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NOTE TO READERS

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CURRENT PROJECT UPDATES

NEW HAMPSHIRE MERGER CASE: RIGHT TO INDIVIDUAL CONSIDERATION

The consolidation of Public Service Company of New Hampshire's information system with the information system of Consolidated Edison takes away important legal rights that have been provided to low-income consumers, according to the testimony of Fisher, Sheehan & Colton, Public Finance and General Economics.

Testifying before the New Hampshire public utility commission (NHPUC) in the PSNH merger proceeding, FSC said that one result of the merger is that PSNH's parent company (Northeast Utilities) and Consolidated Edison will combine their information systems and require their customer service representatives to use uniform platforms through which to interact with their customers. FSC noted that the company's synergy study makes explicit the fact that PSNH will abandon its own data processing platform and move to using a uniform platform provided by Consolidated Edison.

One impact of consolidation into the uniform information system of the merged companies will be to take discretion away from whatever PSNH customer service representatives remain to deliver services to the 70% of New Hampshire's low-income population that is payment-troubled.

FSC cited a litany of consumer protections granted by PUC regulations to New Hampshire customers that will be impeded by the consolidation of the information systems. Whenever the PUC regulations require an exercise of discretion in New Hampshire, the required use of the uniform consolidated data processing system will constrain that discretion.

FSC noted that this discretion is constrained in any one of a number of situation:

1. Decisions within a range: NHPUC consumer protection regulations require PSNH customer service representatives to exercise discretion within ranges. Words such as "up to," "at least," and "not to exceed" confer upon New Hampshire customers a legal right to have decisions made based upon their individual circumstances, and confer upon PSNH customer service representatives a legal obligation to exercise their discretion based upon a consideration of those individual circumstances. FSC considered, for example, NHPUC regulations regarding cash security deposits. The regulations allow the company to impose a deposit equal to no more than two months of billing. After the merger, however, the exercise of this discretion (within the range of \$0 up to no more than 2 times the higher monthly bill) will be constrained by the choices which the uniform data processing system allows.

2. Enabled, not mandatory, actions: FSC also identified areas in which NHPUC regulations *allow* discretionary decisions to be made about which actions or inactions should occur on the part of PSNH customer service representatives. The NHPUC regulations, for example, allow but do not require service termination in the event of nonpayment. The regulations allow, but do not require, the imposition of cash security deposits after nonpayment or consistent late payment. The decision on whether to exercise the discretion rests with a consideration of the individualized circumstances of the New Hampshire customer. After the merger, however, the discretion of the PSNH customer service representative is constrained by the uniform data processing system.

3. Exercise of judgment: FSC finally identified consumer protections granted by New Hampshire PUC regulations that require the exercise of judgment based upon individualized circumstances. Under NHPUC regulations, for example, the terms of deferred payment plans are to be based upon a consideration of the

individual's "ability to pay." In addition, whether a cash deposit is to be required is to be based upon "satisfactory proof" of creditworthiness. Whether a person can be exempt from an impending service termination is based upon whether there is a "medical emergency."

The merger constrains the rights conferred upon New Hampshire customers (to have their individualized circumstances taken into account) and imposes upon PSNH customer service representatives the obligation to instead work within the constraints of a standardized multi-state data processing system. After the merger, PSNH customer service representatives may be in no violation of any particular NHPUC rule or regulation. That does not detract from the observation made, however, that payment-troubled New Hampshire consumers, who are disproportionately low-income, will be harmed because their right to have their individual circumstances taken into account will have been reduced.

To obtain more information about the low-income intervenor's evidentiary and legal case in the PSNH merger proceeding, write to publications@fsconline.com.

BELL ATLANTIC NEW JERSEY UNIVERSAL SERVICE PROPOSAL

New Jersey's schools and libraries have a substantial need for assistance in helping to bring a connection to the Internet to their communities and existing federal funding will not be sufficient, either in form or amount, to help New Jersey's schools and libraries meet this need. As a result, in testimony filed on behalf of the New Jersey Division of Ratepayer Advocate in Bell Atlantic--New Jersey's pending alternative regulatory form proceeding, Fisher Sheehan & Colton recommended that BA-NJ should (1) extend its commitment to Access New Jersey for an additional four years, and (2) expand the services assisted through Access New Jersey to include new technologies such as DSL, which are necessary to gain high speed Internet access.

Public libraries are a place to offer effective

public Internet access, particularly for persons who do not have the ability to connect to the Internet through a home telephone. FSC quoted the U.S. National Commission on Libraries and Information Science (NCLIS), a permanent independent agency of the federal government, as stating:

The Commission is concerned that public libraries offer advanced telecommunications and information services that benefit local communities. Just as they have offered open access to recorded knowledge since the earliest days of our nation's history, public libraries have a vital role in assuring that advanced information services are universally available to all segments of the population on an equitable basis.

NCLIS cited previous studies which "identify geographic and demographic groups that lag with respect to Internet access and emphasize the need for schools, libraries, and community-based access centers (CACs) to provide access to computers and the Internet for those who otherwise lack such access." These studies further show, NCLIS continued, "the value that access to computers and the Internet from more than one location (e.g., home, work, school, and library) can have in developing information technology skills and encouraging the use of those skills." NCLIS then reaffirmed the need to ensure that libraries can be used as points of Internet access for the community:

. . .the public library already serves as an important public point of Internet presence and access, which suggests that the library might play a role in bridging the gaps in Internet access which other researchers have identified. . .the public library represents the first choice among a number of other locations as a public point of Internet access outside of home, school, and work. . .44.7% of [persons] who used the Internet from a location other than home, work, or school used the Internet from a public library.

Schools and Libraries as Universal Service.

Internet access through schools and libraries is a universal service issue, FSC said in its New Jersey testimony. FSC cited the U.S. Commerce Department's National Telecommunications and Information Administration (NTIA) 1998 publication "Falling Through the Net II: New Data on the Digital Divide," which examined the "persisting digital divide" and created a profile of "the least connected." NTIA found that "the digital divide between certain groups of Americans has increased between 1994 and 1997 so that there is now an even greater disparity in penetration levels among some groups. There is a widening gap, for example, between those at upper and lower income levels." According to NTIA, the "least connected" include:

- o Those living in rural areas at the lowest income levels;
- o Rural and central city non-Hispanic minorities;
- o Single-parent, female-headed households;

FSC specifically concurred with the NTIA conclusion that ". . .significant segments of the population still remain unconnected by telephone and/or computer" and that "there are still pockets of "have nots" among the low-income, minorities, and the young, particularly in rural areas and central cities. Policymakers should continue to focus on connecting these populations so that they too can communicate by telephone or computer.

"Because it may take time before these groups become connected at home, it is still essential that schools, libraries, and other community access centers (CACs) provide computer access in order to connection significant portions of our population."

According to March 2000 Census data, FSC said, the telephone penetration rate for households with incomes below \$5,000 was 80.3%, while the penetration rate for households with incomes of \$7,500 - \$9,999 was 88.1%. "We know. . .that the number of households with these low-incomes continues to remain high in New Jersey. . .nearly 50% of the 186,000 LIHEAP (in New Jersey)

recipients had incomes less than \$6,000."

Why Schools and Libraries Need Help.

Three reasons march readily forward about why New Jersey schools and libraries need financial assistance. First, New Jersey's schools and libraries have unique characteristics that may present hardships for them in obtaining adequate funding for telecommunications services, irrespective of the amount of assistance received from the federal universal service fund. The urban areas in New Jersey, for example, have a large number of older school buildings. According to the State Department of Education, as of 1997, 906 of the State's 2,302 schools were over 50 years old, with 86 being over 90 years old. These older buildings present particular problems for retrofitting, since most will not have dropped ceilings --present in newer facilities--that facilitates the installation of wiring. The Department of Education has estimated the wiring costs for classrooms in a 50 year old building to be \$125,000. For large urban areas in New Jersey, therefore, with multiple school buildings which are that old, the wiring costs could be extensive to meet universal service goals.

Second, the age of New Jersey schools and libraries creates financial problems beyond the need to fund the wiring and hook-ups themselves. One of the primary problems with old buildings involves the presence of asbestos. When there is a need to drill holes through old walls for purposes of wiring, for example, there is a good chance that asbestos removal and clean-up will become an issue. The costs of wiring old schools for classroom access to the Internet thus becomes a financial burden. Connections in limited degrees, or to a limited number of rooms, in a school or library do not provide appropriate access to the Internet.

Finally, the cost of the services, themselves, poses a barrier to connecting schools and libraries to the Internet if schools and libraries are charged commercial rates for services. Rates of \$500 and more will not allow school or library systems to sustain multiple connections in support of the community access so desperately.

Necessary Connections.

Merely being "connected" to the Internet does not serve the goal of providing effective Internet access through schools and libraries. According to the 1998 national survey of public library internet connectivity -- while an annual survey is performed, the 1998 survey is the most recent one that has been published; the 1999 survey has yet to be published -- while a substantial number of public library outlets have Internet connectivity (83.6%), provide public internet access (73.3%), and offer graphical Internet access (68.6%), 28.3% have only one graphic workstation for public Internet access, and 14.3% have only two graphic workstations in a library. Based on its annual national surveys, NCLIS offered several measures of whether public libraries offer "effective Internet access," including:

- o Whether there is public access;
- o Whether there is graphical access;
- o Whether access is at sufficient speed;
- o Whether there are sufficient workstations; and
- o Whether there is access within all library outlets, not merely within the library system.

The universal service assistance provided to schools and libraries in New Jersey, FSC said, should promote effective Internet access using these benchmarks as guides.

School vs. Classroom Interconnections.

Care must be taken in defining the existing level of Internet access in New Jersey. For example, 98.1% of all schools statewide in New Jersey are "connected" to the Internet. What this means, however, is that there is at least one Internet connection of any type in the school. The type and extent of Internet access may be quite different. For example, while 98.1% of all *schools* have some type of Internet access, only 71.9% of all *classrooms* have Internet access.

Moreover, only 57.0% of instructional computers are in New Jersey classrooms. Moreover, FSC noted that four of the counties with the lowest rates of Internet access are amongst the six lowest income counties in the state.

Based on all of the above, FSC testified that BA-NJ should be directed to extend and expand its Access New Jersey program. At a minimum, Access New Jersey should be extended for an additional four year period beyond its current expiration date of 2001.

Access New Jersey was established through agreement reached in April 1997 by the Board of Public Utilities, BA-NJ and the Division of Ratepayer Advocate. Access New Jersey is designed to link K-12 schools and libraries and provides about \$130 million in savings over a four year period (1997 - 2001). Access New Jersey includes educational discounts for telecommunications services, free customer service equipment, and network development as follows:

- o Educational discounts offered on a flat-rate basis, ranging from 31 to 72 percent on services for ISDN, frame relay, SMDS, and ATM;
- o A network for high-speed voice, video and data exchange for those schools and libraries served by BA-NJ; and
- o Equipment for items needed by schools and libraries to connect computers and video equipment to the high-speed network.

More information on the universal service analysis presented by FSC in the Bell Atlantic-New Jersey proceeding may be obtained by writing publications@fsonline.com.

LOW-INCOME ELECTRIC DISCOUNTS IN WASHINGTON STATE

Washington state statutes explicitly permit the Washington Utility Utilities and Transportation Commission (WUTC) to approve rate discounts for low-income customers. Unlike some states,

where a rate discount must generate sufficient savings to completely offset the cost of the discount, that is not the case in Washington State.

The statute explicitly provides that "expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers."

Consistent with this statute, the Spokane Neighborhood Action Programs (SNAP), through the testimony of Fisher, Sheehan & Colton, Public Finance and General Economics, has proposed a rate surcharge of 1% of total revenue to fund low-income programs. FSC further proposed that rather than subjecting specific program designs to the unwieldy format of a litigated proceeding, responsibility for the specific design of the low-income interventions be assigned to a working group charged with developing and presenting the program design to the WUTC within a time certain.

Given the statutory authorization for low-income discounts, the test of acceptability (defining "acceptability" as meaning that expenditures are recoverable) is *not* whether the activities generate more savings than they cost, but rather whether a reasonable person acting reasonably could conclude that the activity (and thus the expenditure) will yield the result for which it is designed.

In its testimony supporting the proposed surcharge, FSC explained that Avista currently engages in a full range of traditional credit and collection activities. In 1999, Avista:

- o Disconnected 19,032 residential customers;
- o Entered into 168,247 residential payment arrangements;
- o Mailed 93,254 7-day disconnection notices;
- o Mailed 70,428 24-hour "final" disconnection notices;
- o Made 14,304 field collection visits;

- o Made 60,127 nonpayment telephone reminder phone calls.

Unfortunately, the Company states that it does not track collection costs by income or other demographic measures beyond residential and commercial.

Nonetheless, FSC said, it is a sad but true fact that low-income consumers have greater difficulty in paying their bills than do non-low-income consumers. 1995 census data reports, for example, that while 9.8% of non-poor families could not pay their utility bills in full, 32.4% of poor families could not do so. According to the Census Bureau, while 1.8% of non-poor families had their electricity or natural gas disconnected for nonpayment, 8.5% of poor families suffered this same deprivation. This disconnection ratio increased even further for AFDC recipients, to 10.5%. As can be seen, FSC concluded, low-income consumers are three times more likely to be in payment-trouble, and more than four times more likely to face service termination than their non-low-income counterparts.

The reason for this problem is not difficult to determine. Little question exists but that low-income customers of Avista face unaffordable and non-sustainable home energy burdens. Based on the most current Avista-specific electric and natural gas bills available, home energy bills for Avista's low-income consumers were shown to be consistently in excess of affordable burdens.

A substantial number of Avista customers are faced with these unaffordable home energy bills. More than one-of-four Avista electric customers and nearly one-of-three Avista natural gas customers thus live with incomes below 150% of the federal Poverty Level.

FSC criticized Avista's almost exclusively reliance on traditional credit and collection practices to respond to nonpayment by low-income consumers. According to FSC, those practices are, at best, of marginal help in addressing the unaffordability problems identified above. FSC noted that the Company's use of deferred payment plans does not address the

problem of nonpayment. For example, through 1998, the number of deferred payment arrangements was consistently less than 20% of the total number of accounts in arrears. In addition, FSC found that even those deferred payment plans that were agreed to tended not to work effectively. The number of defaulted payment arrangements was consistently between 40% and 50% of the total number of payment arrangements.

The Washington legislature specifically addressed low-income home energy needs in 1991, when it stated "The legislature finds that the health and welfare of the people of the state of Washington require that all citizens receive essential levels of heat and electric service regardless of economic circumstances and that rising energy costs have had a negative effect on the affordability of housing for low-income citizens and have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. The legislature further finds that level payment plans, the protection against winter heating shutoff, and house weatherization programs have all been beneficial to low-income persons."

Ten years later, in 1999, the legislature decided that additional measures were appropriate to implement its findings that "the health and welfare of the people of the state of Washington require that all citizens receive essential levels of heat and electric service regardless of economic circumstances." In 1999, the legislature provided that the WUTC could approve low-income discount rates.

Through FSC, SNAP demonstrated that high energy burdens continue to have "a negative effect on the affordability of housing for low-income citizens and have made it difficult for low-income citizens of the state to afford adequate fuel. . .", both for space heating and for home electric service. SNAP's proposal to implement a one percent surcharge to fund low-income programs, designed cooperatively with the utility to address affordability problems while at the same time maximizing cost offsets through the generation of expense savings, is now pending before the Washington utilities commission.

For more information about FSC's Avista proposal in Washington State, write: publications@fsconline.com.

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) is a research and consulting firm with offices in Belmont (MA), Scappoose (OR), and Iowa City (IA).

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