

the Department with broad powers and procedural latitude as it seeks to achieve the legislative goals through the facilitation of the development of competition for all telecommunications services.

In light of the Public Act, the Department must redirect its future efforts to facilitate market conditions and create regulatory conditions that will maximize the benefits of future competition for the user public of Connecticut. As articulated by the Department's Chairman, Reginald J. Smith, during the June 23, 1994 technical meeting in Docket No. 94-05-26, General Implementation of Public Act 94-83, the passage of Public Act 94-83 places the Department and the telecommunications industry at an unprecedented point in Connecticut regulatory history with an opportunity to define a markedly different future for Connecticut telecommunications. That future is not predetermined by the legislation nor preempted by the wishes of a single party or group.

The Department, therefore, has established a framework for the implementation of Public Act 94-83 that will allow it the opportunity to fully and publicly explore all the alternatives available to it under the terms and conditions of the legislation and establish therefrom appropriate regulatory mechanisms to reflect legislative intent. Through such a complete exploration, the concerns and proposals of the industry and other interested parties will be fully examined; likewise the Department will ensure that the interests of the public are satisfied before reconstituting any part of the telecommunications delivery system available to the residents of Connecticut.

The implementation framework involves four phases: the initial conceptual infrastructure phase (which was completed with the issuance of the decision on November 1, 1994, in Docket No. 94-07-01, The Vision For Connecticut's Telecommunications Infrastructure), the competition phase (which includes this docket), the alternative regulation phase and the holding company affiliate phase. Pursuant to that framework, on July 13, 1994, the Department noticed the initiation of the present docket, DPUC Exploration of the Lifeline Program Policy Issues.

II. DOCKET SCOPE AND PROCEDURE

As contemplated by the established implementation framework, the competition phase involves a number of highly focused, limited discovery dockets in which the Department is addressing the issues raised by the legislature's commitment to broader market participation in Connecticut. In addition to the present proceeding, these dockets include: Docket No. 94-07-02, Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the 8 Criteria Set Forth in Section 6 of Public Act 94-83; Docket No. 94-07-03, DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity; Docket No. 94-07-04, DPUC Investigation into the Competitive Provision of Local Exchange Service in Connecticut; Docket No. 94-07-05, DPUC Investigation into the Competitive Provision of Customer Owned Coin Operated Telephone Service in Connecticut;

Docket No. 94-07-06, DPUC Investigation into the Competitive Provision of Alternative Operator Service in Connecticut; Docket No. 94-07-07, DPUC Investigation of Local Service Options, Including Basic Telecommunications Service Policy Issues and the Definition and Components of Basic Telecommunications Service; and Docket No. 94-07-08, DPUC Exploration of Universal Service Policy Issues.¹

This docket was established pursuant to Section 5 of Public Act 94-83 which provides that “[i]n order to ensure the universal availability of affordable, high quality telecommunications services to all residents and businesses throughout the state regardless of income, disability or location, the Department shall . . . establish a Lifeline Program funded by all telecommunications companies on an equitable basis, as determined by the Department, sufficient to provide low income households or individuals with a level of participation in the economy and society of the state.” Conn. Gen. Stat. § 16-247e (a), as amended by Public Act 94-83.

Connecticut’s telephone companies currently administer a Lifeline Program authorized by the Department for use by designated customers of those telephone companies. In this docket the Department investigated whether the current Lifeline Program requires amendment to comply with Section 5 of the Public Act.

In order to expeditiously achieve that which the Department envisioned from this docket, the Department established a scope of directed inquiry involving a three-step process (position paper, comments and reply comments) to allow all who wished to participate the opportunity to express their views on local service options and basic telecommunications services.²

The Department directed participants specifically to address in their initial Position Paper the following areas of inquiry:

- Provide your understanding of the current Lifeline Program and the associated terms of eligibility.
- Identify issues associated with the current Lifeline Program which under Public Act 94-83 require amendment.
- Propose a means to achieve compliance with the terms of Public Act 94-83 without reducing the level of support currently available under the Lifeline Program.
- Provide comment as to those telecommunications companies who, pursuant to Public Act 94-83, should contribute to the funding for the Lifeline Program. (The Department deems this information necessary prior to initiating the subsequent proceeding regarding Lifeline Program funding issues).

¹ The Competition Phase will also include dockets involving competitive service regulation, service standards, cost of service, unbundling, depreciation, revenue requirements, local service options, universal service funding, and participative architecture issues.

² The Department has used or is currently using this process in Docket Nos. 94-07-01 through 94-07-09 and has found it to be both efficient and effective as the Department formulates its opinions in each of the proceedings.

Statement of Scope of the Proceeding and Procedural Order, Docket No. 94-07-09, p. 2, October 19, 1994.

Following submission of the Position Papers, participants were given the opportunity to submit written Comments, addressing the Position Papers of others. Thereafter participants were invited to submit written Reply Comments to respond to the Comments. *Id.*, p. 3. The Department received eight Position Papers, four Comments, and four Reply Comments.³

The Department issued a Draft Decision in this docket on March 22, 1995. All participants had the opportunity to file written comments on the initial Draft Decision. On April 12, 1995, the Department issued a second Draft Decision. All participants had the opportunity to file written comments and to present oral argument on the second Draft Decision. Oral arguments were held on April 27, 1995.

III. PARTICIPANTS' POSITIONS

To put the views of the participants in the proper context and to establish a foundation for the Department's discussion in this Decision, the following sections summarize each participant's submissions and identify the principal points of agreement and contention among the participants.

A. SUMMARY OF INDIVIDUAL SUBMISSIONS

1. Office of Consumer Counsel (OCC)

OCC states that a fundamental goal of the Act is to "ensure the universal availability of high quality, affordable telecommunications services to all residents and businesses of the state." According to OCC, Section 5(a) of the Act clearly assigns the intrastate funding of a mandatory Lifeline Program to all telecommunications companies, requiring an expansion of the pool of companies funding the Lifeline Program. OCC further contends that the Act imposes more expansive requirements on the quality and capability of the Lifeline services available to low income disabled persons. In OCC's opinion, implementation of Section 5(a) of the Act will require the Department to review the existing means tests and to evaluate the economic impact on the disabled of acquiring the special telecommunications equipment they need in order to achieve the technical capability to utilize basic telecommunications service. OCC Position Paper, p. 6; OCC Comments, p. 1.

OCC argues that all entities providing telecommunications services in the state, including wholesale cellular carriers, are required under the Act to contribute to the

³ The Department received Position Papers from the following: Office of Consumer Counsel (OCC); Office of the Attorney General (AG); the Southern New England Telephone Company (SNET); MCI Telecommunications Corporation (MCI); Sprint Communications Company L.P. (Sprint); Teleport Communications Group (TCG); New England Cable Television Association (NECTA); and Bell Atlantic Metro Mobile (BAMM). The following submitted Comments: OCC; AG; SNET; Sprint, and Cablevision Lightpath, Inc. (Lightpath). OCC, AG, SNET and Sprint also submitted Reply Comments.

funding of the Lifeline Program, and all funds required to support the program must be collected directly from the telecommunications companies. OCC believes the most equitable mechanism for funding would be to calculate each telecommunications company's share based on a fixed percentage of the gross revenues earned by the company from all intrastate telecommunications services during the previous calendar year. According to OCC, this calculation is fully consistent with the market share methodology currently employed by the Department. OCC Position Paper, pp. 6 and 7.

OCC contends that Lifeline Services must meet the needs of the disabled. Specifically, OCC believes that where a low income telephone customer is hearing impaired, that subscriber must have access to a text telephone (TT), which combines a keyboard and message display to permit written communication over an ordinary telephone line, and to telecommunications relay service (TRS). OCC also recommends that in order to meet the unique requirements of disabled low income persons, the Department should consider expanding the Lifeline Program to include as basic telecommunications services voice dialing for the sight-impaired and special directory assistance for the elderly and sight-impaired. It is also the opinion of OCC that the Department should explore with telephone and telecommunications companies and with appropriate social service agencies the cost and feasibility of a trial program providing, as part of Lifeline, voice messaging service to the "needy homeless." OCC Position Paper, pp. 8 and 9. OCC Comments, pp. 3-5; OCC Reply Comments, pp. 3 and 4.

OCC maintains that the use of an income based means test is an appropriate mechanism to isolate low income households or individuals that qualify for the Lifeline Program. OCC notes that use of a state approved means test is also mandated by the Federal Communications Commission (FCC) for all participants in federally subsidized Lifeline programs and, therefore, the current means test procedure should remain in place. OCC cautions the Department to ensure that any state-established means test recognizes and properly accounts for any additional costs of acquiring the special telecommunications equipment and services required by the disabled. As an example, OCC cites to a hearing impaired telephone subscriber and the need for the means test to account for TT equipment and TRS services. Similarly, OCC points to the need for a means test to consider the cost of voice capable dialing equipment for a sight-impaired telephone subscriber. According to OCC, if a disabled end-user qualifies under a state income assistance program, Lifeline assistance should be provided. OCC Position Paper, p. 9.

OCC further states that outreach and education programs should be enhanced to reach the needy. According to OCC, although telephone penetration in Connecticut is among the highest in the nation, there are pockets of low penetration that must be acknowledged, particularly in low-income neighborhoods of the state's largest cities. OCC concurs with the Office of the Attorney General (AG) and the New England Cable Television Association Inc. (NECTA) that additional or alternative outreach efforts may be appropriate to increase participation. OCC thus recommends that the Department obtain additional information from census data and other sources, and determine

whether further targeted outreach efforts are likely to be effective. OCC Comments, p. 7; OCC Reply Comments, pp. 2 and 3.

Regarding funding for the Lifeline Program, OCC suggests that Connecticut continue to participate in the federal Lifeline programs. OCC is unaware of any reason why the changes in Connecticut's Lifeline Program mandated by the Act would limit the state's ability to receive federal funds or would affect the dollar amount of the funding. OCC states that under Public Act 94-83, end-users are not identified as being directly responsible for funding the Lifeline Program. Rather, it is the opinion of OCC that funding must be spread among and obtained directly from telecommunications companies operating in the state. According to OCC, there is no reason why the current level of support provided by end-users cannot be obtained, as required by the statute, directly from telecommunications providers. OCC argues that funding of Lifeline service is not likely to be a burden on telecommunications companies. For example, to the extent allowed by the Act, telecommunications companies can be expected to pass through the cost of the Lifeline Program to their end-users. OCC is also of the view that as more competitors enter the market, the amount of the charge due from each provider should decrease, mitigating any burden. Additionally, OCC finds no reason to believe that the costs of funding will grow significantly under the Act.

OCC argues that local exchange customers, particularly residential and small business users should not bear a disproportionate share of the Lifeline and TRS costs. According to OCC, a method which (1) applies a portion of the total Lifeline and TRS funding responsibility to every telecommunications company based on each company's gross intrastate revenues and (2) limits apportionment of those funding costs within any telecommunications company in a manner that does not impose an inequitable burden on residential and small business local exchange customers, appears to be the most equitable method that conforms to the requirements of the Act. OCC contends that customers of local exchange carriers (LECs) and other local exchange service providers should not be required to bear more than their proportionate share of the Lifeline Program funding costs as determined by the percentage that the provider's local exchange revenues represent of its total gross intrastate revenues.⁴ OCC suggests that each telecommunications service provider be permitted to internally fund its share of Lifeline and TRS costs by achieving operational efficiencies, through funding by shareholders and by other mechanisms, provided that there is no direct surcharge imposed on end-users. OCC Position Paper, 10-12; OCC Comments, pp. 10-12; OCC Reply Comments, pp. 5 and 6.

Finally, OCC recommends that the Department act as the independent, impartial administrator of any Lifeline Program fund. According to OCC, most of the participants

⁴ Sprint disagrees with OCC and SNET on this point because some providers would be required to pay inflated access charges, which according to Sprint provide contribution to support universal service, in addition to contributing to a Universal Service fund. (Sprint Reply Comments, at pp. 1 and 2) Sprint states that if the Department chooses to maintain a funding mechanism based on telecommunications service provider revenues, payments to intermediaries should be excluded to avoid double counting and penalizing access purchasers by assigning a disproportionate share of the Universal Service funding obligation to interexchange carriers.

in this proceeding agree that it would be best for the telecommunications industry, as it moves toward competition for all services, that any Lifeline Program funding be administered by an independent and impartial third party rather than by the telephone companies, as is currently done. OCC maintains that since the Department currently monitors the Lifeline Programs of the incumbent telephone companies, it could also calculate the funding share of each telecommunications company and monitor the Lifeline Programs of new entrants insofar as they have residential basic service customers. OCC suggests that the Department also be responsible for the collection of Lifeline funding from all Connecticut telecommunications providers and for the disbursement of Lifeline Program funds among basic service providers with Lifeline customers. OCC states that should it be concluded that there exists a statutory impediment to the Department collecting (and disbursing) the Lifeline support funds, the Department should appoint an escrow agent to perform these functions. According to OCC, this escrow agent would carry out only the collection and disbursement directions of the Department and would not have any independent decision-making authority. OCC maintains, however, that the Department acting as an independent administrator would be simple, minimize overall expenses, utilize the Department's expertise to the maximum extent feasible, and ensure that proprietary data (i.e., intrastate revenues of each company) is provided only to the Department. In OCC's view, for the foreseeable future, there is no need to consider any entity other than the Department to administer the Lifeline Program, and this decision could be reviewed if and when competitive local service providers start serving residential as well as business customers and have a significant number of Lifeline-eligible customers. OCC Comments, pp. 5 and 7; OCC Reply Comments, pp. 4 and 5.

2. The Office of the Attorney General (AG)

The AG asserts that its overall objective in this docket is to support a Lifeline Program that promotes the goal of universal service for disadvantaged residents of the state, promotes competition, and that otherwise advances the objectives and goals of Public Act 94-83. The AG also states that, although most of the features of the existing Lifeline Program are consistent with the Act, the existing program should nonetheless be examined to ensure that the Act's goals are met. Accordingly, the AG suggests that the Department examine why there may be telecommunications "have nots," including exploring such things as whether other disadvantaged groups of telephone subscribers that should be eligible for lifeline assistance can be identified, and whether dissemination of information concerning the Lifeline Program can be improved. The AG also recommends that the Department ensure that the interrelationship of other practices such as security deposit, billing, collection and termination practices, do not unfairly negate the effectiveness of a Lifeline Program by unfairly impairing the ability of low income customers to obtain telephone service that supports their participation in the economy and the state. Additionally, the AG recommends that the Department consider funding for special equipment needed by disabled persons, who are eligible for Lifeline assistance, to access basic telecommunications services. AG Position Paper, pp. 2, 7 and 8; AG Comments, p. 1-3.

The AG contends that of primary importance is the need to ensure that the costs of the Lifeline Program be accurately measured and components of the network be unbundled, thereby promoting effective competition as soon as practicable.⁵ The AG also contends that a cost analysis of basic service be conducted as early as possible to protect consumers and promote competition. The AG states that such analysis will ensure competitors are not disadvantaged by unfair subsidies, and that consumers are not harmed by artificially high prices for basic telephone service. Further, in the AG's view, a cost analysis will aid in the formation of a Lifeline Program that fairly and efficiently meets the needs of disadvantaged residents. AG Position Paper, pp. 8 and 9.

The AG argues that the Lifeline credit should not be characterized as a credit on local exchange service, but rather should encompass the full range of basic services including access to toll service. According to the AG, as competition and emerging technology continue to expand the package of services each household or individual must have for participation in the economic mainstream, the Lifeline Program must keep pace. The AG states that basic service must be the minimum level of service supported under a Lifeline Program. Therefore, the AG suggests that just as the components of basic service must be periodically reviewed, so too must Connecticut's Lifeline Program. AG Position Paper, pp. 9 and 10; AG Comments, p. 2; Reply Comments, p. 2.

Lastly, the AG proposes that the Lifeline Program be funded by all telecommunications providers. The AG states that, while the Department has currently determined an independent administrator is not necessary to administer the program, in an increasingly competitive environment, it may over time, become necessary for the Department to establish an independent administrator. AG Position Paper, pp. 9 and 10.

3. The Southern New England Telephone Company (SNET)

SNET states that its interest in this proceeding is to ensure the continuation of a Lifeline Program that: (1) is funded by all telecommunications companies; (2) is funded in a competitively neutral manner; (3) is administered by an independent third party; and (4) can be utilized by end users in purchasing basic service from any provider of basic service. SNET supports the continuation of the existing Lifeline Program because: (1) the program allows customers to choose among local service options,

⁵ The Department has recently initiated several dockets to review Connecticut's telephone companies' cost of providing service and to unbundle their telecommunications networks. See Docket No. 94-10-01, DPUC Investigation into the Southern New England Telephone Company's Cost of Providing Service; Docket No. 94-11-02, DPUC Investigation into the New York Telephone Company's Cost of Providing Service; Docket No. 94-11-05, DPUC Investigation into the Woodbury Telephone Company's Cost of Providing Service; Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network; Docket No. 94-11-03, DPUC Investigation into the Unbundling of the New York Telephone Company's Local Telecommunications Network; and Docket No. 94-11-06, DPUC Investigation into the Unbundling of the Woodbury Telephone Company's Local Telecommunications Network.

giving customers maximum choice both in terms of service features and affordability; (2) it takes full advantage of available federal funds; (3) it can be continued without interruption - a definite benefit to recipients - in that administrative processes are already in place for outreach to eligible customers, verification of eligibility, and billing and collecting funds; (4) the recovery of program costs is competitively neutral in that all certified providers participate, and no specific service or service category is targeted by the Department; (5) the program is narrowly targeted to meet the clearly defined objective of ensuring that individuals with low incomes can afford basic service; and, (6) the current system is competitively neutral in that credits can be applied to customers' bills regardless of their provider of basic service. SNET Position Paper, pp. 2 and 3.

SNET supports the basic principle that all burdens and responsibilities for the Lifeline Program must be shared equitably among all telecommunications providers, including not only the financial burden, but also all administrative obligations and responsibilities. SNET states, for example, that all certified local service providers must be prepared to participate in outreach, eligibility verification, annual eligibility reviews, etc. that have been historical responsibilities of the telephone companies. SNET maintains that all local service providers must work together to ensure that no lapse in the program occurs when eligible customers change from one provider to another. According to SNET, this sharing of responsibilities and obligations is consistent with the intent of Public Act 94-83 and the public policy objective that universal service continue to be supported in the competitive environment. In SNET's opinion, unequal application of Lifeline Program obligations and responsibilities would inevitably skew the competitive balance toward some telecommunications providers and away from others. SNET Position Paper, pp. 3 and 4.

In terms of cost recovery by individual service providers, SNET recommends the Lifeline Program cost recovery efforts be guided by the principle of affording maximum flexibility to each provider to ensure that no provider is either advantaged or disadvantaged versus any other. SNET states that currently the cost recovery mechanism permits a provider to choose whether or not to charge end-users and recommends this latitude be granted to all providers. SNET further recommends the proportionate share which those services represent of total service category revenues should be used as the basis for cost recovery by an individual service. SNET maintains that the existing cost recovery mechanism provides competitive neutrality for all providers, while a mechanism that is directed solely to end users would not. Additionally, SNET suggests that providers be permitted to bill the costs for the Lifeline Program to end users as either a surcharge or as part of the price of a service. According to SNET, such added flexibility would be consistent with a competitive environment. SNET Comments, p. 3; SNET Reply Comments, p. 2.

Relative to administration of Lifeline Program funding, SNET recommends that it be performed by an independent third party. SNET states that a neutral third party should be designated as the fund administrator to perform monitoring, collection and disbursement activities. SNET also states that its continued administration of the existing Lifeline Program makes little sense, because it cannot credit other providers' customers who participate in the program. Likewise, in SNET's opinion, no

telecommunications provider that participates in the Lifeline Program should administer the program. According to SNET, an independent administrator is consistent with competitive neutrality. SNET also suggests that an existing state agency serve in the administrative role, particularly if the agency currently determines eligibility (i.e., the Department of Social Services). However, SNET does not recommend the development of any new bureaucracy, and states that it is prepared to work with others toward development of an acceptable solution to fund administration for the future. SNET Position Paper, pp. 3 and 4.

SNET argues that funding for the Lifeline Program be broad-based and competitively neutral. According to SNET, general tax revenues are the optimal source for funding a Lifeline Program.⁶ In support of its recommendation, SNET states that such funding would cause the least distortion in marketplace consumption decisions, and accurately reflects the fact that the Lifeline Program is a societal cost. SNET argues that from a public policy standpoint, there is no reason why Lifeline funding should be borne by telecommunications services or companies alone. However, SNET states that absent the ability of either the industry or the Department to impose such a societal funding arrangement, the next best option is to spread the burden among all telecommunications companies, in an economically neutral manner. SNET also states that it supports the continuation of the previously approved funding mechanism based on each providers' relative share of total intrastate taxable revenues, which it believes is fair and nondiscriminatory.⁷ SNET Position Paper, pp. 4 and 5.

4. MCI Telecommunications Corporation (MCI)

MCI states that as competition increases, so will universal availability of telecommunications services because prices for these services will be driven downward toward their costs. MCI contends that it is important that any subsidy programs, such as the Lifeline and Universal Service programs, be competitively neutral. MCI defines competitive neutrality to mean that the adopted funding mechanism must be applied in such a way as not to advantage one provider of telecommunications services over another. MCI recommends that a separate fund be established for Lifeline Assistance, with all telecommunications service providers required to contribute to the fund. MCI also proposes that all telecommunications service providers have the ability to withdraw from the fund to serve their respective Lifeline customers. MCI argues that Lifeline Program funding can be accomplished by assessing all telecommunications carriers a percentage of the fund based on their net intrastate common carrier revenues. According to MCI, its proposal will both further the state's pro-competitive goals and assure that Lifeline assistance is available to all who are eligible under current eligibility guidelines. MCI Position Paper, pp. 4 and 5, 7.

⁶ The AG disagrees with SNET and states that a tax based fund conflicts with Section 5(a)(2) of the Act which requires that Lifeline be funded by all telecommunications companies.

⁷ SNET opposes alternative cost recovery proposals (i.e., funding on a net basis) as proposed by MCI, Sprint, TCG and Lightpath because it violates the principle that all providers be treated on an equal basis.

MCI maintains that it will not be difficult to modify the current Lifeline Program to make it competitively neutral. According to MCI, the criteria for eligibility have already been established as has been the amount of the contribution based on Federal Lifeline telephone assistance plan requirements. MCI asserts that there remain only two steps that need to be taken to develop a competitively neutral funding mechanism. First, a separate Lifeline Support Fund (LSF) should be established. MCI contends that in order to assure that funds are collected and dispersed equitably, a neutral third party should administer the funding pool. Secondly, all providers should be allowed to receive funds from the LSF according to the number of Lifeline customers to whom they provide service. Specifically, once the pool of funds available to support Lifeline has been determined and made available by the contributing parties, eligible service providers would be able to draw a subsidy from the pool based on the number of Lifeline customers they serve. Accordingly, MCI proposes that instead of delivering the subsidy to the LEC, all service providers should be able to draw from the pool to serve their Lifeline customers. In so doing, Lifeline assistance recipients would choose their local exchange provider based on rates, customer service, quality, etc. Id., p. 6.

5. Sprint Communications Company L.P. (Sprint)

Sprint asserts that a Lifeline Program is an essential component in maintaining universal service in a competitive environment. Sprint states that it supports end-user based, targeted universal service funding to either low income subscribers or customers in high-cost-to-serve areas as part of a universal service commitment. According to Sprint, funding for these explicit needs should come from the existing Lifeline Program. Sprint Position Paper, p. 2.

On the issue of funding, Sprint states that all telecommunications providers should be required to contribute to the Lifeline Program. Sprint defines telecommunications providers to include, but not be limited to, local exchange carriers, long distance carriers, cellular and wireless companies. Sprint recommends that Lifeline funding be based on total telecommunications service revenues, net of payments to intermediaries. Sprint contends that such a basis would avoid double counting, and apportions support on the basis of the economic value-added that firms realize as a result of the universal deployment of the public switched network.⁸ Id., p. 2.

Sprint contends that the preferred method of funding the Lifeline Program would be end-user based. Specifically, Sprint proposes a mechanism for dividing financial responsibility between providers and the general public by implementing a per line surcharge billed to all telecommunications customers, other than those customers

⁸ SNET opposes Sprint's proposed cost recovery proposal because it violates the principle that all providers be treated on an equal basis. SNET agrees with OCC that a net intrastate revenue approach would place a disproportionately large percentage of the Lifeline burden on facilities-based carriers. SNET states that an assessment based on each provider's gross intrastate revenues and proportionate share of total state gross intrastate revenues treats all providers equitably within the terms of the Act. SNET Reply Comments, pp. 2 and 3.

participating in the Lifeline Program, by the appropriate local service provider.⁹ Sprint also proposes that the revenues obtained from the surcharge be collected by each service provider from its respective customers. According to Sprint, each service provider would calculate the amount of the Lifeline Program reimbursement to which it is entitled (based on the number of eligible Lifeline subscribers each provider serves) and remit to an independent third-party administrator any excess funds to be distributed to other participants in the Lifeline Program. Sprint recommends that providers eligible to receive additional reimbursement receive such funding directly from the independent administrator of the fund. Sprint maintains that such an approach is equitable, because customers of all telecommunications service providers would contribute to the Lifeline Program in accordance with Public Act 94-83. Additionally, according to Sprint, an end user based funding arrangement is economically efficient and competitively neutral, unlike the existing program that requires service providers to contribute to the fund based on market share irrespective of the number of Lifeline Program participants such provider serves or the amount of payments made to intermediaries. Sprint Comments, pp. 2 and 3.

6. Teleport Communications Group Inc. (TCG)

TCG contends that basic service represents the minimum level of service to which all consumers should have access. TCG states that basic service should include access to emergency services and to special telecommunications services and equipment for the hearing impaired. According to TCG, however, because access to these services is part of the basic service provided by all carriers, E911 service for all customers, including Lifeline customers, should have a funding source to which service providers contribute which is separate from the Lifeline Program fund. Similarly, TCG suggests that telecommunications service for the hearing impaired should have a funding source to which service providers contribute which is separate from the Lifeline Program fund.¹⁰ TCG Written Exceptions to First Draft Decision, p.1. TCG states that other discretionary services, such as call blocking and caller identification, should be technologically available to all customers, but should not be considered part of the basic service commitment and, therefore, not be considered eligible for universal service funding. TCG Position Paper, p. 3.

TCG suggests that a fair and independent universal service support program has three basic components: (1) an independently administered support fund; (2) fair contributions from all carriers; and (3) equal access to the subsidy fund by all carriers. TCG contends that the Department's first step in establishing an independent universal

⁹ OCC disagrees with this proposal because it fails to meet the Act's requirement that Lifeline be funded by all telecommunications companies. OCC also disagrees with this proposal because it would determine the funding required from each local exchange provider based on the provider's number of access lines rather than on gross revenues. According to OCC, access lines are not an equitable method of determining Lifeline funding responsibilities, as it puts a disproportionately large burden on LECs with large numbers of residential access lines while exempting interexchange carriers and resellers and other carriers from any funding responsibility. OCC Reply Comments, pp. 5 and 6.

¹⁰ OCC disagrees with this recommendation. According to OCC, all local service providers should individually bear the applicable and appropriate connection and access costs to E911.

service support fund is to identify those customers and those areas where the cost of basic service exceeds the rates paid by customers for that service. TCG states that this would include low income (i.e., Lifeline) customers, customers living in "high cost" areas, and any other customers whose rates for basic service fall below the dominant carrier's cost of providing basic service. TCG declares that it would rely upon the incumbent local exchange carriers to identify those customers that require support and the amount of the support subject to the following parameters: (a) only basic service is eligible for a subsidy; (b) the cost of providing service is calculated according to Total Service Long Run Incremental Cost (TSLRIC) principles; and (c) the subsidy is the difference between the cost of basic service and the customer's rate for that service. TCG further states that the Department might consult the state's social services department to identify low income customers who might be eligible for Lifeline support. TCG Position Paper, pp. 6 and 7.

To manage the subsidy fund, TCG recommends that the Department select an independent administrator. According to TCG, management of the fund by an independent agent removes the appearance of bias in the collection and disbursement of subsidies. TCG states that the independent administrator would be responsible for (1) collection of carrier contributions; (2) disbursement of the support funds; (3) review and adjustment of the funding requirement; and (4) resolution of disputes regarding the fund. TCG recommends that the Department select an administrator after collecting bids from qualified organizations. Id., p. 7.

TCG also recommends that the support program be funded by all providers of two-way telecommunications services in the state according to market shares. TCG states that market shares should be calculated according to each carrier's share of total intrastate net transmission revenue. TCG defines net transmission revenue as a carrier's total revenue from telecommunications services, less payments to other carriers for "input" services. According to TCG, this approach avoids the double counting of any carrier's revenue. TCG warns the Department that it is possible that a new entrant or a small incumbent may not have sufficient revenue to contribute to the fund and it would be unreasonable to expect a carrier to contribute to the support fund before it has revenues or if it has no profits. Therefore, TCG recommends that the Department establish a minimum threshold (based on the carrier's absolute size or its market share) that carriers must exceed before being required to contribute to the fund. Id., pp. 7 and 8

Like others in this proceeding, TCG recommends that disbursements from the fund be made directly to an eligible customer's carrier. Similarly, TCG proposes that any carrier serving an eligible customer should be able to draw from the fund on behalf of that customer. TCG also recommends that the process be automated to facilitate verification of customer eligibility and to collect contributions and to disburse support funds. Id., p. 8.

7. The New England Cable Television Association (NECTA)

NECTA declares that its objective in this proceeding is to ensure that the Lifeline program is designed in such a way as to ensure affordable basic service for low-income individuals or households, whether they obtain their basic telephone service from an incumbent LEC or a new entrant. According to NECTA, the level of service that is defined as basic for purposes of universal service should be the level of service incorporated into the Lifeline Program for low-income customers. NECTA also states that in order to be consistent with the objectives of the Act, the structure and funding of the Lifeline Program must be competitively neutral. NECTA contends that the requirements of the Act will necessitate that the current Lifeline Program be amended for a competitive telecommunications environment. NECTA Position Paper, pp. 3, 5.

In its Position Paper, NECTA cites the Lifeline subsidy experience in other states for comparison. NECTA states that experience in these states indicates that the availability of the Lifeline subsidy, without additional outreach efforts, may not be sufficient to ensure the participation of a substantial number of eligible households. NECTA contends that a need exists to target assistance to certain groups such as non-English speaking households who may face difficulty ordering telephone service, low-income households with negligible disposable income, and low-income renters who face high installation charges. In Connecticut, NECTA notes that certain parts of the state are underserved. Specifically, NECTA points to the percentages of households without telephone service in Hartford, 14.5%, Bridgeport, 8.7%, and New Haven, 7.8%. In order to bolster participation in Lifeline Programs, NECTA cites the approach taken by the New York Public Service Commission (NYPS) staff, which proposed that customers eligible to receive Lifeline service be automatically enrolled unless, after notification, they expressly request not to receive the available subsidy.¹¹ NECTA states that because low-income families are disproportionately more likely to be mobile than families who are not low-income, the adequacy of the Connecticut Telephone Connection Assistance Program (CTCAP) should also be examined. *Id.*, pp. 5-7.

NECTA maintains that another requirement of the Act that will require amendment of the current Lifeline Program is the transition from a LEC-administered program to one that is administered by a neutral entity subject to oversight by the Department. According to NECTA, this function should be carefully established to ensure competitive neutrality, and should not be housed in an existing incumbent exchange carrier organization or an adjunct of any such organization. *Id.*, p. 8.

NECTA states that the Act requires individual recipients of Lifeline funds to use such funds to pay for telecommunications services. Accordingly, NECTA recommends that either a voucher system or a funding arrangement whereby the administering entity

¹¹ OCC does not favor automatic enrollment. According to OCC, there is no ruling yet by the NYPS on this proposal, and it is not clear that it is being seriously considered. OCC states that there are residents who may qualify for one of the 14 aid programs in Connecticut who do not want Lifeline service for a variety of reasons. In the OCC's view, government should not automatically intrude in a resident's life. To OCC, the important goal is that information regarding Lifeline be available, not that Lifeline service be forced upon anyone. OCC Comments, pp. 9 and 10.

is authorized to forward the customer's funding entitlement directly to its serving carrier would adequately address this requirement. NECTA also states that administration of any Lifeline fund at the state level must be structured so as to make it clear to customers that an equivalent offset is available whether service is obtained from an incumbent LEC or a competitive local exchange carrier. *Id.*, pp. 8-9.

On the issue of funding, NECTA recommends that any Lifeline fund be established as a component of the universal service fund mechanism so that the charge is assessed on all local service providers for all loops provided on a voice-grade equivalent basis (including not only landline access to the network but also alternative forms such as cellular access). NECTA states that while this would not directly assess interexchange carriers and other "non-local" telecommunications companies, it would result in such companies paying indirectly, based on their access line requirements. According to NECTA, this approach would form an equitable basis for funding, consistent with the requirements of the Act. *Id.*, p. 9.

8. Cablevision Lightpath, Inc. (Lightpath)

Lightpath supports establishment of a Lifeline Program that simultaneously promotes competition for intrastate telecommunications services and the goal of universal service for low-income residents. Lightpath states that a neutrally administered Lifeline Program will help ensure that low income Connecticut consumers have access to these advanced telecommunications services, thereby supporting their participation in the economy and society of the state. Lightpath asserts that in a competitive environment with competing local exchange carriers, any Lifeline Program must: (1) be funded by all telecommunications companies; (2) be funded in a competitively neutral manner; (3) be administered by an independent third party; and (4) enable eligible subscribers to obtain service from any provider of basic service. Lightpath Position Paper, p. 2.

Lightpath believes that the existing Lifeline Program eligibility requirements are reasonable and should be adopted by order in this proceeding. Lightpath states that additional outreach efforts will be required to ensure full participation in the Lifeline Program. Lightpath contends that the most effective means of ensuring that the Lifeline goals of the Act are met will be for the Department to manage the transition to local competition in a manner which ensures that local service competition has an opportunity to develop and to provide service alternatives to all customers. *Id.*, pp. 3 and 4.

With respect to funding, Lightpath proposes that all providers of intrastate telecommunications service be required to contribute to the Lifeline Program based upon intrastate telecommunications revenues. Like others in this proceeding, Lightpath contends that in order to avoid double counting of revenues, contribution should be based on total intrastate telecommunications service revenues less payments to other carriers for input services. *Id.*, p. 4.

Lightpath concurs with other participants in this proceeding that it is essential the Lifeline Program be administered by a neutral third party. According to Lightpath, the funding mechanism should be kept very simple and be based upon some form of virtual voucher system which allows companies to draw credits from the Lifeline fund. Lightpath also concurs with SNET that the administrator be a government agency and recommends that the Department administer the fund. Lastly, Lightpath states that to be consistent with Section 5(a) of the Act, the Lifeline Program must apply to all carriers providing basic telecommunications services. Lightpath states that this means all providers of basic service must be able to receive funds from the Lifeline Program. According to Lightpath, this will ensure that Lifeline assistance recipients are able to choose their local exchange provider based on rates, customer service, and other public interest quality considerations. *Id.*, p. 5.

9. Bell Atlantic Metro Mobile (BAMM)

BAMM states that it continues to support Lifeline programs in order to promote the use of the telecommunications network by low-income individuals. BAMM also states that it continues to advocate the funding of the Lifeline Program on a reasonable and proportional basis. BAMM Position Paper, p. 3. BAMM maintains that the Department lacks authority to assess cellular carriers for Lifeline funding. BAMM states that it is willing to contribute to the program on a voluntary basis or by way of an increase to the price for services provided to all telecommunications customers by local exchange providers. BAMM threatens, however, that any effort to mandate compulsory contributions by the cellular carriers via a direct surcharge "tax-type" mechanism will be met with objection. BAMM Position Paper, p. 2.

Regarding Public Act 94-83, BAMM argues that the Act does not require either the establishment of a Lifeline Program different from that which currently exists or amendment of the current Lifeline Program. BAMM contends that the existing Lifeline Program satisfies the Act, but a modification to the existing funding mechanism may be required in order to ensure an equitable allocation of the funding requirement among all telecommunications companies (including unregulated wireless providers). According to BAMM, the existing Lifeline Program satisfies the Act's requirement to ensure the universal availability of telephone service within the state. BAMM also claims the existing program satisfies the Act's requirement that the Lifeline Program be administered by an entity authorized and subject to oversight by the Department. Likewise, BAMM states the existing Lifeline Program satisfies Public Act 94-83's directive that the program define the eligibility requirements for prospective participants. According to BAMM, by allowing for direct credits as a separate line item on telephone bills rendered by the local exchange carrier, the existing program satisfies the statutory requirement that recipients use Lifeline funds to pay for telecommunications services. *Id.*, pp. 8-10.

BAMM contends that the only aspect of the existing Lifeline Program that may require amendment given the mandate of Public Act 94-83, is the definition of telecommunications companies contributing to Lifeline funding. BAMM states that the Omnibus Budget Reconciliation Act of 1993 precludes the Department from directly

assessing cellular carriers for costs associated with Lifeline funding. BMM maintains that it has a long history of commitment and willingness to contribute to Lifeline funding, assuming such funding is accomplished on an equitable basis. According to BMM, the existing funding mechanism is based upon a percentage of the market for intrastate telecommunications services of each company regulated by the Department. BMM states that consequently, the existing funding mechanism fails to capture other companies such as personal communications service providers (PCS) and specialized mobile radio providers (SMR) who provide telecommunications service within the state but are not regulated by the Department. BMM also states that this aspect of the existing Lifeline Program will require modification in order to comply with the mandate of Public Act 94-83 that the Lifeline Program be effected on an equitable basis. According to BMM, the existing program fails to accomplish this objective. Id., pp. 10-12.

B. POINTS OF AGREEMENT AND CONTENTION

The above discussion sets forth the general positions of the participants submitted in this proceeding. An analysis of the details of those positions reveals a significant consensus of opinion among this docket's participants. Specifically, the participants agree that: 1) the current Lifeline Program satisfactorily serves the needs of Connecticut low income customers for basic telecommunications service; 2) the current Lifeline Program provides adequate support for low income households regarding connection charges to initiate service; 3) the goals of Public Act 94-83 require that all telecommunications services providers share in the obligations and responsibilities of continuing at a minimum the current Lifeline Program; 4) additional outreach efforts may be useful to achieve greater participation in the Lifeline Program; and 5) the Lifeline Program should be administered by a neutral third party.

The participants express differing views, however, on the mechanics of the lifeline fund. Specifically, the participants disagree on a formula to be used by the Department to determine funding payments, eligibility thresholds for industry funding obligations, and funding methods to be used by the providers for recovering costs associated with offering Lifeline programs.

IV. DEPARTMENT ANALYSIS

A. INTRODUCTION

Public Act 94-83 envisions a regulatory framework that will support the Department's pursuit of broader market participation, while affording the Department the means to ensure that the public interest is protected. One public policy commitment to which the Act makes recurring reference is Universal Service, suggesting its relative importance to both the legislature and the public it represents. The Department initiated this proceeding to explore the state's Lifeline Program, one of the Universal Service funding mechanisms mandated by the Act.

B. STATUTORY FRAMEWORK

Section 5 (a) of Public Act 94-83 provides:

In order to ensure the universal availability of affordable, high quality telecommunications services to all residents and businesses throughout the state regardless of income, disability or location, the Department shall . . . establish a Lifeline Program funded by all telecommunications companies on an equitable basis, as determined by the Department, sufficient to provide low income households or individuals with a level of telecommunications service or package of telecommunications services that supports participation in the economy and society of the state. The Lifeline Program shall be administered by an entity authorized, and subject to oversight, by the Department. The Department shall determine by order which customers qualify for the Lifeline Program. Recipients of lifeline funds shall use such funds to pay for telecommunications services provided by any telecommunications company.

Conn. Gen. Stat. § 16-247e (a), as amended by Public Act 94-83. This statutory section served as the basis for the Department's initiation of the instant docket and serves as the framework for the discussion that follows.

C. DOCKET NO. 94-07-08, DPUC EXPLORATION OF UNIVERSAL SERVICE POLICY ISSUES

The Department initiated Docket No. 94-07-08, DPUC Exploration of Universal Service Policy Issues, to explore Universal Service issues, including the potential impact that broader market participation may have upon the goal of Universal Service. In that docket, the Department determined that "[t]he basic service offering (and other offerings predicated upon it) will likely continue in the near future to be the most heavily subscribed service offering, and, therefore, will continue to be a meaningful achievement standard for measuring Universal Service penetration."¹² Decision, Docket No. 94-07-08, March 31, 1995, p. 22. The Department stated, however, that because "basic service is not a static service offering but is, in and of itself, a dynamic and evolving set of technological capabilities," the Department "reserves the right to review and revise in the future the composition of basic service and the associated commitment of the industry to its universal deployment." *Id.*

¹² In Docket No. 94-07-07, DPUC Investigation of Local Service Options, Including Basic Telecommunications Service Policy Issues and the Definition and Components of Basic Telecommunications Service, the Department promulgated a functional definition of "basic telecommunications services" that incorporated twelve capabilities and qualities. Decision, p. 18, February 28, 1995. In that same Decision, the Department directed all authorized providers to meet all bona fide requests for such services in the geographic area(s) for which the provider is certified. *Id.*

As explained in the Decision in Docket No. 94-07-08, Public Act 94-83 contemplates two programs to further its Universal Service goal. First, it requires the Department to establish a Lifeline Program, i.e. "a targeted support available to individual telecommunications users who could not otherwise afford the cost of basic telecommunications services (irrespective of whether such service is provided in a low-cost or high-cost service area)." *Id.*, p. 24. Second, the Act empowers the Department to construct a Universal Service Program which would ensure that all residents and businesses in the state, regardless of location, have access to affordable, high quality basic telecommunications services, to financially protect residents in geographic areas of the state that might otherwise go unserved or underserved in an unconstrained competitive environment. *Id.* The instant docket concerns only the Lifeline Program.

Although leaving the determination of the appropriate funding mechanism for the Lifeline Program to the present docket, in Docket No. 94-07-08, the Department articulated certain policies that, pursuant to Public Act 94-83, must guide the state's Lifeline Program. Specifically, the Department held that Public Act 94-83 requires that "any application of financial funding to telecommunications services providers for purposes of preserving Universal Service achievements must be done in a manner that is fair and equitable and that represents the full value of the Connecticut market to each participant serving it." *Id.*, p. 26. The Department thus stated that "all telecommunications services providers, including the cellular carriers, PCS providers, and other wireless telecommunications service providers, must contribute to the funding for Universal Service." *Id.*

It is with an understanding of the language of Public Act 94-83 and the Department's Decision in Docket No. 94-07-08, therefore, that the Department in this proceeding has reviewed the current Lifeline Program to determine if amendments need to be made to that program.

D. CURRENT LIFELINE PROGRAM

Lifeline service was first identified by the Department in its July 7, 1993 Decision in Docket No. 91-10-06, DPUC Review of Telecommunications Policies: Infrastructure Modernization, Competition, Pricing Principles and Methods of Regulation, as a means of maintaining the current level of universal telephone service in Connecticut. In that proceeding, the Department found that participation in a Lifeline Program for low-income telephone customers was in the public interest and directed Connecticut's three telephone companies (also referred to herein as local exchange carriers or LECs) to submit proposals for participating in the FCC's Lifeline Telephone Assistance Program. In its Decision in Docket No. 92-09-19, Application of the Southern New England Telephone Company to Amend its Rates and Rate Structure, dated July 7, 1993, the Department endorsed SNET's Lifeline service proposal. The Department concluded, however, that funding obligations for the program should not be provided only by end-users as SNET had proposed, but should be shared by all users and telecommunications services providers.

Docket No. 93-08-07 DPUC Investigation into Developing an Appropriate Funding Mechanism for Lifeline Service for Connecticut LECs, was initiated to develop the funding and cost recovery mechanisms for Lifeline services. In that docket, the Department reaffirmed its policy requiring funding for Lifeline services to come from end-users and providers of telecommunications service. The Department also concluded in that proceeding that it would be inequitable to recover Lifeline costs entirely from monopoly local exchange services, even though the LECs were the only providers of those services. The Department, therefore, directed the LECs to recover from their monopoly services only the percentage of Lifeline service costs that monopoly service revenues represented of the telephone companies total taxable intrastate revenues as defined in Conn. Gen. Stat. §16-49, with the remaining costs to be recovered from non-monopoly services in a manner to be determined by the LEC. By the March 23, 1994 Decision in Docket No. 93-08-07 and Docket No. 89-03-03, The Southern New England Telephone Company Agreement to Support a Joint Proposal for Assistance to Hearing and Speech Impaired - Reopened Proceeding, the Department accepted SNET's proposal to begin imposing the Connecticut Service Fund surcharge on customers' monthly telephone bills to recover that portion of its Lifeline and TRS costs allocated to its local exchange customers. Additionally, in the August 10, 1994 Decision in those dockets, the Department permitted SNET's shareholders to bear the remaining Lifeline and TRS costs. Connecticut's telephone companies were also required to bill each telecommunications company for its respective portion of the LECs' Lifeline costs based on gross intrastate revenue percentages developed by the Department pursuant to Conn. Gen. Stat. § 16-49.

The Department adopted the same eligibility requirements for customer participation in the Lifeline Program as it had approved for Connecticut LEC participation in the FCC's Link-Up America Plan (CTCAP), adopted in 1988, with the addition of those eligible for the ConnPACE prescription drug program. These include eligibility for any of the following programs:

Department of Social Services Programs

- Aid to Families with Dependent Children (AFDC)
- Title 19-Medicaid
- State Supplement to the Aged, Blind or Disabled (AABD)
- Food Stamp Program
- Energy Assistance Program
- Connecticut Energy Assistance Program (CEAP)
- State Appropriated Fuel Assistance Program (SAFA)
- Child Care Certificate (CCC)
- Transitional Child Care (TCC)
- Personal Care Assistance Program
- Rental Assistance Program (RAP)
- Section 8 Housing
- ConnPACE

Social Security Administration Program

- Supplemental Security Income (SSI)

E. THE FUTURE OF THE CURRENT LIFELINE PROGRAM IN LIGHT OF PUBLIC ACT 94-83

Review of the submissions in this proceeding reveals significant agreement among the participants that the current Lifeline Program has well served the basic telecommunications needs of Connecticut customers. The Department reaffirms its commitment to the existing Lifeline Program. The existing program: provides customers with the ability to choose among local service options, providing subscribers with maximum choice in terms of service features and price; makes use of federal funds; permits participation by subscribers without interruption; is competitively neutral; and would permit the application of Lifeline credits to customers' bills regardless of their provider of basic service.

The Department recognizes, however, that there are areas where the existing program requires further attention in light of Public Act 94-83. The Department discusses the necessary changes in the sections that follow. Prior to turning its attention to those subject areas, however, a brief discussion of certain specific recommendations made by participants is in order.

TCG recommends that some services (e.g., E911 and handicapped services) should have a funding source to which service providers contribute which is separate from the Lifeline Program fund. The Department believes that the provision of E911 service is a critical component of basic service and should be funded by service providers in the state. Accordingly, the TCG recommendation is rejected. Similarly, the Department views the provision of handicapped services such as telecommunications relay service and equipment designed for the hearing impaired as a means of increasing the level of universal service by keeping telephone service universally available on a technical basis. Since all users and telecommunications service providers will ultimately benefit from the provision of these services, service providers must recognize and accept responsibility to share in the cost of providing such services. Therefore, Lifeline Program funding obligations shall continue to include subsidizing certain telecommunications costs associated with special telecommunications services (e.g., TRS) and equipment.

OCC recommends that the Department explore with telephone, telecommunications companies and social service agencies, trialing voice messaging service to the homeless and other services to the sight impaired. The Department does not believe the record of this proceeding warrants such a trial be conducted at this time. Rather, the Department will direct the Administrator of the Lifeline Program, (as discussed further in Section IV. G., below) to fully investigate the need for, costs of, and feasibility in offering such service enhancements. Based on the Administrator's findings, the Department will act accordingly.

NECTA recommends that customers eligible to receive Lifeline service be automatically enrolled in the Lifeline Program unless, after notification, they expressly request not to receive the available subsidy. The Department finds the record of this

proceeding insufficient to require eligible Lifeline Program customers to be automatically enrolled in the program. While Public Act 94-83 states the intent to ensure the availability, accessibility and affordability of telecommunications services for Connecticut's residents, it does not empower this Department to mandate participation by any individual. Any effort on the part of the Department to extend participation without the expressed consent of the individual would be a significant and unwarranted extension of its authority.

As discussed below, with some modification, the current Lifeline Program can meet Connecticut residents' basic telecommunications service needs consistent with the mandates of Public Act 94-83.

F. LIFELINE PROGRAM FUNDING

1. Who Should Contribute To The Funding Of The State's Lifeline Program?

Public Act 94-83 requires the Department to establish a Lifeline Program "funded by all telecommunications companies on an equitable basis, as determined by the Department." (Emphasis added) Conn. Gen. Stat. § 16-247e (a), as amended by Public Act 94-83. A "telecommunications company" is defined by statute as "a corporation, company, association, joint stock association, partnership or person, or a lessee thereof, which provides telecommunications service . . ." ¹³ Conn. Gen. Stat. § 16-1 (a) (25), as amended by Public Act 94-83. A "telecommunications service" means "any transmission in one or more geographic areas (A) between or among points specified by the user, (B) of information of the user's choosing, (C) without change in the form or content of the information as sent and received, (D) by means of electromagnetic transmission, including but not limited to, fiber optics, microwave and satellite, (E) with or without benefit of any closed transmission medium and (F) including all instrumentalities, facilities, apparatus and services, except customer premises equipment, which are used for the collection, storage, forwarding, switching and delivery of such information and are essential to the transmission." Conn. Gen. Stat. § 16-247a (b) (6), as amended by Public Act 94-83.

Pursuant to Public Act 94-83, therefore, and as held in the Department's Decision in Docket No. 94-07-08, all providers of telecommunications services are to

¹³ Specifically excluded from this definition of telecommunications company is "a person, firm, corporation, company, association, joint stock association or partnership, or a lessee thereof, which provides only (a) private telecommunications service . . . (B) the one-way transmission of video programming or other programming services to subscribers, (C) subscriber interaction, if any, which is required for the selection of such video programming or other programming services, (D) the two-way transmission of educational or instructional programming to a public or private elementary or secondary school, or a public or independent institution of higher education, as required by the Department pursuant to a community antenna television company franchise agreement, or provided pursuant to a contract with such a school or institution which contract has been filed with the Department, or (E) a combination of the services set forth in subparagraphs (B) to (D)." Conn. Gen. Stat. § 16-1 (a) (25), as amended by Public Act 94-83.

fund the state's Lifeline Program. By definition, this includes providers of commercial mobile radio service (CMRS) (including cellular service and paging service), personal communications service (PCS), specialized mobile radio (SMR) service, and other wireless telecommunications services.¹⁴

BAMM has indicated its support for the Lifeline Program; however, it continues to express its view that the Department lacks the authority to assess cellular carriers for Lifeline funding.¹⁵ BAMM states that while it is willing to contribute to the program on a voluntary basis or by way of an increase to the price for services provided to all telecommunications customers by local exchange providers, any effort to mandate compulsory contributions by the cellular carriers via a direct surcharge "tax-type" mechanism will be met with objection. BAMM Position Paper, p. 2.

In support of its position, BAMM cites the Budget Reconciliation Act of 1993, Pub. L. 103-66 §6002, 107 Stat. 379 (1993) (1993 Budget Act), which provides:

¹⁴ This view is supported by numerous participants in this proceeding. See for example, OCC Position Paper, pp. 6 and 7; AG Position Paper, p. 9; MCI Written Exceptions to the First Draft Decision, p. 1, Sprint Position Paper, p. 2; TCG Position Paper, p. 7; NECTA Position Paper, p. 9; and Lightpath Position Paper, p. 4. BAMM, Springwich Cellular Limited Partnership and Message Center Beepers, Inc. object to the Department's conclusion that commercial mobile radio service providers are telecommunications companies. Each concedes that the definition of "telecommunications service" may be read to include CMRS and that a "telecommunications company" is defined by statute as "a corporation, company, association, joint stock association, partnership or person or a lessee thereof, which provides telecommunications service." Conn. Gen. Stat. §§ 16-1 (a) (25) and 16-247a (b) (6), as amended by Public Act 94-83. Each argues, however, that Public Act 94-83 did not contemplate inclusion of commercial mobile radio service (CMRS) providers as "telecommunications companies." The Department disagrees. The plain language of Conn. Gen. Stat. § 16-247c (a), as amended by Public Act 94-83, recognizes that commercial mobile telecommunications service is a "telecommunications service" and further recognizes the state's limited authority over CMRS providers (i.e., the state can only regulate CMRS to the extent permitted by the federal government). The statutory framework, therefore, requires that all telecommunications companies, including CMRS providers, fund the Lifeline Program and the Universal Service Program. Conn. Gen. Stat. § 16-247e, as amended by Public Act 94-83. Likewise any telecommunications company, including a CMRS provider, affected by a Department proceeding may be subject to payment of consultant fees for such proceeding. Conn. Gen. Stat. § 16-18a, as amended by Public Act 94-83. Other provisions of Public Act 94-83, however, apply only to telephone companies, to **certified** telecommunications companies or to both. See e.g., Conn. Gen. Stat. §§ 16-247c (certification), 16-247f (initial classifications, reclassifications and tariff filings), 16-247g (maintenance of accounts), 16-247h (use of public right-of-way), 16-247k (alternative regulation), and 16-247l (access to occupied buildings). CMRS providers are neither a telephone company nor a certified telecommunications company. The legislature obviously recognized that the definition of telecommunications company encompassed more than telephone companies and certified telecommunications companies. Therefore, where the legislature intended that only telephone companies and certified telecommunications companies be subject to a particular provision, the legislature so limited the applicability of the provision. On the other hand, where the legislature determined that a particular provision, such as the funding of the Lifeline Program, should be a term and condition applied to all telecommunications companies, the legislature used the broad term "all telecommunications companies." The conclusion that CMRS providers are telecommunications companies is not inconsistent with Public Act 94-83.

¹⁵ It is interesting to note that during oral argument, BAMM stated that its customers would be entitled to participation in the Lifeline Program if such customers met the eligibility requirements. If BAMM and its customers are to reap the benefits of the Lifeline Program, BAMM must contribute to the program on an equitable basis as determined by the Department.

. . . no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

Id. BAMM interprets the 1993 Budget Act as precluding the Department from assessing cellular carriers for Lifeline funding unless and until the Department finds the cellular service to be a substitute for land line telephone exchange service for a substantial portion of the communications within Connecticut.

The Department does not agree with BAMM's interpretation of the 1993 Budget Act. While the federal legislation prohibits states from regulating the entry of and the rates of cellular carriers, states are not prohibited from regulating the other terms and conditions applicable to these carriers. The contribution to the Lifeline Program is a term and condition of providing telecommunications service that is placed on all telecommunications companies doing business in Connecticut. As the Department said in Docket No. 93-08-07, a Lifeline funding mechanism would not impose on the cellular carriers any entry or rate requirements. Therefore, the Lifeline funding responsibility is a condition of providing telecommunications service in Connecticut, consistent with the 1993 Budget Act, and therefore, subject to the Department's regulatory jurisdiction. Given that the Department is not attempting to regulate entry or rates of the cellular carriers, the Department need not reach in this proceeding the question of whether cellular services are a substitute for land line telephone exchange service under the terms of the federal legislation.¹⁶

¹⁶ The federal legislation's reference to entry requirements is best interpreted to mean the requirement to serve aspects of universal service. In interpreting a statute, the Department must "assume that a reasonable and rational result was intended by the promulgating legislature." Windham First Taxing District v. Windham, 208 Conn. 543, 553, 546 A.2d 226 (1988). Additionally, "[t]he unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result." State v. Campbell, 180 Conn. 557, 563, 429 A.2d 960 (1980). Although the federal legislation precludes states from regulating the entry and rates charged by cellular carriers, it carves out an exception for the state preemption "where such services are a substitute for land line telephone exchange service for a substantial portion of the communications" in the state. The 1993 Budget Act thus recognizes that where cellular is a substitute for land line local exchange service, state commissions need the ability to place the obligation to serve and accompanying requirements on a cellular carrier to achieve the advantages inherent in having its residents connected to an information infrastructure. The Department need not even address that exception in the current proceeding, because requiring a Lifeline contribution does not constitute an attempt to regulate the entry of or rates charged by cellular carriers. Rather, as discussed above, requiring a Lifeline contribution constitutes the imposition of a

In light of the above, the Department will amend its existing Lifeline Program to extend funding obligations to providers of commercial mobile radio service (CMRS) (including cellular service and paging service), personal communications service (PCS), specialized mobile radio (SMR) service, and other wireless telecommunications services, effective immediately.¹⁷

2. The Funding Mechanism

Currently, the existing Lifeline Program is funded by means of an assessment on all certified telecommunications companies and the telephone companies according to their proportionate market share, measured by total intrastate revenue as defined in Conn. Gen. Stat. § 16-49.¹⁸ In Docket No. 93-08-07, the Department determined this to be an equitable mechanism, as it broadly apportions the funding burden. This mechanism utilizes data that is either routinely calculated or, can be reasonably estimated. Although some of the data is competitively sensitive, its confidentiality can be maintained through protective orders issued by the Department and non-disclosure agreements entered into by those who require such data for billing and collection purposes.

Several participants in this proceeding argue that Lifeline Program funding should be based on net intrastate common carrier revenues.¹⁹ Net intrastate common carrier revenues are defined as a carrier's total intrastate revenues, less payments to other carriers (LECs) for input services (e.g., access). As stated above, one of the criterion used by the Department in determining an appropriate funding mechanism for Lifeline Service in Docket No. 93-08-07 was that the mechanism be fair. Docket No. 93-08-07 January 26, 1994 Decision, p. 3. Similarly, Section 5(a)(2) of the Act requires that the Department "establish a Lifeline Program funded by all telecommunications companies on an equitable basis, as determined by the Department." The Department finds that funding the Lifeline Program based on a "net" revenue basis would violate Section 5(a)(2) of the Act that all service providers be treated on an equal basis. Funding the Lifeline Program based on net intrastate revenues would further reduce

term and condition of providing a telecommunications service that is imposed on all telecommunications companies. Moreover, while a cellular carrier may, in its discretion, recover its Lifeline contribution through the rates charged its customers, such recovery is in no way required by the Department. With this Decision, the Department is merely effecting the legislature's intent that as a term and condition of providing telecommunications services in Connecticut, all telecommunications companies shall fund the Lifeline Program.

¹⁷ In Docket No. 94-08-02, Application of the Southern New England Telephone Company to Offer a Generic Wireless Interconnection Service, the Department determined that SNET should recover from generic wireless interconnection (GWI) subscribers that service's proportionate share of SNET's TRS and Lifeline Program costs. Decision, January 11, 1995, p. 18. For GWI subscribers, the amount of the GWI surcharge will be subtracted from the assessment imposed pursuant to the funding mechanism established herein.

¹⁸ Under the current Lifeline Program, pursuant to the Department's request, BMM and Springwiche Cellular L.P. each contribute \$10,000 per year for the Lifeline Program.

¹⁹ MCI Position Paper, p. 7; Sprint Position Paper, p. 2; TCG Position Paper, p. 7; and Lightpath Position Paper, p. 4.

assessments to non-LEC participants while placing a still greater funding burden on the LECs and their general customers. In the Department's opinion, funding the program in this manner would not be fair, would not be equitable and would not be consistent with the Act. Accordingly, the participants' suggestion to base funding on net intrastate common carrier revenues is hereby rejected. It is for these same reasons that the Department also rejects the recommendation that the Department establish a minimum threshold (based on the carrier's absolute size or market share).

In light of Public Act 94-83 and the opportunities created by its commitment to broader participation in Connecticut's telecommunications market, the Department has determined that the use of total gross revenues generated in Connecticut (intrastate and interstate) by the respective provider offers the best basis for calculating telecommunications company contributions.²⁰ This funding approach better reflects the real economic value to each of the companies of participation in the Connecticut market. While this funding approach may reduce the level of funding required by Connecticut's LECs and shift some additional funding obligation to new market entrants, it is consistent with establishing a "level playing field" and cost-incurred accounting methodologies. Therefore, full compliance with the Act's commitments to fair and equitable treatment of all participants requires that funding be based on each telecommunications service provider's gross Connecticut revenues without normalization for either payments to other providers or for intrastate/interstate classifications.

G. LIFELINE PROGRAM COST RECOVERY

Under the current Lifeline Program, LEC recovery of the costs of providing Lifeline and TRS are recovered through a per exchange line rate element entitled the Connecticut Service Fund. Only the LEC basic exchange service's respective share of Lifeline and TRS costs are recovered from customers while the balance of the costs are recovered from telephone company shareholders. OCC recommends that telecommunications company Lifeline cost recovery mechanisms be limited so that an inequitable burden of these costs are not placed on residential and small business local exchange customers. The Department concurs and notes that Connecticut's LECs are currently limited to the amount of Lifeline costs that can be recovered from their local exchange customers. The Department reaffirms in this proceeding its belief that to recover Lifeline Program costs entirely from one body of customers would be totally inequitable. The Department continues to believe that the Lifeline Program will have a positive impact on the range of services offered by telecommunications companies. Therefore, the Department will authorize telecommunications companies to recover

²⁰ MCI argues that, because the Department lacks jurisdiction over interstate-only carriers, basing the contributions on total gross interstate and intrastate revenues would preclude an assessment based on interstate revenues from interstate-only carriers, while requiring an assessment based on both interstate and intrastate revenues from companies that provide both interstate and intrastate service. MCI Written Exceptions to First Draft Decision, p. 2. The Department's funding mechanism picks up those interstate-only carriers through the revenues generated by facilities-based carriers. The facilities-based carriers have the discretion to recover the contribution through the price charged for their resale offering.