipients when the customer places a call to an 800, 888, or 976 telephone number. Companies shall work with the Department on the form of the notice.

3. Non-directory Listed and Non-published Numbers: Each telecommunications service provider shall enable consumers to control the level of privacy of their telephone number(s) and shall preserve, to the extent possible, the privacy of non-published and non-directory listed listings between, among and across interconnected networks and competing, interconnected service providers.

4. Call Blocking Features: All local exchange carriers shall make free per-call blocking available to all customers. In addition, all local exchange carriers shall provide per-line blocking, at no charge, to any customer demonstrating a heightened safety interest and any customer with a non-published number service that requests per-line blocking.

   All local exchange carriers shall, at least annually, notify customers of the availability of per-line and per-call blocking. The notification shall inform customers of the criteria for obtaining per-line blocking and the means by which per-call blocking can be activated. Publication of this information in a directory will satisfy the annual notification requirement.[307]

   All local exchange carriers shall provide a telephone number by which customers that have per-line blocking can, at no cost, verify that the per-line blocking is functioning properly.

5. Telemarketing: All local exchange carriers shall provide the following notice (or an equivalent)to customers through the telephone directory:

   > There are three things you can do about telemarketing. First, you can write to the following address to get your name off the list of all names called by telemarketers: Telephone Preference Service, PO Box 9014, Farmingdale, NY 11735-9014. Second, upon receiving a call from a particular telemarketer, ask them to identify themselves clearly and then tell them you want your number taken off the list. Third, remember that it is not impolite

307. The FCC already requires such notification by companies providing interstate services. 47 C.F.R. § 64.1603.

to hang up on such an unwanted caller. After informing the caller you do not wish to be called back, simply say goodbye.

All telecommunications companies operating in Vermont that conduct telemarketing shall, within the first 30 seconds of the telemarketing call, ask the customer whether the customer wishes to hear the solicitation.

6. Notice of Services with Privacy Implications: At the time a company files a tariff, or at least 30 days prior to the time a company introduces or modifies a service or implements a technology change that may affect the privacy interests of consumers, the company shall file a statement of foreseeable privacy impacts on customer privacy expectations. The statement shall describe any options the company proposes to make available to customers to address privacy concerns.

V. CONCLUSION

The evidence in this proceeding supports the findings and conclusions set forth above. As a result, I recommend that the Board (1) approve the Stipulation on Service Quality, (2) adopt a Consumer Bill of Right, and (3) establish specific standards with respect to consumer protection, resolution of disputes, and customer privacy. These standards represent a positive first step. However, the competitive environment continues to change; the standards the Board adopts now may need to be adjusted to better reflect customers' needs and expectations. The Board should, therefore, revisit the specific consumer protection and privacy standards summarized in Part IV, D of this Order after two years to determine whether changes are necessary.

The foregoing is hereby reported to the Public Service Board in accordance with the provisions of 30 V.S.A. § 8.

This Proposal for Deicsion has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 1st day of July, 1999.

s/ George E. Young
George E. Young
Hearing Officer

VI. BOARD DISCUSSION

This proceeding represents the first time the Board has examined broadly the question of whether to adopt standards governing retail service quality for the telecommunications industry in Vermont. The record before us, and the thoughtful comments of the parties, demonstrate that the participants in the proceeding have carefully examined how best to ensure that consumers are treated fairly and receive superior quality service as the marketplace is opened for competition.

We have reviewed the many comments provided on the Hearing Officer's Proposal for Decision ("PFD"). Although we agree with the parties that some changes to the PFD are needed, in general, as we explain below, we have accepted the Hearing Officer's recommendations. The service quality standards, including consumer protection standards, adopted today should establish clear guidelines, which will benefit both consumers and market participants.

A. Service Quality

1. Implementation

The Hearing Officer's PFD recommended that the Board accept the Stipulation of the parties with respect to service quality issues, with one exception: the Hearing Officer proposed that all service providers begin collecting data on retail service quality immediately, rather than delaying until the development of wholesale service quality standards.[308] AT&T supports the Hearing Officer's acceptance of the Stipulation, but objects to the PFD's recommendation that data collection commence immediately.[309] According to AT&T, "until carriers, who rely on an underlying carrier, are assured of quality service from the underlying carrier, the gathering of such data would serve no useful purpose in the Board's assessment of the actual performance of providers of service in Vermont."[310]

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308. The Service Quality Stipulation appears in Attachment 1 to this Order.
309. AT&T Comments at 5.
310. *Id*.

AT&T's Comments raise two interrelated issues. The first is the date upon which the monitoring of service quality should take effect within Vermont. The second issue is the applicability of the service quality standards to telecommunications providers that offer service through resale or rely upon unbundled network elements. AT&T's proposed resolution, also set out in the Stipulation, is to delay implementation of the former until development of the latter, i.e., retail service quality standards should not apply until the wholesale standards are fully developed.

As to the first issue, we do not agree with AT&T that the obligation for telecommunications service providers to begin collecting data on service quality should be delayed until the onset of service quality standards. To the contrary, the PFD, and the record on which it is based, strongly indicate the need for all companies to monitor their service quality performance. In fact, the record, and sound public policy, support the need for not only monitoring, but also implementation of the service quality criteria in the Stipulation as soon as feasible. The PFD and the Stipulation both point persuasively to the need for service quality standards for retail telecommunications services.[311] From the perspective of Vermont's consumers of retail services, the need for standards exists today and is not dependent upon the existence of carrier to carrier standards.

Therefore, with one modification, we accept the Hearing Officer's recommendation that we approve the Stipulation. The service quality standards set out in the Stipulation and PFD shall take effect upon August 1, 1999, not upon development of wholesale service quality standards.[312] This date allows companies an opportunity to put in place monitoring systems, to

311. See pp. 10-11.

312. Since the issuance of the Proposal for Decision (and the comments thereupon), the Department and Bell Atlantic have filed a Stipulation in Docket 6167 establishing retail service quality standards. The standards set out in the Stipulation are similar in structure, but numerically more stringent than the service quality standards the Board adopts today. Until the Board adopts standards in Docket 6167, Bell Atlantic shall comply with the service quality standards adopted by this Order. In our final Order in Docket 6167, the Board will address the interrelationship, if any, of the service quality standards adopted herein and those set out in the Stipulation filed in that proceeding.

the extent they do not already exist, while not unduly delaying the establishment of effective standards.[313]

AT&T's Comments do raise a valid issue: some competitors may rely upon other companies to provide the facilities or even the entire service which is offered to the consuming public. For example, a competitor that relies upon a link provided by Bell Atlantic will not be able to provide service using that link if it fails, whether the fault lies with itself or Bell Atlantic. The purpose of the delayed implementation date was to allow the parties and Board to develop wholesale service quality standards that allocated responsibility between the retail service provider and wholesale service provider and set wholesale standards upon which competitors could rely when offering their retail services. The need to develop these standards continues to exist, although we do not find that the absence of wholesale criteria and measures warrant delay in implementation of the retail standards. Instead, we make clear in this Order that until the establishment of wholesale service quality standards, if a company relies upon unbundled network elements or provides service through resale of an incumbent LEC's services, that company shall not be responsible for failure to meet a service quality standard to the extent that the cause of the failure rests with the wholesale provider of resold services or unbundled elements. Thus, in the example of the link failures cited above, the competitor would not be held responsible for the trouble report engendered by the fault, if, in fact, the troubles arose from Bell Atlantic.

We believe that limiting responsibility of competitive retail service providers will, in the interim, provide an adequate substitute for wholesale service quality standards. Nonetheless, we agree with the parties that these standards are essential. For that reason, we will open a new docket for the express purpose of establishing wholesale service quality standards. As the Stipulation in this proceeding suggests, however, it may be most useful to structure the docket so that standards can be developed through workshops and collaborative efforts rather than litigated evidentiary hearings. The Hearing Officer should explore the best structure of the docket with the parties.

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313. The record indicates that most telecommunications providers operating in Vermont can track the service quality criteria in the Stipulation at the present time.

The Board also wants to express its intent to open a rulemaking on service quality matters shortly. This docket has established a reasonable framework to measure service quality. As these standards are of general and future applicability, we believe that it may be appropriate to convert them into a rule, following the processes set out in the Vermont Administrative Procedures Act. Parties will be free in that context to raise other issues related to the service quality standards.

Our review of the Proposal for Decision and record in this proceeding raises one further issue concerning the period of time over which compliance with the service quality standards will occur. Under the Stipulation, compliance with the Baseline Standards is measured on an "annual basis."[314] The Stipulation does not explicitly state that the parties intend annual basis to mean a calendar year rather than a consecutive twelve-month period, although other portions of the Stipulation suggest the former. Nonetheless, we conclude that compliance with the standards set out in the Stipulation should be measured on the basis of twelve-month rolling averages rather than calendar years. First, compliance with service quality standards is an on-going responsibility. It makes little sense to excuse a twelve-month period of inadequate service simply because that period spanned two calendar years and met the Baseline levels in each of the two years. Measuring performance as a rolling average reflects the on-going nature of each provider's responsibilities.

Second, the rolling average provides a basis for taking action against a company prior to the end of a full year, where performance may have fallen below Baseline or Action levels. Otherwise, the Department and the Board could not seek penalties until the close of a calendar year from a company whose performance in the first half of a year did not meet the Baseline or Action levels simply due to the absence of data for the remaining months of the year. Therefore, we clarify the Stipulation's requirement that service quality be measured on an annual basis to require assessment using twelve-month rolling averages.

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314. Stipulation, ¶ 7 at 3.

2. Service Quality Guarantees

Paragraph 8 of the Stipulation provides that telecommunications carriers with customer service guarantee tariffs must "diligently offer" service guarantees in certain circumstances.[315] VTel, which has a service guarantee program in place, had requested a ruling as to whether this standard required that VTel provide more notice than that which the company already makes. The Hearing Officer did not reach the issue, instead recommending that the Board review compliance with the "diligently offer" standard on a case-by-case basis. The Independents now request a specific determination as to whether VTel must provide more notice than it presently does.[316]

We first observe that VTel's service quality guarantee tariff is not in the existing evidentiary record, although VTel quoted it in its brief and some parties discussed it during the hearings. Therefore, it is difficult for the Board to make an explicit statement finding the notice to consumers contained in VTel's tariff consistent with (or inconsistent with) the "diligently offer" provision of the service quality Stipulation. In approving the Stipulation, however, it is our understanding a company would not need to provide explicit notice to each affected customer when an event occurs that could allow the customer to seek compensation under the service quality guarantee program, although a company could choose to do so. Although in general, we would expect that a company that complied with the notice provisions of its tariffs would be acting consistent with the standard, assuming it readily provided the customer guarantees upon request, in some circumstances, additional notice may also be appropriate.[317] For example, most customers are unaware of provisions included in company tariffs; companies that do not inform their consumers of the service guarantee programs may not have diligently offered these programs. These are factual issues that we cannot resolve absent a full opportunity of all parties to present more guidance to the Board.[318]

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315. Stipulation, ¶ 8 at 4.

316. Independents at 5.

317. If the Department finds these tariff notice provisions inadequate, it should request that the Board investigate the tariffs or encourage the companies to include additional notice in their tariffs.

318. VTel's Comments also request the opportunity to withdraw its service guarantee program if the Board did not fully resolve its concerns over compliance with Paragraph 8 of the Stipulation. The Board believes this discussion will adequately address VTel's concerns. VTel, of course, remains free to file a revised tariff under

(continued...)

B. Consumer Protection

1. Consumer Bill of Rights

The Hearing Officer recommended that the Board adopt a Consumer "Bill of Rights." Many parties objected to one element of that proposal: the recommendation that telecommunications providers be prohibited from disconnecting basic services if a customer fails to pay its bills for toll or ancillary services; we address this issue below. More broadly, AT&T urges the Board to reject the Bill of Rights in its entirety, including the proposed Consumer Protection standards, and adopt instead the Industry Code of Conduct to which the Industry parties stipulated.[319] According to AT&T, the Hearing Officer's recommendation fails to balance the costs of the individual standards with their benefits and undermines the purpose of the federal Telecommunications Act of 1996.[320]

The Board concludes that the Bill of Rights and the Consumer Protection standards that the Hearing Officer recommends to implement the Bill of Rights represents a preferred outcome to the Industry Code of Conduct. As the Hearing Officer observed, except for the no-disconnect policy recommendation, the Bill of Rights itself is quite similar to the Industry Code of Conduct. In fact, AT&T's own witnesses viewed the Bill of Rights favorably.[321] The Bill of Rights also mirrors the consumer protection principles the Board endorsed in Docket 5854.[322] It provides a clear statement of the basic standards that apply to all telecommunications providers that will aid the companies as well as the consuming public.

The Board also agrees with the Hearing Officer that specific consumer protection standards are appropriate and preferable to the Code of Conduct. In several instances, as discussed below, we conclude that revisions to the PFD's recommendations are appropriate. In general, however, the PFD strikes a reasonable balance between the costs imposed on

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318. (...continued)
30 V.S.A. § 225 that withdraws the service guarantee program; that filing will be reviewed in accordance with Vermont law.

319. AT&T Comments at 2-3.

320. *Id*. at 3, 10-11.

321. Tr. 5/22/97 at 89 (Friar).

322. Order of 12/30/96 at 97-98.

companies and the benefits received by ratepayers, as the nature and magnitude of the comments by parties makes clear.[323]

2. Disconnection of Basic Service

The PFD recommends that the Board prohibit the disconnection of basic service for non-payment of a customer's toll bills or charges for ancillary services. Most industry parties object to this recommendation.[324] Parties also suggested several modifications to the proposed no-disconnect policy if the Board decides to adopt the Hearing Officer's recommendations.

Bell Atlantic and AT&T both argue that the proposed change jeopardizes toll revenues and will increase uncollectible revenues, while not accomplishing its intended purpose, which Bell Atlantic identifies as increasing the number of consumers connected to the public switched network.[325] These parties also argue that the proposal is bad public policy as it disregards the rights of the majority of consumers who pay their bills and permits delinquent payers to "game" the system. AT&T objects that the PFD essentially treats all Vermont customers as Lifeline customers by extending the FCC no-disconnection policy beyond Lifeline customers. Finally, AT&T argues that the policy will stifle product and pricing innovations by forcing service providers to break up bundled services to continue the provision of basic service.

Franklin raises similar concerns to AT&T and argues that the PFD is based upon several "vague and unsupported factual assumptions that conflict with the evidence in the record." The first conclusion that Franklin argues is unsupported is the finding that the current disconnection policy discriminates against companies that provide their own billing and collection.[326] This claim goes to the heart of the policy change recommended by the Hearing Officer and challenged by the Industry representatives.

The Board has carefully reviewed the comments of Industry parties and concludes that the Hearing Officer's recommendations are reasonable and should be adopted. It is

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323. The Code of Conduct, as the PFD discusses, is generally consistent with the recommended standards.

324. Bell Atlantic Comments at 2; Independents Comments at 7 (Franklin Telephone Company, only); AT&T Comments at 6.

325. Bell Atlantic Comments at 2; AT&T Comments at 6-7. Franklin also objects to the Hearing Officer's findings related to uncollectible revenues.

326. Independents Comments at 10.

undisputed that significant changes have occurred in the competitive marketplace since Docket 5060.[327] Many companies offer telecommunications services within Vermont, particularly toll services, although the Board has authorized a number of companies to offer local exchange service as well. To ensure a robust competitive marketplace, the Board has endeavored to adopt policies that facilitate competitive entry and eliminate practices that may discriminate.[328]

The facts related to the no-disconnect policy are fairly straightforward and uncontested. At present, local exchange carriers consider all regulated charges on the bill when determining whether a customer's arrearage is sufficient to permit disconnection, including the toll charges of carriers who bill through the LEC.[329] Some toll carriers conduct their own billing and collection.[330] These two facts mean that if a toll carrier bills through an LEC, the amounts owed the toll carrier are considered in calculating the disconnection amount; if not, such amounts are not considered. They also lead to the conclusion that customers may lose their local service if they fail to pay the bill in the former case, but not in the latter. As the Department argued and we find, this situation means that customers have greater incentive to pay their toll bills in the former scenario, because of the direct threat to their local telephone service.[331]

We concur with the Hearing Officer that these disconnection policies have an anti-competitive effect.[332] Quite simply, a company offering toll services that chooses to bill through the LEC can take advantage of the fact that customers must pay the bill to retain local service to gain an advantage over a competitor that conducts its own billing, solely because of the customer's desire to retain local telephone service. Companies that provide their own billing services cannot disconnect local service if the customer fails to pay the toll charges. The

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327. *Complaints of various customers vs. New England Telephone and Telegraph Company regarding disputes relating to disconnection of service for AT&T charges*, Docket 5060, Order of 10/2/86.

328. Docket 5713 is investigating many of these issues.

329. Exh. DPS-CP/P-1 at 22-23.

330. *Id*. at 25.

331. *Id*. at 24.

332. The Hearing Officer characterized this effect as "discriminatory." To the extent that companies that conduct their own billing and collection are placed at a competitive disadvantage, the Board concurs that the existing policy discriminates against them.

latter provider (and any provider not offering local exchange service) is thus placed at a competitive disadvantage as it lacks the threat of local disconnection.

The Hearing Officer also cited other potential benefits for the no-disconnection policy, to which the Industry commenters object. While these benefits are not the most important factor underlying today's decision, the Board concludes that the objections are without merit. As to the potential for increased subscribership, the evidentiary record demonstrates that in other states, adoption of the policy has led to more consumers being connected to the public switched network.[333] Although the Hearing Officer found that a "before and after" study may provide better data, the assertion of several parties that no evidence existed supporting the Hearing Officer's conclusion that the no-disconnect policy would aid subscribership is clearly unfounded.

The no-disconnect will have some effect upon uncollectible revenues. The PFD finds that an increase in uncollectible revenues is possible.[334] However, we have no basis for assessing the magnitude of the change, if any. Moreover, experience in New York suggests that the policy results in retaining more customers connected to the switched network, thus generating additional revenue and reducing uncollectible revenues from basic exchange customers who may have been disconnected in the absence of the no-disconnect policy.[335] In light of these differing impacts, the record does not support the industry party contention that the policy will harm consumers through an increase in uncollectible revenues that will be passed on to consumers in the form of higher basic exchange rates.

The evidence also does not support the Industry argument that the no-disconnect policy will jeopardize toll revenues. We want to be clear that the no-disconnect policy is not in any way intended to relieve consumers of the obligation to pay for services that they use. If a customer does not pay for toll service charges, the provider of those services may, consistent with Board Rules, disconnect the customer from those services and may initiate steps to collect

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333. Tr. 5/27/97 at 15; tr 5/21/97 at 43; exh. DPS-CP/P-1 at 23. Franklin argues that this statement is unsupported. Independents Comments at 9. The citations provided herein demonstrate that the statement is supported by the record.

334. See pg. 28.

335. Exh. NYNEX-6. This transcript supports the Hearing Officer's conclusion, which Franklin argued was unsupported, that uncollectible revenues from basic exchange service are likely to decline. See pg. 28.

amounts owed. The Board recognizes that adoption of the policy may lead to an increase in the number of consumers disconnected from their toll services for non-payment.[336]

Franklin and the other Independents both argue that the Hearing Officer relied upon matters outside the record in rendering the findings of fact and conclusions of law. In this regard, the Independents point to the Hearing Officer's finding that no technical impediment exists to implementation of the no disconnect policy.[337] Franklin argues that the Hearing Officer improperly relied upon the FCC's findings and conclusions rather than the factual record.[338]

Our review of the record does not support either of these contentions. The Department advocated Board adoption of the no-disconnect policy from the outset of this proceeding. During the evidentiary hearings, parties specifically discussed the fact that the FCC had adopted the no-disconnect policy for Lifeline customers. The Hearing Officer specifically asked parties if any reason existed for the Board to adopt a different approach for other customers. At no time during the submission of testimony or during hearings did the Independents submit evidence suggesting that technical impediments existed to implementation of the policy. The Hearing Officer's conclusion that no such impediments exists is a reasonable inference drawn from the facts submitted by the Department, the FCC's policy as set out in federal regulations,[339] and the absence of any evidence to the contrary despite the clear opportunity to demonstrate technical difficulties presented to the parties.[340]

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336. The Industry argument that toll revenues will be affected amply demonstrates the strength of the local service link as a vehicle for collecting toll revenues. In light of these assertions, it is not clear how Industry parties can also argue that the Hearing Officer's conclusions that the existing policy allows leveraging of the local service provider role is unsupported. See Franklin Comments at 10.

337. Independents Comments at 19.

338. Independents Comments at 14.

339. The Hearing Officer did not rely upon the FCC's factual findings, but rather the specific conclusions embodied in federal regulations. 47 C.F.R. § 54.401(b) specifically adopts the no-disconnect policy for Lifeline customers. This represents a valid requirement of federal law applicable to all companies in the state; the Hearing Officer would have been remiss had he not relied upon these legal requirements in assessing the appropriate policy for Vermont ratepayers.

340. The Independents explain in their Comments that the companies comply with the federal mandate through manual intervention rather than an automated process. This fact was not presented during the hearings and cannot, therefore, be considered here. It is not clear that had the Independents presented the information, the PFD's conclusion that no technical impediment exists would be changed.

Franklin also asserts that the Hearing Officer's finding that market changes have undermined the LECs' use of billing and collection contracts to generate revenues is unsupported.[341] Franklin's Comments, however, cite to the portion of the record that supports the PFD. The Hearing Officer concluded, based upon testimony of parties, that more companies are providing their own billing and collection. These trends represent the market forces that reduce the importance of billing and collection revenues.

The Board, therefore, does not agree with the Independents and Franklin that the Hearing Officer relied upon facts not included in the evidentiary record.[342]

Franklin's basic argument, although styled as objections to findings unsupported by the record, is that the Hearing Officer reached different conclusions than did the Board in Docket 5060 and did not fully refute each of the factual underpinnings of the previous policy. The observation that the no-disconnect policy is at variance with previous Board policy is correct and was explicitly stated by the Hearing Officer. As Franklin notes, the Board specifically observed that changes to the policy may be appropriate if LEC customers derive fewer economic benefits.[343] That time has come. AT&T itself is no longer using Bell Atlantic for billing and collection services. The PFD and this discussion document the changes in the telecommunications marketplace that have made adoption of a new policy appropriate.

As we have accepted the Hearing Officer's recommendation to adopt the no-disconnect policy, it is necessary to consider the various requests for adjustment of that policy. Bell Atlantic requests that, as an alternative, the Board should allow carriers to disconnect local service when the customer fails to pay for services provided by that carrier.[344] This policy would allow LECs (and CLECs) that offer toll service to include both toll and local service amounts owed them when determining whether disconnection is permitted.

The Board disagrees. The thrust of our decision is that in a competitive environment with separate service offerings, policies that allow one carrier to gain a competitive advantage

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341. Independents Comments at 9.

342. Franklin also argued that the Hearing Officer's finding that the no-disconnect policy may lead to an increase in the percentage of customers connected to the public switched network was unsupported by the evidence. This argument is discussed above.

343. Docket 5060, Order of 10/2/86 at 11.

344. Bell Atlantic Comments at 5.

should be avoided. Under Bell Atlantic's proposal, companies offering toll and local service would have a greater ability to collect the amounts owed for toll service than would companies offering solely toll service because, for the former companies, non-payment of toll could lead to disconnection of local service. It is precisely this practice and linkage that the no-disconnect policy is intended to break. Although Bell Atlantic's proposal would eliminate the use of the local service disconnection threat to collect amounts owed other service providers, it would still create an environment in which competitors offering both local and toll service would have a greater capability to collect toll and ancillary revenues owed them. We decline to adopt Bell Atlantic's proposed change.

Bell Atlantic's second recommendation is that the Board allow local providers to apply mandatory toll caps and/or toll blocks "to mitigate the detrimental effect of the no-disconnect policy on local carriers."[345] Before addressing Bell Atlantic's specific proposal, we note that the premise upon which it is based is faulty. Bell Atlantic assumes that the local carriers bear the brunt of changes to the disconnection policy. This is true only to the extent that the local carriers either provide toll themselves or voluntarily enter into billing contracts under which they become responsible for bad debt of interexchange carriers.

The existing policy, allowing LECs to disconnect local service for non-payment of toll, placed the LECs in the role of a collection agent for IXCs. In a competitive environment, the Board has concluded that such a role is no longer appropriate – each carrier should retain responsibility for collecting amounts owed it, without being able to use the existence of another service as leverage to encourage payment.[346] Thus, even if the policy has a detrimental effect that merits use of toll blocks or toll caps, its effect is upon IXCs, not LECs.

Turning to the specific recommendation of Bell Atlantic, we agree that IXCs that disconnect a customer may impose a toll block to prevent the customer from using that IXC's service. Any toll block should be selective, however, and block access only to the carrier that,

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345. Bell Atlantic Comments at 7. The Department also requests that the Board clarify the permitted use of toll blocks for customers that fail to pay their toll bills and are, as a result, disconnected from toll service provided by a particular carrier. DPS Comments at 2.

346. In fact, except when the LEC also provides toll service, LECs should be neutral as to which IXC a customer uses or whether a consumer has been disconnected for non-payment of toll to that customer. Toll remains a separate service from local service.

following Rules 3.300 and 3.400, has disconnected a customer. LECs should not be able to place a complete toll block on disconnected customers for the same reasons that we adopt the no-disconnect policy. IXCs also may seek to implement toll caps as an alternative to customer deposits.

Bell Atlantic also proposes that the Board modify the no-disconnect policy so that it applies solely to the first line for residential customers and that the policy be limited to toll charges.[347] The PFD recommended that the policy apply to both toll and ancillary charges and did not limit the policy to residential customers. We agree with the Hearing Officer. Customers that pay their basic service charges are entitled to continue to receive basic service. This policy applies to both residential and business customers and to all charges in addition to the basic service charges.

The Department and Independents each raise issues related to future application of the policy. The Department requests that, if companies offer basic service bundled with other services in the future, the Board require the service providers to notify their customers of the unbundled rate in advance.[348] The Independents request that the Board clarify how the no-disconnect policy will apply if tariffs are not required or the Board permits companies to offer rate bands.[349]

At the present time, all companies must file tariffs setting out the terms and conditions of service.[350] It is possible that the Board will modify the tariffing requirements in the future as markets become more competitive.[351] However, the Board cannot now speculate as to the manner in which the tariffing requirements would be modified or suspended. Application of the no-disconnect policy to an environment in which tariffs are not required should be considered at the time the Board changes tariffing rules.

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347. Bell Atlantic Comments at 8. The Department raises a related, but opposite concern, requesting the Board to clarify that customers cannot be disconnected if they do not pay their toll charges or charges for ancillary services. DPS Comments at 2.

348. DPS Comments at 3.

349. Independents Comments at 16.

350. See Docket 6115, Order of 11/18/98.

351. For example, 30 V.S.A. § 227a authorizes the Board to modify certain regulatory requirements if it concludes a service is competitive.

The Board has recently clarified the manner in which rate bands operate, stating that companies must charge all customers a single rate within the band and provide notice of rate changes, even if the modified rate falls within the authorized band.[352] Since companies will have a specified rate, the no-disconnect policy should work in the same manner as for tariffed services offered under a single rate.

Finally, we agree with the Department that companies offering basic service bundled with other services should notify consumers as to the rate that would apply to basic service on a stand-alone basis. The Independents comment that if the Board adopts the no-disconnect policy, we should delay implementation of the policy to allow the Board and parties to resolve a number of implementation issues through rulemaking.[353] The Comments on the PFD have highlighted a number of specific implementation issues that are not specifically dealt with in the policy. However, we do not believe that a protracted delay in extending the basic consumer protection standards adopted herein is reasonable. We, therefore, will delay implementation of the no-disconnect policy for a period of 90 days. This will provide LECs with an opportunity to reevaluate their practices and, if they find it appropriate, renegotiate billing and collection contracts. If specific issues require resolution, the rulemaking on consumer protection standards that we initiate in this Order should provide a vehicle for addressing them.

Finally, the Department recommends that the Board adopt a specific consumer protection standard, in addition to including the no-disconnect policy as part of the Bill of Rights. We believe that today's Order and the principle in the Bill of Rights sets out the policy clearly and that repetition is unnecessary. We expect that the rulemaking on consumer protection standards will elaborate upon these principles.

3. Consideration of Costs

352. Docket 5713, Order of 2/4/99 at 49.

353. Independents Comments at 15. In the alternative, the Independents request that we delay implementation by 180 days to allow for resolution of these issues.

The Department raises what it characterizes as errors concerning the PFD's treatment of assertions by the service providers that certain proposals would entail excessive costs.[354] According to the Department, the PFD misconstrues the Department's arguments, such that adoption of the Hearing Officer's analysis may create an environment in which utilities benefit from their failure to produce evidence on costs.

The Board shares the Department's concerns that utilities, which have the best information concerning the costs to implement changes in billing systems, send notices to consumers, and undertake other actions necessary to ensure fair treatment for consumers, cannot rely upon simple assertions that implementing particular proposals will impose excessive costs. To the extent that the PFD creates the impression that the Board will rely upon such unsupported assertions, this discussion is intended to make clear that the Board will not do so. Companies that intend to have the Board make its decisions based upon a weighing of costs and benefits must quantify the costs.

In this proceeding, the specific proposals at issue did not require the detailed cost information that utilities would normally be expected to provide. Nor did the absence of such information warrant the Board inferring that the actual cost data failed to support the utility claims of excessive costs. In the limited number of proposed consumer protection standards in which costs were relevant (notice of rate changes, written confirmation of service orders), the Board was able to apply its expertise (as we presume the Hearing Officer did), to weigh the competing considerations.

4. Advance Notice of Change in Rates

Under Vermont law, 30 V.S.A. § 225(a), a company that changes its tariffs must provide "such notice to parties affected by such schedules as the board shall direct." The Hearing Officer recommends that the Board mandate that each company changing its rates provide advanced notice of the proposed change.

AT&T and Bell Atlantic each object to the PFD. Bell Atlantic argues that notice included in the first bill should be adequate, citing the likely customer confusion from

354. DPS Comments at 3-7.

providing advanced notice. In addition, Bell Atlantic claims that the benefit for consumers is small, while the existing system is "working well."[355] AT&T requests that the Board reject the PFD, instead opting for the provision in the Industry Code of Conduct requiring notice consistent with Vermont law.[356] The Department also disagrees with the PFD, and asks us to mandate a minimum of 30-days notice, citing the Board's ordering of such notice for individual customers where a company changes prices within a rate band.[357]

The Board accepts and agrees with the Hearing Officer's conclusion that advanced notice of rate changes is appropriate. Consumers in a competitive marketplace are expected to make rational choices about their carriers and about the manner in which they use telecommunications services. Advanced notice of the rates they will incur is essential to allow ratepayers to make informed decisions in both areas. The record demonstrates the harm to consumers when this notice is absent.[358] As the Department observed in its comments, the Board reached a similar conclusion previously in Docket 5713.

Thus, we do not accept Bell Atlantic's recommendation that notice can safely await the first bill after a change in rates. At that point, consumers facing rate increases or changes in terms and conditions that make service less valuable will be unable to avoid the higher charges by switching to a competitor or altering usage patterns. We find this unacceptable. As to AT&T's proposal, we concur with the Hearing Officer that the Code of Conduct is circular and does not really address the issue.[359] Vermont law already mandates such notice as the Board shall direct; as a result, AT&T's recommended standard fails to establish any notice obligation.

The Department's comments raise the issue of how far in advance companies must provide notice, a concern which Bell Atlantic also raised. The PFD offers companies two options. They can provide notice 30-days in advance of a rate change or, they can coordinate the notice with bills so long as all consumers receive notice at least 15 days prior to the change in rates. We find these options reasonable. Although it may be preferable to have a full 30-day

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355. Bell Atlantic Comments at 9-10.
356. AT&T Comments at 11-12.
357. DPS Comments at 11, citing Docket 5713, Order of 2/4/99 at 49.
358. Exh. DPS-CP/P-1 at 25; tr. 5/27/97 at 50-51 (Murray-Clasen).
359. PFD at 41, fn. 159.

advance notice, we recognize that providing companies the option of coordinating the notice to consumers with the normal billing cycles offers additional flexibility and may reduce costs to the company and ultimately, to consumers. Therefore, we conclude that the PFD's recommendation concerning advanced notice is reasonable and we accept it.[360]

The Department and Independents also requested clarification on issues related to the use of bill inserts. The Department asks that the Board modify the decision to require that notices be located in a distinct area of the bill in bold or other readily distinguishable typeface.[361] The Independents ask clarification of whether the notice must be accomplished by a bill insert or whether a written notice on the bill is adequate.[362] The purpose of the notice requirement is to inform consumers of rate changes in advance. Our concern is less with the precise form of the notice than with the timing and effectiveness of the notice. Companies may choose the use of bill inserts or may include notations on the bill as requested by the Independents. In either event, the notice must be readily identifiable by a typical consumer, although at this time we do not mandate any particular form of notice.[363] In the case of notices included on the bill, effective notice may warrant use of special typefaces, as recommended by the Department, although we do not mandate it.[364] Each company that provides notice on the bill is responsible for ensuring that the notice meets the principles adopted here.

5. Consumer Complaint and Dispute Resolution Process

Several parties proposed modification to the consumer complaint and dispute resolution process recommended by the Hearing Officer. Bell Atlantic requests that the Board

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360. If a company, such as Bell Atlantic, finds that coordinating the customer notice with the normal billing cycle confuses customers or presents difficult logistical issues, the company is free to send a separate notice.

361. DPS Comments at 11.

362. Independents Comments at 20.

363. Experience has shown that many consumers do not carefully read their bills. For example, in the case of MCI's rate change without notice cited by the Department, many consumers did not identify the rate change until a substantial period of time had elapsed. To be effective, notice must occur in such a manner that a typical consumer will read it.

364. We do note that notice of rate changes buried within the bill would not meet the readily identifiable standard we adopt.

modify the process to require the Department to immediately forward any complaints it receives to carriers on the day it receives the complaint.[365] According to Bell Atlantic, the Department's initial role is "ministerial," with the Department merely referring complaints to the affected utility. The Independents raise a similar concern, asking that the Board require notice to the affected company within 10 business days.[366] In addition, the Independents ask that the Board institute mandatory time periods within which the Department must respond to consumer complaints.

The Board does not agree that it is necessary to require the Department to forward all complaints immediately to the affected telecommunications carriers. The Department's Consumer Affairs and Public Information Division is charged with handling a large number of complaints; and while these may be typically referred rapidly to the complainant's provider, there may be reasons not to forward the complaint immediately. However, the Department should endeavor to inform the service provider within a reasonable time, as required by the PFD.[367]

For the same reasons, we do not accept the Independents' request that we impose a time limitation for the Department to respond to consumer complaints. Leaving aside the jurisdictional question of whether the Board can adopt such a requirement, we believe the Department has sufficient institutional incentives to resolve consumer complaints rapidly.

AT&T urges the Board to eliminate the PFD's requirement the service providers notify customers of the dispute resolution process at the time service is initiated.[368] AT&T argues that the mandate to discuss dispute resolution is costly, difficult to implement, and suggests an adversarial relationship at the outset.

The purpose of the initial notification, and the subsequent periodic notification, to consumers is to ensure that Vermont ratepayers receive adequate information about the ability to contest charges and an understanding of the manner in which a challenge may occur. It may

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365. Bell Atlantic Comments at 13.

366. Independents Comments at 20-21.

367. Bell Atlantic cautions that requiring the Department to act within a "reasonable time" provides too much discretion, which could be too slow for the customer. We believe the Department has strong incentives to obtain information promptly from the utilities and resolve disputes.

368. AT&T Comments at 15-16.

impose some additional costs upon the utilities; however, no company presented any evidence as to the magnitude of these costs. The PFD's recommendation that companies may include the notification in the directory or with the customer bills should minimize these costs, so that they should be clearly outweighed by the benefits to consumers.[369]

The Department proposed two modifications to the PFD. First, the Department recommends that Paragraph 3 of the procedure be modified to allow the Department to require companies to provide information in less than seven days.[370] Second, the Department recommends a modification to Paragraph 5 so that the Department would not need to notify the affected utility if the Department did not require information from the utility.

We agree that the Department may need information more rapidly than the seven days mandated by the PFD. Therefore, we accept the bulk of the Department's proposed modification to Paragraph 3. The Board does not, however, agree with the second proposed modification. It is reasonable for the Department to notify affected companies of the receipt of complaints, even if the Department does not need additional information.

Consistent with the previous discussion, we adopt the following dispute resolution process.

> Dispute Resolutions
> All telecommunications providers shall address consumer inquiries, complaints and requests for impartial resolution of disputes in a responsible manner. Companies shall employ the following dispute resolution process.
>
> 1. Each telecommunications provider shall list on the bill the telephone number(s) at which the customer may reach representatives of the provider for information or the resolution of any dispute that may arise.
> 2. Each telecommunications provider shall provide customer service representatives (CSRs) through whom consumer complaints and inquiries can be registered.
> 3. Each telecommunications provider shall provide a response to a customer inquiry or complaint within seven (7) business days of receipt of the inquiry or complaint, except that the Department may request a provider to respond in less time where circumstances of a particular complaint require

369. We also do not believe that the notification initiates an adversarial relationship.

370. DPS Comments at 12.

less time or in cases of emergency, disconnections, and reconnections as required by Board rules.

4. Each telecommunications provider shall notify a customer that, if the customer is not satisfied with the resolution offered by the provider, the customer may seek further review of the dispute by higher management within the company (if available) or may contact the Department of Public Service.

   a. The provider shall provide the customer with the telephone number of the Department of Public Service's Consumer Affairs and Public Information Division.

   b. If a customer seeks review of a dispute by higher management with a company, the company shall respond within ten (10) business days of the date the original dispute resolution was appealed.

5. If a customer elects to contact the Department of Public Service, either directly or upon exhaustion of their provider's internal dispute resolution process, the Department should, within a reasonable time, notify the affected company of the receipt of the consumer complaint.[371]

6. If, following receipt of a customer complaint, the Department needs further information or a response from the company, the service provider shall investigate the complaint and provide a response to the consumer and the Department within ten (10) business days of its receipt of the consumer complaint from the Department.

   a. If the complaint raises complex issues or issues that require more time to resolve than provided above, the telecommunications provider shall provide the consumer and the Department with an interim status report within ten days of its receipt of the complaint from the Department.

   b. The telecommunications provider shall submit a final report within ten (10) business days of the submission of its interim status report. If a final resolution cannot reasonably be achieved within the time frames provided herein, the provider shall notify the Department and the consumer and keep both apprised of the Company's progress towards reaching final resolution.

7. Nothing in this dispute resolution procedure shall prevent a customer from contacting the Public Service Department's Consumer Affairs and Public Information Division directly at any point in this process (including at the

371. If the Department concludes that a particular complaint should remain confidential, the Department does not need to inform the affected company.

outset), or otherwise limit a customer's statutory or other legal right to dispute all or a portion of his or her telephone bill.

8. At the time a customer initiates service, and then at reasonable periods, each telecommunications provider shall notify a customer about the availability of the Department of Public Service's complaint resolution process. This notice may occur through telephone bills or telephone directories.

6. Written confirmation of Service Order

The Department advocated that the Board require telecommunications companies to provide written confirmation of service orders within 10 days of the verbal service order. The Hearing Officer rejected the Department's recommendation, instead proposing that companies be permitted to provide written confirmation of the service order as late as the first bill. In its Comments on the PFD, the Department requests that we adopt its original position. According to the Department, written confirmation is needed to ensure that consumers have "an opportunity to correct potential billing problems before they occur."[372] In addition, the Department states that advanced notice closes a loophole in Vermont's Consumer Fraud Act, which requires written confirmation of home solicitation sales,[373] but does not apply to telecommunications and electric services regulated by the Board.[374]

The Board fully agrees with the Department and PFD that written confirmation of service orders is necessary. As the PFD documents, the complexity of telecommunications services and difficulty with terminology has led to an environment in which, despite the best efforts of Customer Service Representatives ("CSRs"), consumers may not fully comprehend the service options that they are purchasing. The issue before the Board is the timing of that confirmation and whether notice must occur within ten days (per the Department).

Prompt notice, as requested by the Department, will allow consumers to identify any incorrect portions of a service the customer has ordered before they have incurred many costs

372. DPS Comments at 8.

373. 9 V.S.A. § 2454(b)(1).

374. The Department also recommends several adjustments to the Hearing Officer's recommendations in the event the Board does not alter the policy.

associated with that service.[375] Although no party quantified the costs, based upon our experience, we expect that a separate notice will also increase costs for companies; service providers would need to institute a separate mailing. In balancing the benefits against the additional costs, the Board concurs with the Hearing Officer's recommendation not to mandate a separate notice to customers within 10 days. Written notice to consumers by the time of the first bill will be adequate to allow consumers to rapidly seek correction of any errors arising from the ordering of service, while still minimizing the degree to which consumers may accrue charges for services they did not seek to purchase.[376]

The Department correctly points out that the standard we enunciate here is different from that set out in the Vermont Consumer Fraud Act. Although there are some benefits to consistency, for the reasons set out above, the Board concludes that the written notice by the time of the first bill is reasonable for telecommunications services.

In the event the Board does not adopt the 10-day written notice recommendation, the Department requests three modifications. First, the Board should require oral notification to consumers of their right to request written confirmation. Second, the confirmation provided with the bill should be in a separate document or otherwise readily identifiable and clear. Third, the Department recommends that any charges for services that the consumer elects to cancel after receiving written confirmation of ordering the services should be the responsibility of the company rather than the consumer.

The Board agrees with the first two proposed modifications. Consumers should be informed of their right to request written confirmation of services orders. This will allow consumers that are unsure of the exact services purchased to obtain rapid verification.

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375. The Department argues that the ten-day notice will allow error correction before costs have been incurred. For most service changes and many new service orders, we expect that companies initiate the new services in less than ten days.

376. We recognize that our conclusion to allow written notification of service orders and changes subsequent to initiation of service is different from the decision on advanced notice of rate changes. The latter affects a large number, if not all, customers at the same time and may influence their future decisions. Written notification of service orders will benefit all affected customers, but will have practical affect only for the limited number of customers who actually identify conflicts between the services ordered and the services received.

Notice of the services purchased also should be readily identifiable to consumers. The Board does not find it necessary to explicitly prescribe how service providers meet this standard, but any notice should ensure that a typical consumer can easily identify the new services ordered and understand precisely the services purchased. A simple line item on the bill showing the charges for a new service is unlikely to meet this standard.

As to the responsibility for charges incurred between the time of the service order and the written confirmation provided to the customer, we decline to specifically state that disputed charges are the responsibility of the service provider. Resolution of disputes requires a case-by-case evaluation of the facts. In resolving these disputes, the Board is mindful of the fact that there exists a significant disparity in the information available to the service provider and the customer. This disparity necessarily places a greater responsibility on the service provider to ensure that the consumers are fully apprised of the services they are purchasing. To the extent that disputes arise, however, they should be treated in the same manner as any other disputed portions of the telephone bills and may not be included in the amount owed for purposes of determining whether a customer can be disconnected.

The revised standard states as follows:

2. Written Confirmation of Service Order: Companies shall furnish written confirmation of all service orders, describing the requested service(s) and associated rates, no later than the first billing cycle following that order. The notice shall also inform consumers of significant terms and conditions affecting the rates in terms understandable to the typical consumer. The notice may be included with or on the customer's first bill if that bill is sufficiently detailed and the notice is readily identifiable by the customer. If a customer requests a written confirmation prior to that time, companies shall provide that confirmation within 5 days of the request. Each service provider shall inform customers of the right to request written confirmation at the time the customer requests new service or a change in service.

   Customers may cancel any service within 15 days of receipt of written confirmation.

7. Information on Bills

Several parties recommend changes to the Hearing Officer's proposed requirements for the minimum contents of each bill sent to consumers. Bell Atlantic objects to the PFD's

requirement that billing carriers list the name, address and telephone number of each carrier providing services on the bill.[377] Bell Atlantic argues that the provision of an address represents an unnecessary complication, particularly if a number of companies are providing service on the bill, and proposes that companies be provided, as an alternative, a primary number for consumers to contact. AT&T argues that billing should be a "matter of contract between carrier and customer" which should not be impeded by regulation.[378] Instead, AT&T asks the Board to endorse the standard set out in the Industry Code of Conduct requiring companies to render "reasonably detailed billing statement itemizing services, usage and charges."

AT&T's characterization of the bill as a "contract" is simply not correct. The bill format is developed by AT&T, perhaps through some consultation with consumers, but certainly not with their agreement, which is implied by AT&T's characterization.[379] Moreover, AT&T's viewpoint omits the important role delegated to the Board under Vermont law: the responsibility is to ensure that the bill format is consistent with the public interest. In fulfilling this responsibility, we need to ensure that the bill conveys sufficient information to consumers so that they can comprehend the services and quantities purchased.[380]

Bell Atlantic's comments raise the more significant issue of whether billing companies should be required to list the name and address of each company providing services that are included on the bill. The name and address will allow consumers to easily identify each company and contact them. However, we expect that most, if not all, consumers that have billing inquiries or disputes will attempt to contact the provider first by telephone. Thus, consumers will receive more benefit from having the telephone number of each provider listed rather than the mailing address, and we will modify the PFD accordingly.

Bell Atlantic also requests that the Board only require publication on the bill of a primary number through which other companies can be contacted. The Department asks the

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377. Bell Atlantic Comments at 11-12.

378. AT&T Comments at 13.

379. Considering the number of customers, agreement with customers would be a virtual impossibility.

380. See 30 V.S.A. § 209(a)(3) granting the Board jurisdiction over the manner of operating or conducting business, "so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public."

Board to adopt a similar change in which the billing company would list not only its telephone number, but also those of the company or companies that "has the authority to resolve billing disputes, questions, or complaints."[381] The Board agrees that a primary point of contact for billing disputes is reasonable; the standard in the PFD already requires companies to identify such a contact. However, consumers should also have the ability to contact directly the company that actually provided the services. The accessibility to the underlying service providers should not require the customer to incur toll charges. This goal of assuring the consumer the ability to access each company can be achieved by requiring the billing company to list the address of each other service provider or by listing a toll-free access number for each company on the bill. Therefore, we have modified the standard recommended by the Hearing Officer to require companies to list a toll-free number for each company or, if not available, the company's address. This requirement should also be adequate to address the concerns expressed by the Department. As a result, we do not accept the Department's recommended changes.

The Independents generally supported the PFD. However, they commented that the PFD's recommendations might be less urgent due to legislation then-pending in the state legislature which imposed similar standards.[382] Since the Independents commented, the legislature has adjourned without enacting H.177. Any potential duplication between that bill and the proposed consumer protection standard is now moot.

The Department proposed an additional modification to the standards recommended by the Hearing Officer to clarify that the bill must identify the service provider, not a billing and collection company or billing clearinghouse on the bill. We agree that this clarification is useful. Listing of a billing clearinghouse may provide little value to consumers if the company from whom they actually purchased service is not identified.

The Consumer Protection standard is revised to read as follows:

> Content of Bills: Companies shall provide reasonably detailed billing statements that, at a minimum, itemize services, usage, and charges at a unit level (including

381. DPS Comments at 12.

382. Independents Comments at 20, citing proposed H.177.

> the number of units consumed and the rates charged per unit). Non-recurring, recurring, and usage charges shall be separately identified.
>
> A telecommunications provider shall identify on the bill the name and telephone number of itself. It shall also identify the name and a toll-free access number for each service provider for whom the billing company is providing billing and collection services in conjunction with that bill. If a toll-free access number is unavailable, the billing service provider shall list the company's address. Providers shall also provide on the billing statement a primary telephone number for consumers to contact.

8. Correction of Directory Assistance/Phone Directory Error

AT&T objects that the PFD is not reasonable in proposing that all telecommunications carriers must correct directory assistance or telephone directory errors within two days, although AT&T does not provide any indication as to what may represent a reasonable time frame.

AT&T's arguments are unpersuasive and, in fact, are based upon a misreading of the PFD. The specific standard recommended by the Hearing Officer states that error correction shall occur promptly. It then goes on to state that "whenever possible" companies shall make available the correct number through directory assistance within two business days.[383] This standard is reasonable. Customers whose number is incorrectly listed in directories or directory assistance are not receiving the full value of the services they purchased; all companies should move to correct these errors as quickly as possible.[384] The standard recommended by the Hearing Officer mandates such responsiveness, without adopting a mandatory two-day requirement. We accept the PFD's proposed standard.

9. Privacy

The PFD proposes several standards aimed at ensuring protection of consumers' privacy interests. AT&T, the Department, and the Independents each request changes to the Hearing Officer's recommendactions.

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383. See pp. 58-59.

384. We have no reason to assume that companies do not perceive the same need for rapid correction of errors.

AT&T challenges the proposal requiring companies to submit a Privacy Impact Statement each time (1) a service is deployed or modified or (2) a company implements a technology change in a manner that may affect customer privacy interests, arguing that this statement is unnecessary because the Board already can review tariffs and associated privacy issues.[385] The Independents do not oppose the Privacy Impact Statement, but instead recommend that companies only need to file the privacy statement the first time a service is introduced in Vermont by any company.[386]

AT&T's observation that the Board has the authority to review tariffs is, of course, correct. But potential privacy impacts of a new or modified service are not always readily apparent from a tariff filing. Similarly, tariff filings do not address the concern that changes to the network or non-tariffed features will affect consumers' privacy interests. We conclude that the Hearing Officer's proposal to require a Privacy Impact Statement is a reasonable means to ensure that the Board, Department, and consumers can assess the privacy implications of new services or other service changes. Companies will incur little cost and time to prepare and submit the statement, while the benefits that others, including the Board, derive from the filing are potentially significant.

The Independents question whether the companies should be required to submit a privacy statement when another company has already introduced the same service and submitted the required notice to the Board. To the extent that the service offerings are identical, there is some merit to the Independents' position. However, we believe the Hearing Officer's recommendations make more sense. Service offerings may have minor differences when offered by different utilities. It is also possible that a new service offered by one company will have different customer impacts than the identical service provided by another telecommunications provider. The Privacy Impact Statement will help identify these distinctions to the Board and Department. Moreover, the Board anticipates that preparation of the Statement will entail little work for affected utilities.

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385. AT&T Comments at 17.
386. Independents Comments at 23.

The PFD recommends that the Board continue the existing policy, enunciated in Docket 5404, requiring companies to offer per-call blocking of caller ID (and other services that transmit calling number information) and, for certain customers, per-line blocking. The Department argues that the standard recommended by the Hearing Officer does not fully incorporate the Docket 5404 requirements because it does not specify the procedures by which companies can assess the heightened privacy interests of individuals.[387] We find these clarifications useful and adopt them.

The Department and Independents each commented on the Hearing Officer's recommendations that companies provide regular notice of line and call blocking. The Independents request that the Board clarify that the notice requirement applies only to carriers that offer Caller ID or other Phonesmart Services. The Independents argue that obligations to offer blocking services should not be imposed on carriers that do not offer the service sought to be blocked.[388]

The Independents' proposal would result in customers of some companies that provide blocking functions not informing their customers of the availability of the blocking option.[389] The Board does not find this reasonable. All Vermont residents must be informed of the blocking options available, even if their service provider does not offer Caller ID. Their calls to customers elsewhere in the state or the country still result in dissemination of customer identifying information that could be blocked. Unless customers know of these options, they are unable to block the calls, however. We accept the PFD.

The Department requests that the Board modify the requirement for regular notice to require companies to notify customers at the time of service initiation as well.[390] We agree.

The revised standard for blocking reads as follows:

4. Call Blocking Features: All local exchange carriers shall make free per-call blocking available to all customers. In addition, all local exchange carriers shall provide per-line blocking, at no charge, to any customer demonstrating a

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387. Department Comments at 14-15.

388. Independents Comments at 22.

389. The PFD recommends that the Board require all Vermont companies to provide per-call blocking. No party objects to this recommendation, which we adopt.

390. Department Comments at 15.

> heightened safety interest and any customer with a non-published number service that requests per-line blocking. Customers may demonstrate a heightened safety interest by submitting a self-declaration form provided by the service provider that confirms the customer's safety risk and requests the company to install per-line blocking on a specific access line.[391]
>
> All local exchange carriers shall, at least annually and at the time customers initiate service, notify customers of the availability of per-line and per-call blocking. The notification shall inform customers of the criteria for obtaining per-line blocking and the means by which per-call blocking can be activated. Publication of this information in a directory will satisfy the annual notification requirement.[392]
>
> All local exchange carriers shall provide a telephone number by which customers that have per-line blocking can, at no cost, verify that the per-line blocking is functioning properly.

The Department also argues that the Hearing Officer erroneously rejected two of the Department's privacy recommendations. Specifically, the Department had requested that the Board require providers to (1) regularly inform customers of the information that providers collected about them and where they share that information and (2) distribute annual privacy notice and consent forms to customers allowing customers to prevent dissemination of customer information.[393] The Hearing Officer, according to the Department, did not base the recommendation on the factual record. The Department also proposes that, if the Board does not accept the full Department recommendation, it adopt a modified version that would enhance consumer protections.

The Department is correct that the record demonstrates that companies collect an extensive amount of information about customers.[394] Our reading of the PFD suggests that the Hearing Officer considered this fact, but did not conclude that the collection of information required adoption of the proposals put forth by the Department. We concur. The record demonstrates that Bell Atlantic has a number of legitimate uses of the information it collects,

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391. As the Board observed in Docket 5404, there will be no need for Company investigation of a customer's self-declaration or for regulatory involvement in such cases.

392. The FCC already requires such notification by companies providing interstate services. 47 C.F.R. §64.1603.

393. DPS Comments at 13.

394. Exh. DPS-Reply-1 at 21.

such as to facilitate collection of billed amounts owed the company. The Department's proposals could restrict the manner in which Bell Atlantic and other companies perform these functions, which we are wont to do. Similarly, the consumer "opt-out" provision recommended by the Department could limit service providers' ability to use information received from customers.

The Department suggested that, in the alternative, the Board could adopt a scaled down approach. This suggestion has merit; however, the evidentiary record before us does not clearly indicate at what point the restrictions may be overbroad and thus the Board declines to adopt such limitations. The Department may wish to propose a more limited approach in the consumer protection rulemaking which will follow this proceeding.

10. Due date for bills

During technical hearings, the Department recommended that the Board clarify Rule 3.301(B) to require a specific due date on each bill at least 30 days from the mailing of the bill.[395] The PFD did not rule on this particular request, recommending instead that the Board examine this issue as part of a broader rulemaking on Rule 3.300 (and other rules). In its comments, AT&T requests that the Board instead adopt a 21-day deadline for payment of bills.[396]

The Board adopts the Hearing Officer's recommendation on this issue. As the PFD explains, the Board established its rules through procedures governed by the Vermont Administrative Procedures Act; changes to the rules should, in general, follow the process dictated by that statute. The rulemaking that we initiate (explained below) should consider the payment period, among other issues.[397]

C. Other Issues

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395. Exh. DPS-CP/P-1 at 15-16.

396. AT&T Comments at 17.

397. We also note that AT&T's request for a 21-day period is not timely as it was not raised at technical hearings. Instead, AT&T took the position that it was unreasonable to depart from "the widespread 30-day cycle" prevalent in the industry. Exh. AT&T-1 at 10.

1. Scope of proceeding

The Hearing Officer issued a Procedural Order on January 30, 1997, limiting the scope of the proceeding to the establishment of retail service quality standards for services that had previously been provided by LECs, either on a monopoly or competitive basis.[398] This ruling effectively excluded the application of the service quality standards to providers of cellular telecommunications services, although virtually all other telecommunications services now regulated by the Board remained within the scope of the docket. The Independents assert that the PFD, and specifically, footnote 4, may be inconsistent with this procedural ruling, because it suggests that the service quality and consumer protection standards set out herein do not and will not apply to cellular providers, even after they begin offering competition for basic service.[399]

We do not interpret the PFD as inconsistent with the Hearing Officer's earlier procedural ruling, but to eliminate any question, we will briefly explain the applicability of this Order. The Board initiated this proceeding to establish retail service quality standards.[400] The primary focus was to develop minimum service quality standards to ensure that Vermont consumers receive high quality service as local exchange competition commences. As the Hearing Officer found in the Procedural Order, cellular providers do not yet offer services that effectively compete with the local exchange. Thus, application of the service quality standards to cellular providers was deferred to a future date, consistent with the purposes for which the Board opened this investigation. The Procedural Order also noted that "once wireless carriers begin offering local service, those carriers will be subject to the service quality standards that apply in this proceeding."[401]

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398. Order of 1/30/97 at 3-4.

399. Independents Comments at 2-3. The Independents refer to the January 30, 1997, Procedural Order as one issued by the Board. In fact, the Hearing Officer issued that Order as part of his responsibility to manage the docket. As we make clear in the following discussion, we endorse the Hearing Officer's conclusion.

400. Although the parties made a distinction between service quality and consumer protection standards, the latter actually is subsumed in the former. Superior service quality requires not only technical performance, but also high quality provision of non-network elements of the service, matters often thought of as consumer protections.

401. *Id.* at 5.

We agree with these procedural rulings. The service quality standards we adopt in this Order will not apply to cellular providers at the present time. If cellular providers (or other providers offering basic exchange services in non-traditional manners, such as cable companies) begin offering the equivalent of basic service, displacing traditional land-line communications service, they will become subject to the standards.[402] In the rulemakings on consumer protection and service quality issues that we will initiate following this Order, participants may seek to revisit this issue and apply the standards to other telecommunications service providers.

2. Rulemaking

The Hearing Officer has recommended that the Board initiate rulemaking to revise Board Rules 3.200 and 3.300. We agree that this action is reasonable. However, the Board considers the Hearing Officer's recommended scope for the rulemaking to be too limited. Instead, the rulemaking should consider not only amendment to the existing rules, but also establishment of consumer protection rules covering the issues outlined in this Order. As we observed above with respect to the service quality standards, the consumer protection safeguards are intended to apply to all industry participants and to have future effect. The public and market participants will benefit through the delineation of the Board's standards in formal rules.

Accordingly, following issuance of this Order, the Board will initiate a rulemaking proceeding to consider amendments to the existing deposit and disconnection rules as well as to convert the consumer protection safeguards adopted here into formal rules. All participants in that rulemaking are, of course, free to raise broader issues.

3. Compliance Filings

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402. Considering the Hearing Officer's Procedural Order, it would be inappropriate to apply the service quality standards to wireless carriers at the present. Nonetheless, the Consumer Bill of Rights and other consumer protection standards appear to represent sound business practices that may be reasonably applied to other telecommunications providers. Participants in the rulemaking on consumer protection issues, discussed below, may want to consider the application of these or other standards to wireless providers.

The PFD recommended that all companies that needed to revise their tariffs to be consistent with this Order submit those revisions within 30 days of the Order. Bell Atlantic asks that the Board instead allow 60 days to revise tariffs, noting that there are "practical difficulties associated with the implementation of some of the Hearing Officer's recommendations."[403] Although it is not clear from Bell Atlantic's comments what these "difficulties" may be, the Board recognizes that this Order covers a wide range of issues. For that reason, we will modify the PFD as requested by Bell Atlantic.

403. Bell Atlantic Comments at 16.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and Recommendations of the Hearing Officer are adopted, except as modified above.

2. The Stipulation and Agreement on Service Quality filed December 23, 1997, is approved, except that the retail service quality standards contained in the Stipulation shall take effect on August 1, 1999.

3. Each telecommunications company authorized to provide intraLATA services within the state shall review its tariffs and, if necessary to conform to this Order, file revisions to the tariffs within 60 days of this Order.

4. Each telecommunications carrier shall comply with the Consumer Bill of Rights and the Consumer Protection Standards established herein (and set out in Attachment 2 to this Order) effective on the date of this Order, except that the prohibition against disconnection of a customer's basic telecommunications service for non-payment of toll and ancillary charges shall take effect 90 days from the date of today's Order.

Dated at Montpelier, Vermont, this 2nd day of July, 1999.

s/ Michael H. Dworkin)
)
)
s/ Suzanne D. Rude)
)
)
s/ David C. Coen)

PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: July 2, 1999

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board of any technical errors, in order that any necessary corrections may be made.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.