as LECs are able to demonstrate that the particular switches they use have a significantly higher per-line cost than the national average. Any DEM weighting program should also contain a sunset provision to encourage LECs to invest in more efficient switching equipment.

Finally, the Commission should not use Census Block Groups to determine high-cost eligibility. Instead, costs should be determined on a state-wide area basis, and any federal assistance should be distributed to those states whose costs are substantially above the national average. Once this allotment is made on a state-wide basis, distribution and administration of the fund should be left to the states, based upon overall federal guidelines. States should have the right to use any reasonable basis for this dispersal as appears appropriate for that state. Besides better allowing for local needs than a micro-managed federal program, allowing the states to distribute the funds will avoid duplication, because many states already administer their own universal service programs.[5]

II. Dial Equipment Minutes Weighting Rules

The Commission acknowledges that the assistance afforded by DEM weighting is based on the untested assumption that the switches small LECs use have higher per-line costs than switches used by larger LECs.[6] Unless that assumption can be documented, the Commission should not assume that small LECs have higher per-line costs than large LECs and automatically

[5] As the Commission requests, the remainder of these Comments is organized in a manner that parallels the headings in the Notice. *Id.* at ¶ 8.

[6] *Id.* at ¶ 9.

allow DEM weighting. Any support that is retained should be based upon the extent of actual use of high-unit cost switches.[7] In addition, any DEM weighting support should include a sunset provision as an incentive for LECs with high-cost switches to upgrade to more efficient equipment.

If the DEM weighting adjustment is retained, even temporarily, the implementation mechanism should be changed. Currently, the DEM weighting subsidy is hidden in the LEC's interstate switched access charge rates by allocating a higher percentage of the LEC's switch costs to the interstate jurisdiction. In a competitive environment, all subsidies should be explicit so that the amount can be easily quantified and adjusted as public policy requires. Therefore, the amount of any needed high-cost switch support should be provided by a direct billing to interexchange carriers of separately-identified DEM support rather than through the LEC's access charges.

III.A Use of High-Cost Credits

The Commission's proposal to distribute assistance in high-cost areas through use of high-cost credits is designed to help ensure that subsidies to customers in those areas are explicit and quantifiable.[8] Its companion proposal to examine local service costs on a Census

[7] The Commission suggests a high-cost test based upon the average switching cost per line in a study area. *Id.* at ¶ 13. Bell Atlantic suggests, as an alternative, that the Commission determine the average switching cost per line for certain types of high unit-cost switches, then permit DEM weighting only for the number of lines that actually use those switch types. This will target DEM support to the actual lines for which switching costs are substantially above the national average.

[8] *Id.* at ¶¶ 19-22.

Block Group basis purportedly would target relief to high-cost areas far more precisely than the existing study area-wide calculation of costs.[9] Both proposals, however, have the perverse effect of potentially increasing the size of the Universal Service Fund ("USF"). Additionally, the Census Block Group proposal could be expensive and complex to administer. Revisions should be made to both.

In the Notice, the Commission asks whether to extend high-cost credits to new entrants in order to encourage competitors to provide local service in high-cost areas and to give subscribers a choice of local carriers.[10] Use of such credits in a competitive environment could dramatically increase the size of the fund needed to subsidize high-cost services, because high-cost credits would become available to finance investment in inefficient duplicate infrastructures. This economically unsound investment is unlikely in the absence of subsidies. If several carriers construct redundant networks and each serves only a portion of the subscribers in an area, the cost to serve each subscriber would increase drastically, and far higher subsidies would be needed to retain the same subscriber rates. A possible "cure" to that problem, capping the fund, might not yield sufficient revenue to keep rates close to their existing levels and could result in substantial local rate increases. Contrived "competition" which causes either the subsidy fund, or local rates, to rise sharply is not a result that serves the public interest.

If, however, the Commission chooses to encourage uneconomic investment by making high-cost credits available to fund construction regardless of whether an unsubsidized

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[9] *Id.* at ¶ 23.

[10] *Id.* at ¶¶ 20-21.

marketplace could support additional service providers, it should ensure that all such carriers operate under the same set of rules. The Commission proposes, however, only that all carriers be required to offer at least one generally-available residential service in a geographical area.[11] Instead, it should require any new entrant receiving high cost funds to undertake the same service obligations as the incumbent with which it seeks to compete. This generally means that the new entrant will need to construct its own facilities-based system that is capable of providing ubiquitous single-party residential and single-line business dial tone services, with access to directory assistance and 911 (where available) to all residences and single-line businesses in the target area. This requirement will also help to prevent competing providers from "cream-skimming" the high-cost areas by serving only relatively lower-cost subscribers in the high-cost areas, then collecting high-cost credits based upon the average loop cost.

In addition, the Commission and state commissions should have the ability to monitor carriers receiving high-cost credits to ensure that the credits are being used to lower local rates. For this to happen, all carriers receiving high-cost credits should be required to keep similar accounts. This means that new entrants must, to the same extent as the incumbent provider, keep accounts on a basis equivalent to the Part 32 Uniform System of Accounts and separate their interstate and intrastate costs in a manner similar to that specified in the Part 36 Separations Rules. Similarly, if the costs of all carriers serving an area are taken into account in determining high-cost areas, all such carriers must develop their costs the same way.

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[11] *Id.* at ¶ 26.

The Commission's proposal to aggregate all lines served by a LEC in all study areas and deny relief if the average per-subscriber assistance is less than $1.00,[12] is anticompetitive and unwarranted. Although that proposal would reduce the size of the subsidy fund, it could result in subsidies to one set of competitors -- new entrants that do not choose to serve large low-cost areas -- while placing unsubsidized incumbents at a competitive disadvantage.[13] Just because an incumbent is "financially sound" does not justify handicapping that LEC's ability to compete, as the Commission appears to assume.[14] Nor does it follow that high-cost areas served by an incumbent LEC do not need assistance, or that competitive pressures will allow the LEC to subsidize rates in those areas with revenues from low-cost areas.

The Commission should not adopt its proposal to use Census Block Groups, which typically serve only 400 households,[15] to identify high-cost areas and the cost of serving those areas. As the Commission acknowledges, use of such a small measurement area could substantially increase the total subsidy requirement and with it the size of the USF.[16] Census Block Groups are rarely conterminous with a central office serving area. It is therefore likely to be difficult and expensive to ascertain the cost of service in each Census Block Group. Also,

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[12] *Id.* at ¶ 45.

[13] When assistance in the one study area served by Bell Atlantic which currently receives USF funds -- West Virginia -- is averaged among the more than 739,000 access lines Bell Atlantic serves in that state, the amount of per-line assistance, while substantial in total dollars, would be less than $1.00 per month.

[14] Notice at ¶ 45.

[15] *Id.* at ¶ 23.

[16] *Id.* at ¶ 75.

because of the large number of Census Block Groups in the United States, the entire system could become overly cumbersome and unwieldy to administer.[17] The area covered by a Census Block Group also does not necessarily correlate to that served by an individual central office or even by a single LEC. As a result, costs will sometimes need to be calculated on an even more granular basis than Census Block Groups, thereby complicating the process still further.

The complexity of attempting to administer a national Census Block Group-based USF program is illustrated by a recent *ex parte* filing in this docket.[18] This model attempts to calculate the "proxy" costs of providing service in each Census Block Group, by weighing a large number of separate factors, each of which has many different variables. Some of the factors, such as population density, switch size and type, and distribution cable capacity, will vary widely over time. This will require the model to be updated frequently and will result in frequent changes in the relative costs of various Census Block Groups. In addition, the model assumes that communications technology is static, because it appears to have no provision for the rapid technological changes that the telecommunications industry is now undergoing. These changes could have a major effect on the costs of providing service in many areas. The Commission should not attempt to administer such a complex process but should leave to each state the determination of whether to use this model or some other approach in developing costs.

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[17] The Commission cites figures showing that there are 220,506 Census Block Groups nationwide. *Id*. at n.32.

[18] Benchmark Cost Model, submitted jointly by MCI Telecommunications Corp., NYNEX Corp., Sprint Corp. and US WEST Inc. (Sept. 12, 1995) ("Cost Model Ex Parte").

Instead, costs should be determined on a overall state basis by aggregating the costs of all local common carriers serving that state. States whose average access line costs substantially exceed the national average may receive payments from the USF based upon the aggregate high-cost credits applicable to the access lines in that state. State commissions should then determine the basis for distribution within their jurisdiction.

The Commission asks whether to superimpose a needs test on top of high-costs in identifying customers that are eligible to receive assistance from the USF.[19] Although targeting high-cost assistance to low-income subscribers is laudable in concept, the additional cost and complexity of administering the USF at the national level through a dual qualification process -- cost of providing service and income -- could outweigh the benefits. Instead, the Commission should confine any USF assistance to high cost states, then allow the states to determine whether or not to overlay a means test onto its distribution mechanism.[20]

III.B Administrative Options

The Commission proposes three options, each with sub-parts, for quantifying the USF fund and for administering its disbursement. Bell Atlantic urges the Commission to adopt a portion of its first option by ascertaining costs based upon reports by all exchange carriers, both

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[19] Notice at ¶¶ 30-31.

[20] The Commission is addressing low-income subscriber penetration issues in a separate proceeding. *See Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, Notice of Proposed Rulemaking*, CC Docket No. 95-115, FCC No. 95-281 (rel. July 20, 1995).

incumbent carriers and new entrants. The second option, use of proxy factors, contains so many variables that either its calculation and administration will be extremely cumbersome, or it will produce inaccurate results, or both. The Commission proposes four sets of proxy factors -- subscriber density, distance from the nearest wire center, terrain, and climate, and asks whether others should be included.[21] Each of these factors has a large number of variables, and the interrelationships among them provide even greater administrative complexity. These concerns are amply illustrated by the size and complexity of the Cost Model Ex Parte, use of which will unnecessarily complicate the USF process and sharply increase the administrative costs.

On the other hand, the Commission has since its inception routinely relied upon carrier-reported cost data for a myriad of regulatory purposes. There is no reason to expect that the data reported for USF would be any less reliable than the data used to determine tariff rates, price cap sharing, rates of return of non-price cap companies, and for the many other uses the Commission makes of the vast quantities of data the LECs are required to report, so long as all carriers are required to report costs in the same manner.

Once the Commission calculates the USF amount to be distributed to each eligible state, the distribution of the USF amounts should be administered by the states, as proposed in Option 3, based upon Commission-prescribed guidelines. Many states already administer intrastate universal service funds, and it would be wasteful to duplicate the distribution mechanism.

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[21] Notice at ¶¶ 64-69.

IV.A Least-Cost Bidding

In the Notice of Inquiry phase of this proceeding, the Commission asks for comments on use of competitive bidding to select the entity that will serve as the "essential carrier" or "carrier of last resort" in a Census Block Group.[22] The issues of what carrier or carriers should provide local exchange service in a given geographical area, how that carrier or carriers should be selected, and what service obligations they have are left exclusively to the states under Section 2(b) of the Communications Act.[23] Currently, some thirty-five states are conducting local competition proceedings, and they should be permitted to resolve those proceedings based upon local conditions and needs, with which they are most familiar. Accordingly, the Commission should not adopt rules or policies relating to local "essential carriers."

IV.B Other Long-Term Issues

The Commission asks whether it should address other long-range universal service questions at this time.[24] It points out that pending legislation would require a comprehensive review of universal service issues in conjunction with the states.[25] Long-term universal service

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[22] *Id.* at ¶¶ 83-87.

[23] 47 U.S.C. § 152(b).

[24] Notice at ¶ 88.

[25] *Id.*

issues are closely interrelated to access charge restructuring and should, therefore, be addressed in the context of a comprehensive access charge proceeding. As Bell Atlantic pointed out in its comments on the initial Notice of Inquiry, there are several pending petitions asking for such a comprehensive review, and universal service should reasonably be addressed in a rulemaking initiated in response to those petitions.[26]

V. Conclusion

The proposals that Bell Atlantic sets out above will keep the USF at reasonable levels, target assistance to high-cost study areas, allow competition, and help preserve a level playing field.

Respectfully Submitted,

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October 10, 1995

[26] Comments of Bell Atlantic at 2-8 (filed Oct. 28, 1994).

COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	
and Policies to Increase Subscribership and	)	CC Docket No. 95-115
Usage of the Public Switched Network	)	

COMMENTS OF BELL ATLANTIC

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September 27, 1995

TABLE OF CONTENTS

Before the
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In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	
and Policies to Increase Subscribership and	)	CC Docket No. 95-115
Usage of the Public Switched Network	)	

COMMENTS OF BELL ATLANTIC[1]

I. Introduction and Summary.

With high telephone subscribership in the United States and a steady increase over the past decade, there is not a nationwide deficiency that requires federal intervention. Instead of adopting expensive and unnecessary national programs, the Commission should work with the states as appropriate to coordinate existing federal programs, such as Link-up America and Lifeline assistance, with the ongoing efforts of the states to ensure that subscribership levels remain high and that any pockets of low subscribership that may exist are remedied with solutions tailored to the unique needs of those areas.

Overall, telephone subscribership has shown a steady increase in the decade since divestiture, rising from 91.6% in 1984 to nearly 94% today. Subscribership in Bell

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

Atlantic's seven jurisdictions is currently close to or above this national average. These high penetration levels result from such factors as local service rate structures, public education programs, state initiatives, and federal programs such as Link-up and Lifeline.

The state commissions in Bell Atlantic's region are continuing to address the subscribership issue in varying ways, reflecting the varying demographics of the local population and prevalent local economic and competitive conditions. The Commission should continue to encourage such local programs, monitor the effectiveness of various approaches, and work with state commissions to help ensure that their programs continue to meet the needs of their citizens.

Conversely, the Commission should not attempt to prescribe uniform national requirements for these local services, such as prohibiting the denial of dial tone service for non-payment of toll calls and prescribing deposit requirements. Instead, state commissions should continue to determine what programs are appropriate to meet the needs and conditions prevailing in their particular jurisdictions. State commissions are best able to weigh the trade-offs in deciding which programs will best achieve or maintain high subscriber penetration in their individual states. A Commission-prescribed nationwide program, by its nature, cannot be as effective as separate targeted efforts designed to meet varying state and local conditions.

Moreover, the Commission should recognize that some of the more complex and expensive state programs referred to in the Notice[2] have not been as

[2] ***Notice of Proposed Rulemaking***, FCC No. 95-281, CC Docket 95-115 (rel. July 20, 1995) ("Notice").

successful as they may appear on the surface, while some of the simplest and least expensive programs have been the most successful. For example, subscribership has somewhat increased since the advent of Pennsylvania's complex program, known generally as "Chapter 64," but at a slightly slower rate than the national average. Moreover, Pennsylvania's program has not been without considerable cost; Bell Atlantic has experienced a nearly 400% increase in uncollectables and a sharp rise in administrative expenses. By contrast, Virginia, with one of the highest penetration levels in the country and rapid subscribership growth, has implemented a much less expensive and intrusive program. Accordingly, a program like Pennsylvania's Chapter 64 may not be cost-effective in all states, and the Commission certainly should not prescribe such an elaborate program, with all its hidden costs, nationwide. Instead, each state should continue to be free to conduct its own cost-benefit analysis in light of local needs.

II. Subscribership Solutions Should be Based on Local Needs.

As the Commission recognizes, "a 100 percent penetration level is not possible."[3] Certain people prefer not to have telephones in their residences or are satisfied with access to public phones or telephones at their place of employment to meet their communications needs. Others have no permanent dwelling and have access to telephones at shelters or other community access locations. Still others find cellular service an adequate substitute for landline service. As a result, many states may already be at or near their maximum feasible penetration levels. Expensive programs designed to increase

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[3] *Id.* at ¶ 44.

subscribership will not significantly increase penetration levels in those states, but they would be costly in terms of increased administration and uncollectables.

Each Bell Atlantic jurisdiction has implemented its own customized program designed to retain or increase local telephone subscribership and each continues to monitor and adjust its program to improve its effectiveness. Some states have prescribed budget calling services for those who want access to telephone services but originate few outgoing calls. Others have established more elaborate mechanisms, with calling plans aimed at specific customer groups. Such state-by-state program development and implementation is appropriate, because conditions vary widely. A program that meets the needs of one state may not be appropriate in another. Moreover, Bell Atlantic's experience has been that the simpler, less expensive programs have been the most successful. This can be seen by a brief review of the widely divergent programs in several of Bell Atlantic's jurisdictions.[4]

Pennsylvania's "Chapter 64" program is administratively complex and expensive to administer. It requires separate bill balances for different services and contains detailed rules regarding denial of service (including denial of service for non-payment of toll), notification and negotiation, and payment schedules. As a result, uncollectables have increased nearly 400% and administrative costs have risen more than $24 million per year. Yet subscriber penetration under Chapter 64 has increased at a slightly lower rate than the national average, and at least some of this increase can be

[4] A more detailed discussion of these programs appears in the Appendix.

attributed to factors unrelated to Chapter 64, such as the availability of measured usage plans and voluntary toll restriction.

Delaware has adopted a program similar to that in Pennsylvania. The subscribership rate there, however, has remained flat under the program, while uncollectables have shot up.

The District of Columbia has tried a different approach -- a series of very low priced services for certain segments of the low-income community and a service with mandatory toll restriction that allows disconnected customers to remain on the network. Until very recently, however, the District's penetration rate steadily declined under this program. Bell Atlantic is working closely with the Public Service Commission and community groups to continue to improve the penetration rate.

By contrast, Virginia's program is limited to a low rate for individuals who qualify for Medicaid or Food Stamps, combined with voluntary community education efforts which Bell Atlantic has initiated in cooperation with state and local officials. This program is relatively simple and inexpensive to administer. Yet Virginia has achieved the highest penetration rate in Bell Atlantic and one of the highest in the country, and its rate of increase exceeds the national average.

This experience demonstrates that no one solution is appropriate nationwide, and that each approach has its costs and benefits. While the results of these customized programs are not always as favorable as originally envisioned, the state commissions are in the best position to assess local needs and to develop or adjust programs based upon the unique conditions faced in that jurisdiction. Moreover, the cost to the public of an inappropriate program, both in terms of uncollectables and administrative expenses, may far outweigh the benefits. Accordingly, the Commission should not attempt to impose a nationai program on all state jurisdictions. Instead, it should continue to monitor the situation, work with the state commissions, individually and through NARUC, and advise local commissions of the results of programs that other states have adopted.

If some additional formal action appears warranted, the Commission should consider convening a federal-state joint conference under Section 410 (b) of the Communications Act.[5] This vehicle can provide a forum for state and federal commissioners to trade ideas and create innovative solutions to help retain or increase subscribership in targeted states or localities.

III. Voluntary Educational Efforts Are the Key to Subscribership.

Properly targeted voluntary educational efforts can be more effective than complex programs to help maintain high subscriber penetration levels. As the Commission acknowledges, some eligible consumers may be unaware of the availability of certain programs and services to keep them on the network.[6] Not only might they have no knowledge that they are eligible for low-income programs such as Link-up America and Lifeline assistance, but they may not know that a toll restriction service is being offered.

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[5] 47 U.S.C. § 410 (b).

[6] Notice at ¶ 46.

The homeless may not be aware that shelters and other community service points provide access to local telephone service and, in some cases, voice mailbox capabilities. Other customers who are not eligible for subsidized services may be unaware of low-cost local dialtone options that may meet the needs of persons who make relatively few local calls.

Community education efforts aimed at such targeted groups as low-income individuals and families and the elderly can help ensure that the target population learn about available programs. Educational efforts can include speakers at community meetings; brochures distributed through community service points, such as churches, schools, homeless shelters, and welfare and Social Security offices; and training programs for such outreach personnel as clergy, other community leaders, and social workers. To have maximum effect such programs should be developed jointly by the telephone company, the state commission, local government officials, and community groups.

Virginia, with Bell Atlantic's highest subscribership, is a case in point. Bell Atlantic-Virginia produced a very effective video for senior citizens on what telephone services are available and how best to use them. Bell Atlantic also developed a brochure with similar information that is disseminated through community organizations and associations and at the state fair and other exhibitions. These educational efforts have produced a very favorable reaction from the target community.

Accordingly, the Commission should work with the industry, with state commissions and local governments, and community and consumer organizations to help develop or augment voluntary community education programs designed to spark awareness of available services, programs, and pricing options.

IV. Some of the Specific Measures Identified in the Notice Are Not Only Contrary to Sound Policy, But Also Exceed the Commission's Jurisdiction.

The Commission has identified in the Notice a variety of possible regulations designed to retain or increase subscriber penetration. Bell Atlantic has demonstrated above why adoption of these or other programs should be left to the states. In addition, some of the specific proposals are under exclusive state jurisdiction, and the Commission would be exceeding its authority if it adopted them.

For example, one proposal would prohibit exchange carriers from denying local service for non-payment of interstate toll charges.[7] As shown above and in the Appendix in the description of individual state plans, similar prohibitions have had little effect on subscribership in states such as Pennsylvania and Delaware where they have been adopted, but they have resulted in skyrocketing uncollectables and, in some cases, administrative costs.[8] These cost increases may force some ratepayers to subsidize other customers' unpaid toll charges. The record does not support a finding that the benefits, if any, of a prohibition on termination of local service for nonpayment of toll charges exceeds these additional costs.

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[7] *Id.* at ¶ 12.

[8] Increases in subscribership in Pennsylvania have failed to keep pace with the nationwide average and Delaware's penetration has remained flat since its program was initiated. By contrast, Virginia and West Virginia, that do not prohibit denial of local service for non-payment of toll charges, have experienced increases in subscribership between 1984 and March 1995 that exceed the national average, and the penetration level in Virginia is among the highest in the country.

This is particularly the case given that some state commissions have found that a prohibition on denying local service for non-payment of toll or other charges ("DNP") would affirmatively harm all ratepayers. For example, in 1992, the Maryland Public Service Commission affirmed its Hearing Examiner's finding that

> the record is clear that the elimination of DNP will impose a negative economic burden on C&P [now Bell Atlantic-Maryland, Inc.] which will ultimately be borne by the timely paying ratepayers who are the vast majority of customers of C&P. The increased costs to C&P along with the loss of attribution revenues and potential loss of IXC billing contracts or likely reduction in those contracts will undoubtedly create pressure to increase rates for basic service -- a result that cannot be construed to be in the public interest.[9]

Other state commissions have reached similar conclusions.[10]

Even if a prohibition on DNP were good policy -- which it is not -- imposing such a prohibition would exceed the Commission's authority. DNP specifies the

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[9] ***Investigation by the Commission on its own motion into the continuance of the disconnection of local telephone service for non-payment of charges for long distance service provided by interexchange carriers***, Case No. 8305, Proposed Order of Hearing Examiner at 9 (Md. P.S.C. May 22, 1992); ***aff'd***, Order No. 70169 (Oct. 30, 1992).

[10] ***See, e.g., Chesapeake and Potomac Telephone Company***, TT86-11, Order No. 9820. 13 D.C. P.S.C. 58 (D.C. P.S.C. January 27, 1992) ("the Commission has determined that the practice of DNP is in the public interest"); ***Northwestern Bell Telephone Company's Proposal to Introduce Selective Carrier Denial as a Permanent Tariff Offering in Minnesota and An Investigation of Disconnection Policies of Local Exchange Companies***, Docket Nos. P-421/M-88-98 & P999/DI-89-921, Order Accepting Reports and Closing Dockets at n.1 (Minn. P.U.C. May 8, 1990); ***New England Telephone and Telegraph Company***, 78 P.U.R.4th 392 (Vt. Pub. Serv. Bd. 1986); ***Investigation Into Termination of Intrastate Telephone Service for Non-Payment of Interstate Charges***, 124 P.U.R.4th 166 (Conn. Dep't of Pub. Util. Control 1991); ***Investigation of Policy of Permitting Local Exchange Carriers To Discontinue Local Telephone Service For Nonpayment of a Bill To Another Company***, 125 P.U.R.4th 251 (Mich. P.S.C. 1991).

terms and conditions under which a telephone company may discontinue ***local dialtone*** service. The Communications Act, however, expressly denies this Commission jurisdiction over precisely these types of "practices ... or regulations for or in connection with intrastate communications service."[11]

While the Notice suggests that the Commission may have authority over DNP because of its impact on provision of interstate telecommunications services,[12] this suggestion has the issue backwards. A DNP policy specifies conditions under which a telephone company may deny ***local*** service. The service directly affected by the policy is, therefore, intrastate service, which is under the states' exclusive purview.

In fact, the very case cited in the Notice to support possible Commission jurisdiction denies the Commission that authority.[13] In that case, the Maryland Public Service Commission had attempted to prescribe a charge on interexchange carriers ("IXCs") for the right to have local service denied for non-payment of the IXCs' charges. In upholding the Commission's finding that Maryland had impinged on Commission jurisdiction by prescribing a rate for an interstate service, the Court of Appeals distinguished jurisdiction over the ***rates*** charged to an ***IXC*** for such a service from jurisdiction over the right of a LEC to deny a ***customer's local service*** for non-payment of toll charges:

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[11] 47 U.S.C. § 152(b).

[12] Notice at ¶¶ 31-32 & n.43.

[13] ***See Public Service Comm'n of Maryland v. FCC***, 909 F.2d 1510 (D.C. Cir. 1990) ("***Maryland***").

> The state argues that the implications of [the FCC's] position would mean that the FCC would then have jurisdiction to prevent the states from cutting off local service for any reason .... ***But we do not think that follows at all***.... [T]he FCC has recognized the states' strong parallel interest in the conditions under which an individual would have access to local service; ***it has left to the states the decision whether LECs can offer DNP at all. There is thus simply no reason to believe that the FCC will seek to interfere with the states' police power in this respect.***[14]

Consequently, the very case cited in the Notice to support possible Commission jurisdiction over DNP actually denies that jurisdiction.

The same considerations demonstrate that the Commission should not adopt nationwide deposit requirements, another of the measures proposed in the Notice.[15] From a policy perspective, deposit requirements should be addressed at the state level, where they can be tailored to address unique local circumstances. From a legal standpoint, deposit provisions are intrastate tariff conditions that are not subject to this Commission's jurisdiction.[16]

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[14] 909 F.2d at 1515, n.6 (emphasis added).

[15] *See* Notice at ¶ 26.

[16] If the Commission nonetheless attempts to prescribe deposit requirements, or issues recommendations to the states, it should condition lowered deposits on the customer's subscribing to toll restriction and agreeing to a strict repayment plan. If a customer misses payments or eliminates the toll restriction, the exchange carrier should be permitted to increase the deposit.

V. Conclusion.

Accordingly, the Commission should not prescribe uniform national regulations relating to local telephone subscribership. Instead, it should leave program development to the states and localities that are in a far better position to ascertain the needs of their constituents.

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September 27, 1995

APPENDIX

Subscribership Programs In Several Bell Atlantic Jurisdictions

This Appendix consists of a discussion of programs in four of Bell Atlantic's jurisdictions that are intended, at least in part, to increase telephone subscribership. As will be seen, the success of the programs do not necessarily correlate positively to their cost or complexity.

Pennsylvania

Pennsylvania's Chapter 64 program is an administratively complex system that, among other provisions, requires telephone bills to show separate balances for basic local exchange services, toll, and non-basic services and prohibits denial of local service for non-payment of toll or non-basic charges. It also has provisions prescribing fairly protracted notification methods and periods before local service may be denied for failure to pay even local charges.

Although subscribership rates have remained high in Pennsylvania, the increase in penetration since the advent of Chapter 64 has been slightly less than the national average.[1] Pennsylvania entered Chapter 64 with a high subscribership level,

[1] Subscribership levels in Pennsylvania increased by 1.7% from 1984, the last year before initiation of Chapter 64, to March of 1995. Nationwide, penetration in that same period increased by an average of 2.3%. FCC, Com. Car. Bur., Industry Analysis Div., ***Monitoring Report***, CC Docket No. 87-339 (May 1995) ("Monitoring Report"); U.S. Census Bureau, Current Population Surveys (1995) ("Census Surveys").