COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing And Termination Practices for Telecommunications Carriers	DTE 06-8

COMMENTS OF
AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

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June 6, 2006

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AT&T Communications of New England, Inc. ("AT&T") applauds the Department of Telecommunications and Energy ("Department") for opening this docket to consider changes to the Department's billing and termination rules. AT&T agrees with the Department that "[a]s a result of [the Department's pro-competitive] policy and of the evolution of a competitive market, today's telecommunications industry in the Commonwealth differs greatly from the industry of 1977 when the [existing rules] were first established."[1] In that spirit, AT&T offers its comments in response to the questions raised by the Department in its *Opening Order*.

Preliminary Comments

One important aspect of the current marketplace for telecommunications services is the fact that regulated telecommunications firms are competing with providers whose services are not, and will not be, subject to the Department's jurisdiction. Intermodal competition has arrived in force, nationally and right here in Massachusetts.

[1] *Order Opening A Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers* (April 7, 2006) ("*Opening Order*"), at 3.

Massachusetts customers — both business and residential — have a dazzling choice of services offered by cable, satellite, cellular and Internet-based providers over platforms untethered from the traditional public-switched telephone network ('PSTN"). Traditional landline ILECs and CLECs alike have seen their customer bases respond rapidly and increasingly to intermodal competitors, especially cell phone, satellite, Internet and cable telephony providers. As a result, the Department must take care not to distort competitive outcomes with inflexible, and perhaps burdensome, regulations on one set of competitors, while another set remains unencumbered and free to react to market conditions more quickly. The Department must not inadvertently impede the ability of the firms that it regulates from competing with the firms that it does not regulate.

Asymmetric regulation in response to rising competition can sow seeds of market destruction. Outmoded regulatory requirements on telecommunications carriers place such carriers at a competitive disadvantage in relation to cable, satellite and other providers who are not subject to such regulation. At a minimum, in a market characterized by increasing competition, similarly-situated competitors must be treated alike. It is not only counterproductive, but industry-threatening, to impose regulation on only some competitors (*e.g.*, traditional wireline carriers) but not impose it on others (*e.g.*, wireless and VoIP providers). This situation raises the costs of doing business, imposes delay and otherwise threatens the very existence of the regulated entities by handicapping their ability to compete efficiently and effectively (or even at all) with their unregulated counterparts.

Subject to federal oversight, certain classes of telecommunications competitors (mainly cellular and Internet phone providers) enjoy freedom from regulatory constraints concerning pricing, service quality, billing and network expense. The federal authorities choose either not to regulate them or to regulate them quite lightly; the state authorities find themselves jurisdictionally precluded from regulating these competitors in any material respect.

Freed from most regulation, cellular and Internet phone service providers have crafted popular and innovative offerings, and customers are free to make their own decisions concerning the acceptability of price and any trade-offs with service quality, billing or other conditions of service. Traditional landline service providers, such as ILECs, CLECs and XCs, however, do not enjoy the same regulatory freedoms and flexibility accorded their intermodal competitors, and increasingly find themselves at significant cost and performance disadvantages. This unequal regulation has hampered regulated firms that would like to match the offerings of their unregulated competitors. This in turn diminishes the options available to consumers who are interested in competitive services that landline carriers might offer.

The Department has promoted competition in the Commonwealth for more than twenty years, and, in doing so, has shown an appreciation of complexity and nuance in both its principles and its methods of implementing them. AT&T urges the Department to exercise its historic sophistication when considering and adopting the regulations at issue here and to implement the Guiding Principles articulated in its *Opening Order* with sensitivity to the potential dangers of asymmetric regulation in an otherwise very competitive marketplace.

AT&T's Responses to Selected Questions

I. QUESTION D.2.

> *Should the updated Practices allow bills to include separately itemized surcharges and, if so, should the updated Practices have different rules for surcharges carriers are required to itemize (e.g., surcharges for E911 or disabilities access), and surcharges carriers choose to itemize (e.g., surcharges imposed to recover local property tax)? Should the updated Practices specify the format of all surcharges and the explanatory information to be included in customer bills (i.e., a simplified format)? See In the Matter of Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket No. 98-170, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55 (rel. March 18, 2005).*

AT&T urges the Department not to entertain adoption of rules governing line items on the bill. Customers are already protected under the clear and concise billing requirements in the FCC's Truth-in-Billing rules. While AT&T understands that the Department may desire to make telephone bills easier to understand for customers, the FCC has already provided guidance on this issue and further rules are not necessary at this time.

The FCC, in CC Docket No. 98-170, In the Matter of Truth-in-Billing and Billing Format, debated extensively the issue of whether carriers should be allowed to impose line item charges and how these charges should be labeled. The FCC released its First Report and Order and Further Notice of Proposed Rulemaking on May 11, 1999,[2] wherein it adopted broad, binding principles, requiring "that bills contain full and non-misleading descriptions of charges that appear therein; and . . . that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries

[2] First Report and Order and Further Notice of Proposed Rulemaking, *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492 (1999) ("*First TIB Order*").

about, or contest charges, on the bill." The FCC, on March 18, 2005, in CC Docket No. 98-170, released its Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking.[3] This order reasserted that "the truth-in-billing rules require that charges contained on telephone bills be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered." To date, the FCC has opted for these types of broad principles rather than mandating detailed rules.[4]

The FCC's views on the matter are particularly relevant, moreover, because only the FCC has the jurisdiction to address all competitors in the market, including intermodal competitors that the Department has acknowledged are increasingly competing directly with wireline providers. The Department, by contrast, lacks jurisdiction to impose billing requirements on major classes of providers – including wireless and VoIP providers – so that any Department regulation of billing practices would necessarily be limited to a subset of the market. At a minimum, the Department should wait for further action by the FCC , which has sought comment on this issue. Premature action by the Department could result in rules that may be inconsistent with the FCC's rules.

In any event, any attempt by the Department to curtail the use of line items on bills would be contrary to federal law and thus preempted. As the FCC has made clear, the federal policy here is in favor of allowing carriers to provide customers more information, not less, by recovering "legitimate administrative and other related costs

[3] Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, Truth-in-Billing Format; National Ass'n of State Util. Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, 20 FCC Rcd 6448, ¶ 28 (2005) ("*Second TIB Order*").

[4] *First TIB Order*,at ¶ 9 (FCC opted for "broad, binding principles to promote truth-in-billing rather than mandate[d] detailed rules that would rigidly govern the details or format of carrier billing practices.").

through rates or other line items."[5] Any Department rule that would deprive carriers of the flexibility provided by federal law would interfere with that federal policy and is thus preempted. Furthermore, as a practical matter, carriers' bills cover both intrastate and interstate service. Any Department regulation dictating whether and the extent to which carriers can recover their costs through line items, even if nominally directed solely at intrastate wireline service, would necessarily interfere with how carriers recover the costs of interstate service and would thus be preempted for that reason as well.

Such a regulation would also conflict with the First Amendment. The information that AT&T and other carriers impart on their bills via the use of line items is commercial speech. To foreclose the use of those line items, the Department would have to establish that the ban is in furtherance of a "substantial" state interest, that it "directly advances" that interest, and that it is "not more extensive than is necessary to serve that interest."[6] The Department cannot satisfy this test, not least because there is no evidence to suggest that foreclosing the use of line items will alleviate customer confusion (AT&T's experience is to the contrary) and because the state can achieve its goals in ways that do not burden speech (by, for example, taking enforcement action against carriers that deceive consumers).

In conclusion, the Department's updated rules should not seek to regulate the extent to which and the manner in which carriers seek to itemizes charges on bills. The updated rules should allow bills to include separately itemized surcharges in any manner a carrier sees fit, as long as it is not deliberately confusing or deceptive.

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5 *Second TIB Order*, at ¶ 28.

6 *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 566 (1980).

II. QUESTION D.3.

> *Should the updated Practices permit flexible billing frequency (e.g., establish a minimum billing period for all customers or establish different billing periods for different classes?) and, if so, should carriers and customers be allowed to agree to a different billing frequency?*

Some customers prefer a monthly bill, others prefer a bill every three months or so to avoid having to bother with a number of small payments, and still others may prefer that they not be billed until their bill reaches a certain size. As long as customers retain the option to receive monthly billing (if that is their preference), carriers should be allowed to provide alternatives to the customers who want them. Beyond a requirement that monthly billing be offered as an option, frequency of bills should be a matter of contract between a company and the customer and should not be mandated or directed by the Department.

AT&T recommends that any rule require nothing more than the offering of monthly billing as an option; it should not prohibit carriers and customers from entering into alternative arrangements.

III. QUESTION D.6.

> *Should the updated Practices address the situation where a carrier over-bills a customer and, if so, how should over-billing adjustments be handled (e.g., should the refund be made for the entire period of the over-billing or some other period of time)? Should interest be paid on the amount of the overcharge and, if so, how should the rate of interest be calculated, and when and in what form should the amount of any overcharge be returned to the customer?*

Situations in which a customer believes that he or she has been overbilled should be handled like any other dispute. With respect to the payment of interest on amounts determined to be overbilled, AT&T believes that such payment should be required only if carriers are permitted to charge interest on, or a late fee with respect to, overdue amounts on customer bills. If carriers are required to pay interest on overbilled amounts, the rate should be no higher than the rate applicable to overdue amounts on customer bills.

IV. QUESTION D.7.

> *Part 3.5 of the current Practices requires carriers to prorate charges for installation, restoration, or reconnection of service. Should the updated Practices continue to mandate that certain charges be prorated, or should carriers have the flexibility to offer, or not offer, payment arrangements and/or deferred payment plans?*

Charges for installation are incurred up front, and carriers should be able to recoup them on the customer's first bill. The rule requiring carriers to permit customer installment payments over 4 months increases collection risks. Should a customer become delinquent within the first 4 months of service, or should the customer disconnect service within the first 4 months of service, the carrier may not ever collect the charges for the initial installation.

The current rule making the unpaid portion of the installation charges due and payable upon termination does not cure the problem. Once the customer leaves, the carrier has little leverage or ability to obtain payment.

For the reasons above, the Department should not require carriers to prorate installation, restoration, or reconnection charges. Such arrangements should be negotiated between the customer and the carrier.

V. QUESTION E.4.

> *Part 4.5 of the current Practices caps deposits for new residential service accounts at $50, and deposits imposed as a condition of restoration of service or subsequent service at two times the average monthly bill. What deposit requirements should apply to new non-residential service accounts or to temporary or seasonal accounts as a condition of service and, are there any other circumstances under which a carrier should be allowed to require a deposit or advance payment?*

Although there are currently regulations regarding deposits for residential customers and regulations regarding interest payments on deposits for non-residential customers,[7] there are no regulations regarding the conditions under which carriers may require a deposit for non-residential customers or limits on the amount of such deposits. The Department should not extend its regulations into this new area.

The Department opened this docket in order to update its rules relating to billing and termination in light of the vast industry and market changes that have taken place since 1977 when its rules were originally adopted. As the Department noted, of paramount significance is the change from a market of one monopoly provider to one with "numerous carriers competing in each market."[8] As a result, the Department stated that it "will review the Practices and will amend their customer protection provisions to match the current competitive marketplace."[9] In light of these immense market changes and the purpose of this docket, regulation of the non-residential market, the most competitive part of the Commonwealth's telecommunications market, simply does not follow. AT&T urges the Department to leave to the competitive market the terms and conditions of providing service to the non-residential market.

Regarding residential deposits, it is critical that telephone service providers have the ability to require a deposit from a new applicant where the applicant does not pass an objective credit screen or where the applicant has a poor credit history with the service provider. Current rules limit the ability to collect a deposit from a new applicant to only those applicants who have been disconnected for non-payment within the preceding six

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[7] 220 CMR 26.09.

[8] *Opening Order*, at 3.

[9] *Id*., at 2.

months. The deposit amount for new applicants should not be capped at $50. The deposit amount should reflect the telephone service provider's risk given the timing of collection efforts. Therefore, the deposit amount for new applicants should be calculated as two times the average monthly bill.

VI. QUESTION F.2.

> *Should written notice requirements apply to termination of service by carriers and, if so, what type of notice should be required? Should the Department permit carriers who provide electronic billing to their customers to provide notice of discontinuation through this same mode and, if so, how would such a process work?*

Under existing rules carriers must provide written notice mailed fifteen days prior to suspension, then a reminder mailed five business days prior to suspension (with the same content as the original notice); then, carriers must attempt to contact the customer two business days prior to the suspension date. Such burdensome requirements are inappropriate in the current competitive environment, especially when regulated carriers are competing against wireless carriers and VoIP providers who are not subject to such requirements and who do not incur such costs. As a regulatory requirement, a single written notice is appropriate. Carriers are, of course, free to offer more; and, indeed, may be compelled by the market to do so if customers find this unacceptable and leave for other alternatives.

As far as electronic notice to e-billed customers is concerned, an electronic disconnect notice should constitute "written notice" when it meets the same content requirements as the paper written notices.

VII. QUESTION G.1.

> *What records and other customer information should carriers be required to maintain (e.g., records of deposits), if any, and for what period of time?*

There are no Massachusetts rules on this issue. AT&T recommends that, if any rules are adopted, they mirror or reference record preservation rules specified by the FCC at 47 CFR 42 ("Preservation of Records of Communication Common Carriers").

VIII. QUESTION H.1.

> *Should the updated Practices identify a specific process by which a customer disputes a bill to the carrier or seeks resolution of a service problem?*

The Department's rules should be limited to the establishment of a reasonable time frame (*e.g.*, 90 to 100 days) for the resolution of a dispute that the customer raises with the carrier. Because the customer is not required to pay the disputed amount, the carrier also has an interest in an expedited resolution of the issue. A fixed maximum period for the resolution of the dispute prior to bringing it before the Department best protects the interests of both the customer and the carrier. Similarly, once it is brought before the Department, all parties have an interest in resolving it within a reasonable amount of time. The Department should establish no more than 90 days for the dispute to be resolved in an informal proceeding.

Apart from any specific process for disputing a bill, the "Right To Dispute Your Bill" message currently required by the Department is too lengthy and cumbersome as a bill message for every residence bill every month. It unnecessarily increases costs for the subset of competitors regulated by the Department. At the most, it should be an annual requirement. Alternatively, a much shorter and simpler message will accomplish the same result, for example:

> Please address any questions about this bill to AT&T by calling the toll free number on your bill. If you are not satisfied with AT&T's response, you may contact the Consumer Division, Department of Public Utilities, One South Station, Boston, MA 02110 or dial (800) 392-6066.

AT&T agrees that the customer should be informed how to dispute his or her bill. However, imposing costs that are not necessary to accomplish that result serves no useful purpose and penalizes the very carriers that comply with the Department's regulations.

IX. QUESTION L.1.

> *Are there other miscellaneous requirements not covered in the above questions that should be addressed in the updated Practices (e.g., directory assistance, low-income discounts, programs providing telecommunications access to disabled persons, E-911)?*

Carriers must have maximum flexibility to respond to market changes, and to introduce and discontinue service offerings easily and quickly to meet rapidly changing customer needs. The Department should interpret M.G.L. c. 159, § 19, consistent with the need of carriers subject to that statute to introduce new and innovative services and rates rapidly in order to compete effectively with carriers whose services are not subject to c. 159, § 19.

M.G.L. c. 159, § 19, establishes a default of 30 day notice for the introduction of new rates and services. However, it also allows for the more rapid introduction of rates and services if the Department so permits. The Department should exercise the discretion given it by the General Court so as to even the playing field between the carriers subject to its jurisdiction and other, less regulated carriers. This policy would enable state regulated carriers to introduce new services easily and quickly, and without any "tip-off" to their less regulated competitors who scour regulatory filings looking for sensitive information.

As a general matter, AT&T encourages the Department to regulate the carriers subject to its jurisdiction in a manner that does not disadvantage them in the marketplace. More liberal treatment of tariff filing requirements is one such example.

Conclusion

AT&T appreciates this opportunity to provide its views on appropriate regulations relating to billing and termination. In our view, such regulations should reflect the current state of the industry. The Department should avoid adopting rules that unnecessarily burden some, but not all, of the carriers competing in the same market. The migration of a substantial portion of the market to VoIP and wireless providers proves that nationally literally millions of consumers have found such a lightly regulated or unregulated environment reasonable and attractive. The Department should take comfort in this empirical evidence and assign it great weight in its deliberations.

As it has in the past, the Department should remain careful to refrain from artificially distorting the competitive alternatives among which consumers choose every day. Regulations that are too onerous or costly could have the perverse effect of driving customers toward the less regulated carriers not subject to the Department's consumer protections. The Department should take care that its efforts to protect consumers do not produce the opposite result.

Respectfully submitted,

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By its attorney,

/s/

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