

Lifeline and Strategies for Maintaining Affordable Telecommunications Services

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National Elder Rights Training Project for the National Legal Resource Center.
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Presenter – Commissioner Geoffrey G. Why

- On June 15, 2009, Governor Deval Patrick appointed Why as the Commissioner of the Massachusetts Department of Telecommunications and Cable (DTC).
- He is also the co-chair of the North American Numbering Council, a Federal Advisory Committee that was created to advise the Federal Communications Commission on numbering issues; and a member of the Section 706 Joint Conference on Advanced Services which advises the FCC on broadband issues.
- In 2012, he was appointed to the Board of Directors of the National Association of Regulatory Utility Commissioners.
- In 2006, Mr. Why was presented the Edward J. McCormack Jr. Award for Excellence by the Attorney General for his work on behalf of Massachusetts consumers.

Presenter – Darlene Wong

- Staff attorney at the National Consumer Law Center focusing on low-income utility consumer issues.
- She has litigated rate and service quality cases involving issues of rate setting, consumer protection, engineering and environmental concerns relating to telecommunications, water, gas and electric companies.
- She is a co-author of NCLC's manual, Access to Utility Service, Fifth Edition, and a contributing author to Collection Actions and Unfair and Deceptive Acts and Practices 2011 Supplement.

Presenter – Olivia Wein

- Staff attorney at the National Consumer Law Center (NCLC) focusing on low income energy and utility issues.
- She is co-author of the fifth edition of NCLC's manual Access to Utility Service and co-author of The Rights of Utility Consumers.
- She serves on the board of directors of the National Low Income Energy Consortium and co-chairs the LIHEAP Coalition. Ms. Wein serves on the Federal Communication Commission's Consumer Advisory Committee.

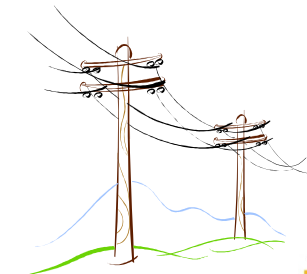
Consumer Protections & Affordability of Telecommunications Service, and Effect of Deregulation on Both



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Introduction and Overview

- What to do when service is inadequate
- What to do when service is unaffordable
- Deregulation – effect on service quality and affordability

Audience Poll

How familiar are you with telecommunications protections for consumers in your state?

- A. Very familiar.** I dream the acronyms, “ETC” and “COLR” and “SQ” in my sleep.
- B. Personal knowledge.** I have personal experience with service quality or affordability issues through one or more cases
- C. Somewhat familiar.** I have no personal experience, but know about service quality and affordability issues.
- D. Newbie.** These ideas are new to me, and I want to learn more.

Reasonable Customer Expectations of Telecommunications Service

- Service that is:
 - Continuous and reliable
 - Adequate for intended communications purposes
 - Non discriminatory
 - Affordable
 - Accessible
- Adequate notice
 - Service affecting changes, such as terminations
 - Changes in rates

COLR Protections, Historically

- Carrier of Last Resort obligations for Landline
 - must provide local exchange service to a customer seeking to be served in the carrier's service area
 - State protection can include billing, termination, notice, service quality standards
- Companies cannot cherry pick and serve only most profitable areas
 - “duty to serve”
 - State Public Utility Commission (PUC) can compel companies to serve rural areas, high cost areas, lower income areas

Landline is Still Necessary

- Over 3.5 million AOL customers use dial-up
 - AOL added 200,000 new dial up customers in 2011
- Why subscribe to Landline?
 - Least Cost Option
 - Dialup speed and service is satisfactory
 - Lack of high speed internet availability
 - Reliable 911
 - Familiarity
- Problems of all-IP network
 - Phone outages with electric outages; 911 accuracy



Addressing Landline Complaints



- Traditionally PUCs
 - Service quality (static, dropped or incomplete calls, outages, customer service)
 - Rates (bill shock, reasonable rates)
 - Billing (incorrect billing, slamming, cramming)
 - Terminations (grounds for, adequate notice)
 - Carrier of Last Resort

Cell Phone – Who Can Help?

- BBB reports highest number of complaints in 2009 was from cell phone industry
- Top wireless complaints to FCC (2004-2008) were by far billing & rates. Then, call quality, contract terms, and customer service.
- FCC specific authority to regulate
- States have limited authority
- State Attorney Generals (E.g., IL)
- Limited action by “private attorneys generals”
 - Arbitration clauses, class action bans, and Concepcion

Wireless Complaints -- FCC



- Few rules
 - Truth in Billing, 47 C.F.R. Section 64.2401
 - Charges must be clear, not misleading
 - Name of service provider for each charge must be clearly identified
 - Clear identification of change in provider
 - Enhanced 911 required
 - Carrier must have ability to provide emergency responders with location and number for person calling 911
 - Portability
 - Consumers can keep phone number when switching wireless carriers, or between LL and wireless
- **No rules for call quality or contract terms!**

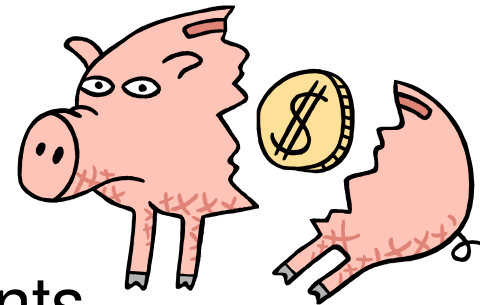
Wireless Complaints -- FCC

- FCC's role is to ***facilitate communication***
 - between consumer and carrier
- Informal Complaints
 - FCC reviews
 - Forwards to carriers for response
 - If response insufficient, FCC contacts carrier again
 - FCC determines when complaint is closed; consumer may not be satisfied and can file Formal Complaint
- Formal Complaints
 - Requires filing fee
 - Rarely used
- Mediation may be available if requested

Wireless Complaints – State PUCs

- Designate eligible telecommunications carriers (ETCs)
 - Allows carriers to receive universal service funds
 - PUCs can impose service conditions before granting ETC designation
- States hesitate to regulate without explicit state legislation
 - Terms and Conditions of Service
 - Includes billing presentation and information, practices and disputes. *NASUCA v. FCC*, 457 F.3d 1238, 1254 (11th Cir. 2006).
 - Rates, but only where market conditions fail (in theory)

Affordability Strategies



- Carefully review billing statements
 - Cramming, slamming, error
- Examine calling patterns, investigate plans
 - Measured service
- Bundled packages (for some, not all)
- Choose one service (landline or cell or VOIP)
- Prepaid phone cards
- Municipal owned BB service
- Enroll in discount programs
- Ask carrier whether payment plan is available

Low-Income Assistance Programs

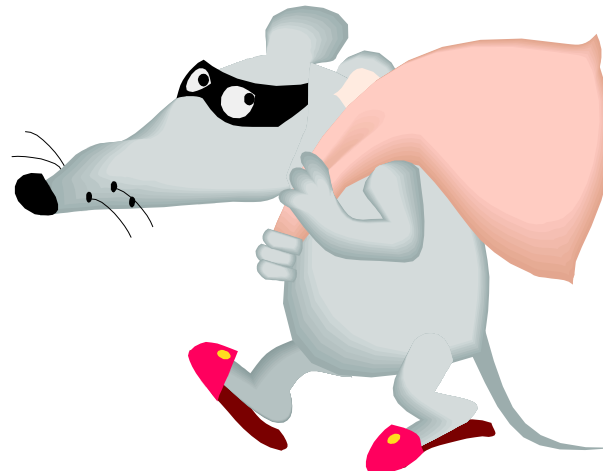
- Lifeline Discount (landline, wireless discount)
 - Applies to landline and wireless telephone service
 - In future, necessary for broadband, as programs below are limited in availability and scope
- Connect to Compete (BB internet discount)
 - Eligibility: child participating in free National School Lunch program; new/non-subscriber; no arrearage
 - Discounted monthly access fee and low-cost computer
 - Training provided
 - 2-3 year offer period
 - <http://connect2compete.org>
- Comcast Internet Essentials (BB internet discount)
 - <http://www.internetessentials.com>, 1-855-846-8376

Slamming

- Look for company logos on your bill that are not familiar or unexpected
- When being solicited, ask for written literature, and say no to phone offers
- Ask your carrier to freeze your service, so that no changes to your service can be made unless made by you.
- If slamming occurred, tell your carrier that you were slammed, that you want to be switched back to your old plan, and charges associated with the switch should be removed from your bill.
- If you have not paid the bill, you don't have to pay first 30 days of service. After that, you pay your authorized rates.
- If you have paid the bill, the slamming company must pay your authorized carrier 150% of what you paid the slamming company, and you get back 50% of the slamming charges.
- File a complaint with the PUC or FCC. (14 states don't process slamming complaints)

Cramming – phone # as credit card

- Be wary of internet sites seeking your phone number
- Look for calls you did not make; seek clarification
- Look for charges for unwanted services; seek clarification
 - “service fee”
 - “other fees”
 - “Voicemail”
 - “mail server”
 - “membership”
 - “monthly fee”
- Ensure that rates charged are accurate
- If charges don’t make sense, call the company to adjust bill and call carrier to remove charges
- Ask for **bill block**
- File complaint with PUC or FCC




When Service is Disconnected

- Challenge a wrongful termination
 - Contact state PUC
- Questions to Consider:
 - Did the company comply with PUC billing procedures?
 - Did the company give adequate notice of termination?
 - If context is bankruptcy (see 11 U.S.C. Section 366):
 - Filing for bankruptcy automatically requires restoration of service or stops a threatened termination for 20 days
 - After 20 days, utility can only terminate if customer fails to pay bills incurred after the bankruptcy filing date
 - However, a deposit or other assurance to the utility may be required for this protection to apply

Deregulation – Effect on Protections



- Deregulation and movement to all IP network has limited/is limiting what state PUCs can do on behalf of consumers
- FCC's USF/ICC Order (carriers lost ETC argument)
- Verizon and AT&T now lobbying state legislatures to lift current and/or future ETC and other obligations to customers
- Recently deregulated states: AL, IN, FL, NC, TX, WI
- Pending bills in states: CA, MA, MI, OH 
- Protections recently preserved in states: NJ, KY

Deregulation– Effect on COLR

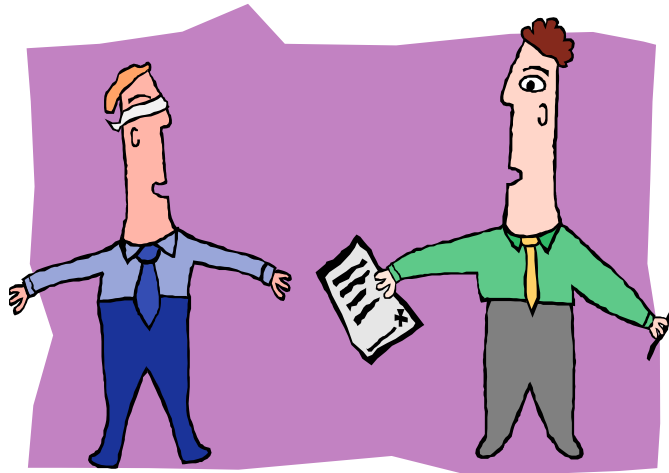
- CA Senate Bill 1161 unanimously passed the Energy Utilities and Communications Committee on April 17, 2012
 - Touted as affirming CA leading role in internet economy
 - Claims that it maintains COLR
 - BUT by restricting PUC from regulating IP enabled voice services, PUC cannot compel service
 - most phone companies use Internet Protocol (IP) in their networks and most phone calls involve the Internet
- Verizon stopping the build-out of FiOS (TV, internet, digital voice)
 - PUCs cannot compel Verizon to build new fiber optic network to serve low income, high cost, or rural areas

Deregulation – Who Can Help?

- FCC not much experience with service quality
 - No SQ rules
 - Complaint process is not adjudicatory
- State PUCs historically have dealt with service quality complaints
 - Adjudication of Formal Complaints
 - Mediation
 - Informal complaints
- Civil Court Action
 - Very expensive for individual complaint
 - Concepcion severely limits more economic class actions

AT&T Mobility v. Concepcion, 131 S. Ct. 1741 (2011)

- U.S. Supreme Court allowed corporations to rely on arbitration clauses in contracts to ban class actions.
 - Arbitration clauses are prevalent in cellular contracts



- Narrows consumer protections in civil courts

We Need “Existing and Evolving Protection,” Rather Than Deregulation’s Promise of “No Protection”



- The importance of telecommunications (or “telephony”) in today’s world cannot be overstated.
- Historically, economic success and livelihoods depended on the ability to access to a canal, railway, electricity or highway.
 - Trade and commerce
 - Travel for work and to obtain goods
 - Electricity enables longer working hours, productivity
- Today, telecommunications or telephony is necessary to economic success and livelihoods
 - Value of the network increases with more people connected
 - Job search online; employer calls
 - Health (doctors) and public safety (911, emergency responders)

Summary

- Traditional landline protections for service quality and affordability remain available to customers in many states, but there is pressure to eliminate them.
- Consumers should enjoy traditional service quality and affordability protections, no matter what technology they use to make a call
 - The nature and purpose of the call for networking, public safety, and economic advancement has not changed
- Deregulation threatens consumer protections in the states. Advocates should investigate, speak up, and protect consumer rights.

Questions

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Lifeline Highlights

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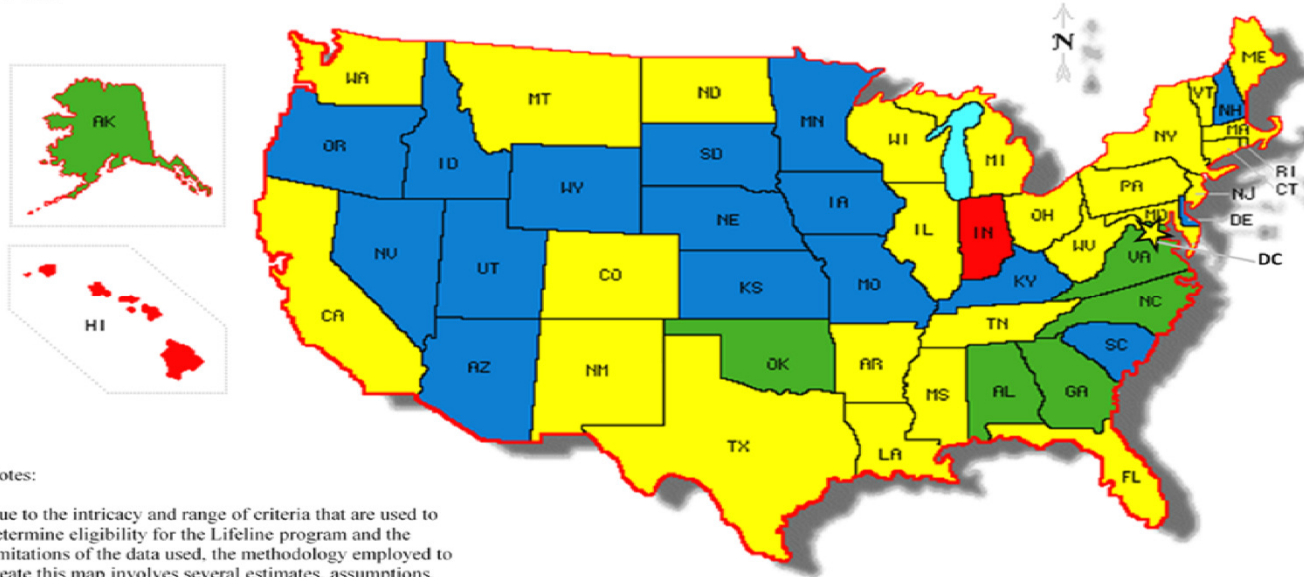
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So what is Lifeline?

- It's a federal low-income telephone assistance program that is one of several Universal Service Programs.
- Federal Lifeline assistance helps customers afford phone service (landline or wireless) through a subsidy for basic service (up to \$10).
- The Lifeline benefit is available to eligible low-income consumers in every state, territory and there is an enhanced Lifeline for consumers living on tribal lands.
- Many states have a complementary assistance program.

2010 Lifeline Participation Rates by State

- - Below 10%
- - 10% - 20%
- - 20% - 50%
- - Above 50%



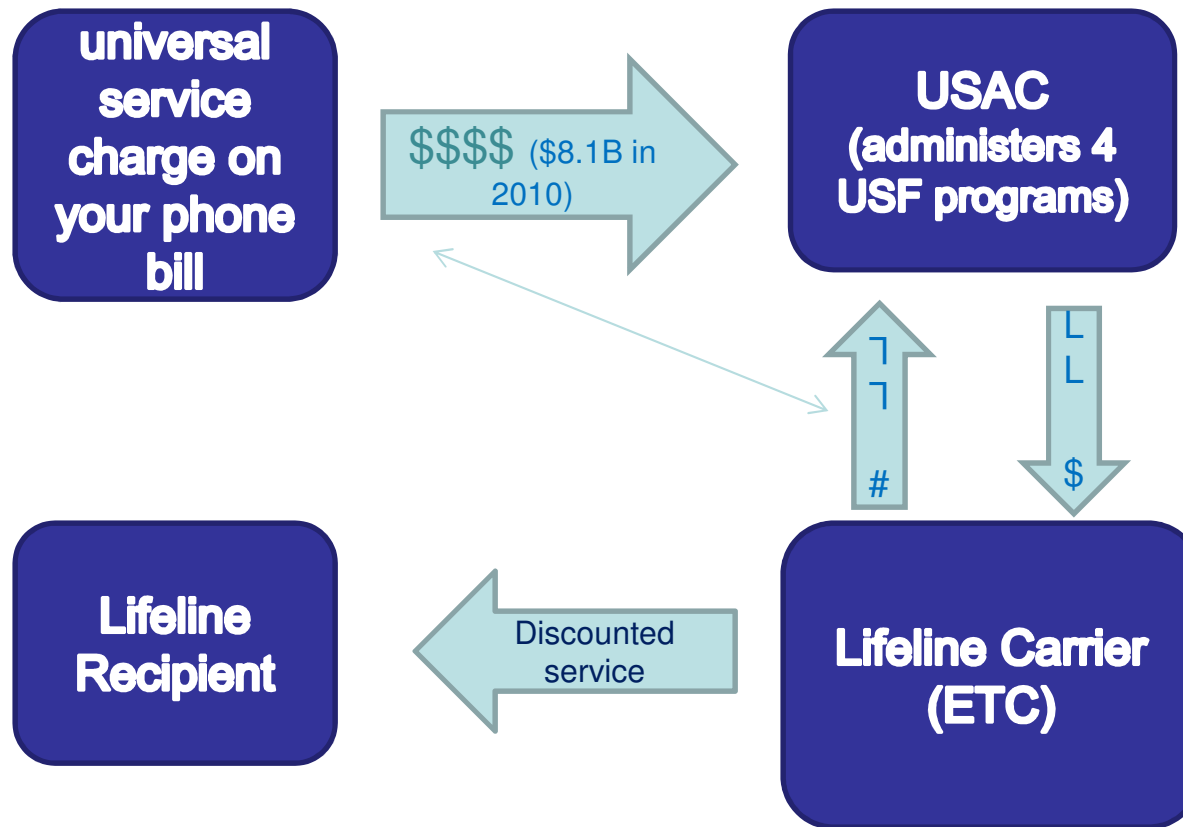
Notes:

Due to the intricacy and range of criteria that are used to determine eligibility for the Lifeline program and the limitations of the data used, the methodology employed to create this map involves several estimates, assumptions, simplifications, and omissions. Therefore, the rates generated on this map should be treated as estimates only.

2-15-11

Source: USAC 2010 Participation Rate By State

How is Lifeline Funded? (\$1.75 B in 2010)



The Lifeline Program is Changing

- The Lifeline program has just been reformed.
- This overview will highlight changes that will affect your low-income clients.
- The overview will also cover some pending issues, including movement towards addressing low-income broadband adoption.

What is covered by Lifeline?

Current/Old Lifeline

- Lifeline is a discount on basic local phone service.
- The federal Lifeline benefit is up to \$10.00, but varies by phone carrier (tiers of support).
- There are landline and wireless carriers who participate in the program (ETCs).

New Lifeline

- “Voice telephony service”; expands past “local” service.
- Set support amount (\$9.25)
- Permits carriers to allow LL benefit on all residential service packages that include voice, including bundles and family shared calling plans.

Who is eligible?

Current/Old Lifeline

- Eligibility varies from state to state.
- States can set eligibility based solely on income or factors directly related to income.
- Federal default eligibility (8 states/2 territories)
- HH income at or below 135% FPG, or
- Participation in Medicaid, SNAP, SSI, Federal Public Housing Assistance; LIHEAP, TANF, NSL Free Lunch Program

New Lifeline

- All states must use, at a minimum, the federal default eligibility criteria (baseline eligibility).
- States may adopt additional program or income criteria.
- NPRM – WIC; establishing eligibility for homeless veterans

New Eligibility and Enrollment Highlights

- One Lifeline Benefit Per “Household”
- Doubling up/group housing process
- Temporary address process
- Moving towards automation for enrollment and verification (Medicaid, SNAP, SSI)
- Numerous certifications and documentation required for all applicants
- All Lifeline customers must verify continued eligibility

PrePaid Wireless Lifeline

- Wireless Lifeline is fairly new, but extremely popular
- The wireless lifeline products vary, but prepaid is the current form
- Characteristics of common prepaid wireless lifeline: federal Lifeline, no deposit, no monthly fees, subsidized minutes reloaded every month, set number of minutes, free handsets
- LL customer must activate service; 60-day inactivation procedure

Duplicates and Database

- Process started in the states to check for duplicate support
- Moving to an automated check for duplicate benefits (National Lifeline Accountability Database)
- Lifeline applicant/recipient: name, address, phone #, date of birth, last 4 of SSN, means of qualifying, start date and termination date for LL (portability)
- Temp and doubling up/group housing process

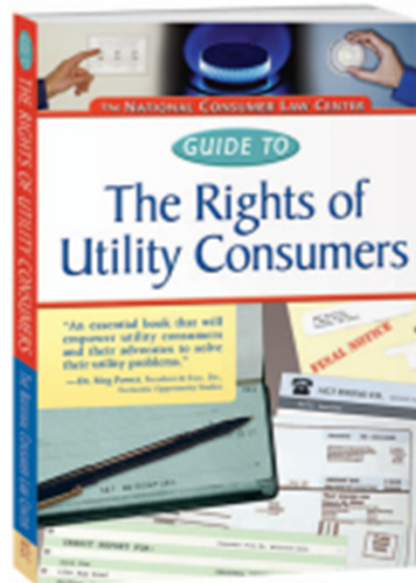
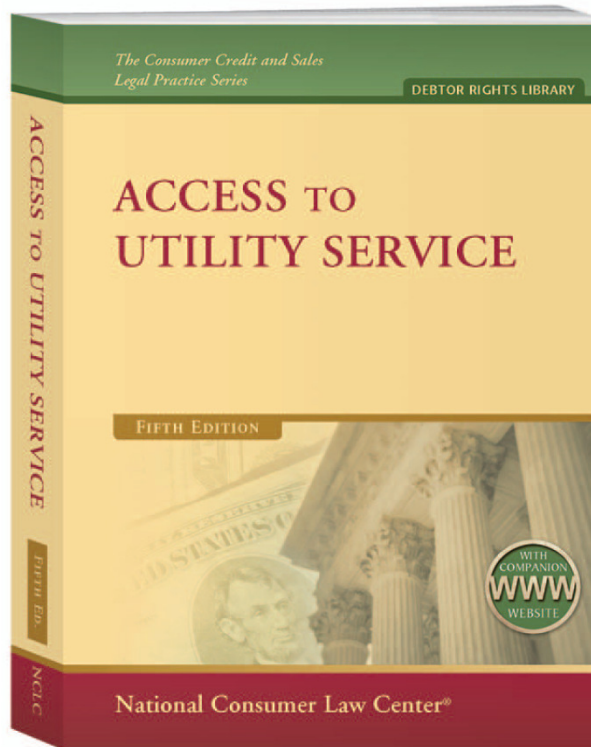
QUESTIONS?



Next Steps

- Low Income Broadband Pilots
- NPRM:
 - Eligibility Database
 - Digital Literacy Program
 - WIC
 - Eligibility for Homeless Veterans
 - Mandatory Application of Lifeline to Bundles
 - Lifeline Support Amount
 - Eligible Telecommunication Carrier Requirements
 - Tribal Lands Support
 - Other

For More Information on Consumer Utility Protections, Programs, and Practices see these NCLC's Titles:



Definitive Legal Manuals and Guides

from National Consumer Law Center

For details, visit the NCLC Bookstore
www.nclc.org

Thank you for your time.

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