

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**Investigation by the Department of
Telecommunications and Cable, On its
Own Motion, Instituting a Rulemaking and
Regulation Review Pursuant to G.L. c. 30A,
207 C.M.R. §2.00, 220 C.M.R. §2.00, and
Executive Order No. 562 To Reduce
Unnecessary Regulatory Burdens**

D.T.C. 16-2

**COMMENTS OF AT&T NEW ENGLAND, INC.
IN RESPONSE TO THE DEPARTMENT OF TELECOMMUNICATIONS AND CABLE'S
NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS
DATED SEPTEMBER 6, 2016**

On September 6, 2016, the Department of Telecommunications and Cable (the "Department"), On its Own Motion, issued an Order Instituting a Rulemaking pursuant to the provisions of G.L. c. 25C, G.L. c. 30A, G.L. c. 159, G.L. c. 166A, 220 C.M.R. §2.00, 207 C.M.R. §2.00, and Executive Order No. 562 to reduce unnecessary regulatory burden and to amend or rescind D.T.C. regulations within Titles 207 and 220 of the Code of Massachusetts Regulations (C.M.R.). On the same day, the Department opened this investigation requesting interested parties to comment on the Department's draft redlined versions of various sections of C.M.R. Chapters 207 and 220. AT&T New England, Inc. d/b/a AT&T Massachusetts ("AT&T MA") hereby files its comments in response to the Department's request for comments.

A. Executive Order No. 562 Directed the Elimination of All Non-Essential Regulations

Recognizing that the bulk of Massachusetts's dated regulations are no longer necessary to protect the residents of the Commonwealth and no longer reflect the realities of the current telecommunications landscape, Governor Baker's March 2015 Executive Order No. 562 ("Order 562") directed all state agencies – including the Department of Telecommunications and Cable -- to review its existing regulations and to eliminate all except those few that are "mandated by law or essential to the

health, safety, environment or welfare of the Commonwealth’s residents”. See Order 562 at § 3. The goal of the regulatory update is to “make[] Massachusetts a more efficient and more competitive place to live and work, while driving economic growth.” See Governor Baker’s Press Release accompanying Order 562. Order 562 mandates that the *only* regulations that should survive the review process are those that satisfy all seven conditions listed in Order 562, including the requirement that “there is a clearly identified need for governmental intervention that is best addressed by the Agency.” *Id.*

Governor Baker’s Executive Order clearly mandates that all regulations that impose “unnecessary cost, burden and complexity” or that “inhibit business growth and the creation of jobs” must be eliminated. Only those regulations “essential to the health, safety, environment or welfare of the Commonwealth’s residents” should be maintained. Therefore, the starting point of the Department’s review should not be what rules and regulations should be eliminated but, rather, which few rise to the level of preserving the public good and should, therefore, remain on the books.

B. Robust Competition Has Vitiating The Need For The Vast Majority of the Telecom Regulations

As the previous comments of AT&T and many of the other Massachusetts carriers convincingly demonstrate, there is little, if any, clearly identified need for the majority of the Department’s antiquated regulations, almost all of which were adopted more than twenty years ago when the telecommunications landscape was vastly different from the one we enjoy today. These regulations were imposed at a time when the telephone and cable industries were largely monopolistic and consumers simply didn’t have a choice of providers. Twenty years ago, carriers didn’t have to break much of a sweat to retain its customers. At that time, the vast majority of customers subscribed to local wireline service via a landline, commonly known as Plain Old Telephone Service, or POTS. Alternatives to POTS were essentially non-existent; therefore, consumers had no real choice but to subscribe to their local POTS provider, and were captive to the billing, deposit, notice and termination practices of that provider. Government regulation was required to protect the landline consumer from a potentially overreaching provider because, quite

simply, the consumer had nowhere else to go. Indeed, as the 2002 Mass Migration Requirements tellingly reveal, if a customer was unhappy with its carrier, there might be one other carrier but quite often there were no other carriers from which to choose.

Those days are long gone. The Massachusetts telecommunications industry has come a long way in the past twenty plus years and today proudly stands as one of the most competitive in the country. Massachusetts consumers have a robust selection of carriers, services and products – both wired and wireless – from which to choose, all of which offer a varied selection of technologies and functionalities. Today, there are a number of options and choices of providers and technologies for voice service. POTS is just one of many available alternatives; in fact, a majority of the Commonwealth's residents have surrendered their landlines and have taken advantage of these competitive alternatives. The number of Massachusetts landlines has steadily declined year after year as more and more consumers deactivate their landline POTS and move to wireless, cable, WiFi, IP-based and various other technologies. This healthy level of consumer choice forces each carrier to fight for customers by offering ever more customer-friendly service terms and customer care policies in a continual effort to “one up” those of other carriers vying for the same business.

While the competitive market has grown in leaps and bounds, the current regulations have lagged behind and have, frankly, become stale. Regulations adopted more than twenty years ago to protect consumers who had no meaningful choice of provider have no place or relevance in the Commonwealth today. Today's consumer no longer needs the umbrella of regulation to keep its providers in check; competitive carriers, competitive offers and competitive forces aggressively do that for them. If it doesn't like the rates and terms one of its carriers, a customer can voice its dissatisfaction by switching to one of several other available carriers. If a customer is unhappy with a current provider's billing practices, quality of service, response times, installation intervals, termination policies, dispute resolution policies, etc., there are other carriers ready, willing and able to immediately step up to offer a better competitive

alternative. In sum, today's vigorous competition renders many of the existing regulations designed to protect consumers in the absence of competitive market forces unnecessary, irrelevant, onerous, and clearly contrary to the seven criteria any surviving regulations must satisfy. In some cases, they are even anti-competitive.

In sum, because consumers can so seamlessly pick and choose between and among carriers and services, there is a strong natural, competitive, market-based incentive for service providers to win and retain them, and to adopt policies, terms and conditions that satisfy them and make them want to stay. That's wonderful for the subscribers of the Commonwealth but where does that leave the service providers? It depends. If you are a local exchange POTS provider, you are saddled with outdated regulations that no longer make sense and aren't even applicable to many of the other voice service providers with which you are trying to compete. If you are one of those alternative providers, you have the freedom and flexibility to offer rates and terms that your POTS competitors simply cannot. That's anti-competitive. Those are the regulations that the Executive Order demands be eliminated.

C. Existing State and Federal Consumer Protection Laws Provide Rich Consumer Protections

Some of the commenters have suggested that the existing regulations are required to protect consumers. That is simply not true. Massachusetts consumers enjoy an abundance of strong consumer protection law which are more than adequate to protect them. The following are just some of the many protections available to protect the citizens of the Commonwealth:

M.G.L. Chapter 93A – REGULATION OF BUSINESS PRACTICES FOR CONSUMERS PROTECTION

M.G.L. Chapter 93H – SECURITY BREACHES

201 C.M.R. 17.00 – STANDARDS FOR THE PROTECTION OF PERSONAL INFORMATION OF RESIDENTS OF THE COMMONWEALTH

209 C.M.R. 18.00 – CONDUCT OF THE BUSINESS OF DEBT COLLECTORS AND LOAN SERVICERS

940 C.M.R. OFFICE OF THE ATTORNEY GENERAL, including Section 3, which includes the Consumer Protection: General Regulations on advertising, pricing (including pricing disclosures), general misrepresentations, repairs, warranties, service contracts, etc.) and Section 7, which includes Debt Collection Regulations¹

As discussed in more detail below, in addition to the vast array of Massachusetts consumer protection laws and the broad protections they offer against unfair, deceptive and unscrupulous practices, the FCC's Truth-in-Billing rules also afford strong protections to Massachusetts consumers in the realm of billing, thereby rendering the regulations discussed in these comments non-essential to the public health, safety, environment and welfare. At best, they are duplicative. At worst, they are irrelevant, unnecessary, onerous, outdated and anti-competitive. Massachusetts should wear its badge of competition proudly and, consistent with the remarkable progress it has made, should eliminate them.

D. C.M.R. Code Parts That Should Be Eliminated Based On Order 562

220 C.M.R. §26.00 -- SECURITY DEPOSITS AND LATE PAYMENT CHARGES APPLICABLE TO NON-RESIDENTIAL CUSTOMERS -- SHOULD BE ELIMINATED IN ITS ENTIRETY

The Department rightfully recommends eliminating the majority of the provisions of former 220 C.M.R. §26.00, specifically §26.02 (Security Deposit Requirements), §26.03 (Amount of Security Deposit), §26.04 (Refund of Deposit), §26.05 (Customer Information), §26.06 (Adjustment Procedures), §26.07 (Method of Payment) and §26.08 (Termination for Non-payment of Security Deposit), all of which relate to security deposits. But because the recommendation does not also propose to eliminate former Sections §26.01 (Applicability and Definitions), §26.09 (Interest Rate Paid on Deposits) and §26.10 (Late Payment Charges), it does not go far enough.

¹ For example, when Massachusetts deregulated wireless services, the legislation specifically provided that: "Nothing in this section shall be construed to affect or modify: (i) the authority of the attorney general to apply and enforce chapter 93A and other consumer protection laws of general applicability; or (vi) the authority of the department to receive and refer consumer complaints or to perform consumer education activities. See M.G.L. Chapter 25 C, Section 8 (b).

The regulations in 220 C.M.R. §26.00 apply to non-residential customers – that is, **business** customers. The Massachusetts regulatory paradigm must acknowledge what almost all other state regulators have acknowledged – that the business telecommunications market is competitive and that its regulation is no longer necessary. The fact that the majority of states have completely unregulated business services and have not sought to re-regulate them is very strong evidence that they are competitive, that regulation has no place in that paradigm and that the regulations in 220 C.M.R. §26.00 fail to meet most, if not all, of the Executive Order’s seven retention criteria. There is no need for governmental intervention, much less a clearly identified one. The costs of the regulations do not exceed their benefits. The regulations exceed federal requirements. Less restrictive and intrusive alternatives – i.e., competition – are available. The regulations are not time-limited. These are just a few of the reasons that 220 C.M.R. §26.00 should be eliminated in its entirety.

Specifically, former Section 26.09 (new Section 26.02) – Interest Rate Paid on Deposits -- and former Section 26.10 (new Section 26.03) – Late Payment Charges on Unpaid Balance of Bills in Arrears - - are no longer necessary to protect business consumers. In fact, requiring providers of POTS to business customers to adhere to these requirements – which do not apply to voice services provided via other technologies -- is anti-competitive and hampers the offers of the POTS providers. If a business customer feels strongly about the interest rate paid on deposits or late payment charges, it can switch to a carrier with interest and/or late payment charge policies that better suit its needs. In fact, given the Department recommendation to eliminate the sections on security deposits altogether, the relevance of retaining a section pertaining to the interest paid on such deposits is questionable, at best. Clearly if the sections on security deposits should be eliminated based on the Executive Order’s mandate as the Department recommends – and they should – it only makes sense that the section pertaining to interest on them be eliminated as well. In fact, if anything, carriers are voluntarily adopting ever more consumer-friendly measures to retain and satisfy their customers. These regulations are onerous,

unnecessary and no longer serve any constructive purpose; instead, they continue to impose unnecessary costs on service providers. They fall far short of the criteria required to keep a regulation in place and should be eliminated.

E. Many Additional Non-C.M.R. Regulations Should Also Be Eliminated As Inconsistent With The Spirit and Intent of Order 562.

Numerous other Massachusetts regulations exist which, while not technically a part of the formal Code of Massachusetts Regulations, should also be eliminated consistent with the spirit and intent of Order 562 as unnecessary, burdensome, outdated, anti-competitive and/or inconsistent with the leading edge competition that exists in Massachusetts today. In fact, it makes little sense to eliminate those rules and regulations formally codified in the CMR Code Parts that are not essential to the “health, safety, environment or welfare of the Commonwealth’s residents” yet retain those that are similarly non-essential to the public good simply because they were adopted via a different procedural vehicle. These regulations are also burdensome, unnecessary, costly and anti-competitive and do not meet Order 562’s seven retention criteria. They, too, should be eliminated to further the goals of the Executive Order.

1. The Rules and Practices Relating to Telephone Service to Residential Customers Should Be Eliminated.

The Rules and Practices Relating to Telephone Service to Residential Customers (herein, “Residential Rules and Practices”) are almost 40 years old and have no place in today’s competitive environment. These Residential Rules and Practices were originally adopted for New England Telephone Company in 1977 and made applicable to any provider of intrastate telecommunications services in 2002. They relate to billing and bill collection, residential telephone service termination, security deposit requirements and the billing dispute rights of residential telephone customers. For example, Rule 2.3 of PART 2 [CUSTOMER INFORMATION ON RATES, SERVICES AND THE PROVISION OF THESE RULES] requires that carriers “print in a conspicuous place in the introductory pages of all residential

telephone directories” a description of all residential customer rights and responsibilities, as well as a general description of available services and equipment. The fact that Rule 2.3 refers to directories at all demonstrates its obsolescence. In today’s world, carriers post their service rates, terms and conditions electronically. In fact, customers prefer it.

PART 3 of the Residential Rules and Practices [BILLING AND PAYMENT STANDARDS] addresses billing and payment standards, and regulates items such as bill frequency, when bills can be sent, length of time to pay, how long after mailing (via U.S. Mail – another clear indicator that the Residential Rules and Practices are outdated in the wake of online bill payment platforms) a bill is deemed received, the information the bill must contain (including a clearly labelled statement of regular monthly charges, taxes, toll calls (listing date of call, length of call, time of call, number called, calling number, etc.)). It also addresses charges for installation, connection and restoration of service, and the requirements of the lengthy printed notice that must be sent – including the print size – notifying customers of their right to dispute their bill.

As noted above, today’s market forces are clearly sufficient to drive fair and reasonable billing practices for all customers, including those residential customers that choose to continue to make intrastate calls via POTS. In addition, the federal Truth-in-Billing requirements offer ample billing protections for customers while also allowing the carriers the billing flexibility required to effectively compete. These federal rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.” 47 C.F.R. §64.2400(a). With exceptions not relevant here, the federal rules apply to all telecommunications common carriers and to all bills containing charges for intrastate and interstate services. 47 C.F.R. §64.2400(b).

Specifically, the federal rules require that “Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered”, that bills clearly identify the charges for each service, and that where the bill contains charges for local service in addition to other charges, the bill must clearly and conspicuously distinguish between charges for which non-payment will result in disconnection. 47 C.F.R. §64.2401(b) and (c). They also require that bills contain clear and conspicuous disclosure of information that the subscriber may need to make billing inquiries about, or contest, charges on the bill. In fact, carriers must prominently display toll free numbers for the very purpose. 47 C.F.R. §64.2401(d). These rules strike the right balance between the customers’ need to understand and dispute its bill and the carriers’ need for flexibility in its billing practices – something PART 3 of the Residential Rules and Practices does not afford. Not surprisingly, many carriers of unregulated services voluntarily provide the billing detail required by the Residential Rules and Practices because competition leads to such customer-friendly policies and practices.

PART 4 (SECURITY DEPOSITS AND GUARANTEES) and PART 5 (DISCONTINUANCE OF SERVICE AND REMOVAL OF ACCOUNTS) of the Residential Rules and Practices should be eliminated for many of the same reasons the Department recommends eliminating former 220 C.M.R. §26.02 (Security Deposit Requirements), §26.03 (Amount of Security Deposit), §26.04 (Refund of Deposit), §26.05 (Customer Information), §26.06 (Adjustment Procedures), §26.07 (Method of Payment) and §26.08 (Termination for Non-payment of Security Deposit), all of which relate to security deposits and discontinuation of services for non-payment. As the Department has already acknowledged, regulations on these topics is not essential to the public health and welfare in this robust competitive environment. Moreover, to require regulated local exchange providers to adhere to these requirements when other providers of local voice services are not subject to the same regulations and restrictions unduly and unnecessarily hampers their ability to compete.

PART 6 [COMPLAINTS AND DISPUTED CLAIMS] sets forth procedural steps for customer bill disputes. As discussed in detail above, the federal Truth-in-Billing rules already require that bills contain clear and conspicuous disclosure of information a subscriber may need to make billing inquiries about, or contest charges on, its bill. In fact, carriers must prominently display toll free numbers for the very purpose. 47 C.F.R. §64.2401(d). Moreover, any carrier that wants to stay competitive and maintain the relationship required to retain its customers must, at minimum, adopt and adhere to consumer-friendly, fair and reasonable billing dispute procedures. If a customer either cannot resolve a dispute with its carrier or is required to engage in unnecessary, inefficient and/or burdensome dispute resolution procedures, there is a good chance that customer will take its service to a carrier with more favorable processes and procedures. In fact, the PART 6 requirements, which require telephone, mail and/or in person communications, are likely to be more inefficient, time-consuming and burdensome than the efficient and much more streamlined electronic practices used today by carriers that are not saddled with the anti-competitive requirements of PART 6.

PART 7 [DEFERRED PAYMENT] is simply an extension of the discontinuance of service and removal of accounts provisions discussed above (except that the discontinuance occurs after the obligation to pay has been deferred yet the payment has not been made) and should similarly be eliminated. In addition, however, PART 7 simply requires the carrier to offer a deferred payment plan if its policies allow for one. There is no reason to regulate where the purpose of the regulation is to require a carrier to adhere to its own policies. Any carrier that runs afoul of its policies will quickly lose its customer base in this competitive telecommunications environment.

Finally, PART 8 [TELEPHONE SERVICE OF ELDERLY PERSONS] should be eliminated in its entirety not just because it, too, is an extension of the PART 5 discontinuance of service regime, but also because it is inherently anticompetitive. Rule 8.3 requires a carrier to continue to provide service to elderly persons – despite the fact it is not getting paid – until it secures the written approval of the Department.

Non-POTS local service providers have no such obligation. No carrier should have to provide service for free, particularly when its competitors do not have that same obligation. Elderly persons have the same healthy array of service providers available to them as everyone else, and there is no evidence that they are helpless to find and subscribe to those providers. PART 8 is antiquated, unnecessary and anticompetitive and should be rescinded.

In short, competitive market forces already adequately protect the residents of the Commonwealth. In fact, most Massachusetts residential consumers do not subscribe to POTS service and these antiquated regulations do not even apply to them. The competitive alternatives these non-traditional consumers have chosen are providing ample protection for billing, termination, disconnection, security deposits, etc. There has been no onslaught of complaints or consumer dissatisfaction. These consumers have not been re-installing POTS to take advantage of the protections afforded by the Residential Rules and Practices. As a result, the Residential Rules and Practices are antiquated, unnecessary, burdensome and, in some cases, restrain local exchange companies from exercising the flexibility the market demands and from competing with their unregulated peers.

2. The Mass Migration Requirements Should Be Eliminated.

The Mass Migration Requirements adopted by the Department more than fourteen years ago, while also not formally codified in the Code of Massachusetts Regulations, have little, if any, relevance today and should likewise be eliminated.² These Requirements, established in 2002, were formulated during an era when CLECs were entering the market after the Telecom Act of 1996 and, in some cases, experiencing financial difficulties or, worse, bankruptcy. At that time, to the extent consumers had a

² The D.T.E. adopted the Mass Migration Requirements in Case No. D.T.E. 02-28 on August 7, 2002 in *Proceeding by the Department of Telecommunications and Energy on its own Motion to Develop Requirements for Mass Migration of Telecommunications Service End-Users*.

choice of local service providers, it was the incumbent and perhaps one CLEC operating either as a reseller of the incumbent's service or as a facilities-based local wireline provider.

Interestingly, and as just one of many indicators that the course of time has rendered these Requirements obsolete, the majority of the CLECs who participated in the proceeding and helped formulate the Requirements no longer exist – Z-Tel Communications, Allegiance Telecom, RNK, WorldCom, Ascent. Their antiquity is also demonstrated by the language in its Order that an exiting CLEC is of “serious concern” (p. 8) due to the fact that there was, at that time, at most one carrier to whom the exiting CLEC's customers could be transferred. In fact, the DTE's Order is rife with references to a single “acquiring carrier”. Even the Milestone chart at pages 6-7 of the Requirements refers to “the acquiring carrier (if there is one)” and contemplates that CLEC customers could be out of service “(if there is no acquiring carrier)”. These references are a throwback to the days when there was very little local competition, to a time when an exiting CLEC had to transfer its customer base to an “acquiring carrier” because in 2002, there was in most cases just one other carrier available to acquire those customers. See Requirements, page 4: “Letter 1 represents the information that the exiting CLEC must send to the customer when there is an acquiring carrier. Letter 2 represents the information that the exiting CLEC must sent to the customer when there is no acquiring carrier.”

Tellingly, the Requirements assume that CLEC customers will migrate to a POTS or wireline provider: “In order for the acquiring carrier(s) to migrate its customers seamlessly, the exiting CLEC must provide sufficient network information to the acquiring carrier and the DTE.” Requirements, p. 5. That's no longer a current, valid assumption. Moreover, the Mass Migration Requirements impose notification and migration requirements on the acquiring carrier(s) because in 2002, most if not all “acquiring carriers” were subject to the jurisdiction of the DTE. As such, the DTE could impose such requirements on them. That is no longer the case today.

These Mass Migration Requirements now constitute nostalgia at best given the mass transformation of the telecommunications industry in the Commonwealth since their adoption. Today, any customer who chooses or is forced to leave a CLEC has numerous “acquiring carrier” candidates. The majority of available “acquiring carriers” offer services that are not regulated by the Department and, as such, are not subject to the Mass Migration Requirements. In short, these are the facts:

1. The number of CLEC customers have been in steady decline over the past several years and it’s highly unlikely any migration, even if one should occur, would be a “mass” migration subject to the Mass Migration Requirements;
2. The “serious concern” the Mass Migration Requirements were designed to address no longer exists; in fact, customers today have a wide variety of options should a CLEC choose to or is forced to exit the market; and
3. It is more likely than not that an acquiring carrier would be beyond the jurisdiction of the Department in any event, thereby rendering the Mass Migration Requirements inapplicable and of no use.

As such, the Executive Order mandates that the Mass Migration Requirements be rescinded/eliminated.

3. Advance Notice of Rate Increases Should Be No More Than One Day

220 (now 207) CMR §5.06 (stemming from M.G.L. ch. 159, Section 19) continues to contain the requirement that carriers provide at least 30 days advance written notice to business and residential customers of any proposed increase to retail rates or charges via a bill insert, bill message, separate mailing or similar means. As AT&T and numerous commenters have noted, this notice period is way too long, inconsistent with the regulations (or, more aptly, the elimination of regulations) adopted by other states and is inherently anti-competitive. Competition not only drives rate increases and rate decreases,

but also drives the pace at which they are implemented. Requiring carriers to give their competitors a “heads up” and a 30 day lead time is anti-competitive and limits carriers’ flexibility to nimbly respond to what their competitors are doing in the industry. M.G.L. gives the Department the discretion to adopt a shorter timeframe: “Unless the department otherwise orders, no change shall be made in any rate ... except after thirty days from the date of filing a statement with the department setting forth the changes proposed to be made in the schedule then in force and the time when such changes shall take effect ... The department for good cause shown may allow changes before the expiration of said thirty days ...” As AT&T and others have commented in this proceeding, one day advance notice is much more reasonable, competitive and consistent with what other states have done.

F. The Department Should Incorporate AT&T’s Prior Comments Into the Record of This Proceeding

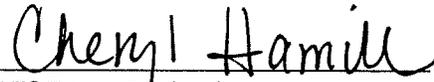
AT&T respectfully requests that the Department also incorporate AT&T’s Comments submitted on August 14, 2015 and November 20, 2015 into the record of this proceeding.

CONCLUSION

Put simply, there is little, if any, clearly identified need for many of the Department’s existing regulations. These existing regulations, now largely antiquated, were put in place to promote competition and consumer protection at a time when most citizens of the Commonwealth had a single alternative provider if they had one at all. Today, the robust nature of the competitors, the competitive technologies and the existing federal and state consumer protection laws are more than adequate to provide that protection today. As such, the existing regulations are no longer

necessary, fail to meet the very clearly articulated requirements of Order 562 – all of which must be satisfied before a regulation can be maintained -- and should be eliminated.

Respectfully submitted,

A handwritten signature in black ink that reads "Cheryl Hamill". The signature is written in a cursive style with a horizontal line underneath the name.

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