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	Docket D.T.E. 06-8

INITIAL COMMENTS OF COMCAST PHONE OF MASSACHUSETTS, INC.

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June 6, 2006

Introduction

Comcast Phone of Massachusetts, Inc. ("Comcast" or "Comcast Phone") respectfully submits these initial written comments regarding the Department of Telecommunications and Energy's ("Department's") Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers ("Order"). The Department has asked interested carriers to address a set of questions concerning a much-needed update to the retail Residential Billing and Termination Practices ("Practices") established nearly thirty years ago in D.P.U. 18448. Comcast appreciates the opportunity to file comments regarding the general scope of new billing and termination rules, and looks forward to the opportunity to comment on any draft new Practices prior to promulgation, in accordance with G. L. c. 30A, § 3.

Comcast Phone is the largest, facilities-based provider of competitive residential local exchange services in Massachusetts. Since 1998, Comcast Phone and its predecessor companies have provided subscribers in the state with various packages of local, toll, and long distance services. Although Comcast Phone's subscriber base in Massachusetts is modest compared with the incumbent local exchange company's, we nevertheless represent a popular competitive choice for facilities-based, residential local service in the Commonwealth.

Comments

Comcast agrees that the local exchange services marketplace has changed in ways that require revision of the detailed and outdated billing and termination rules embodied in the Practices. *Cf.* Order at 2-3. The Practices established many years ago in D.P.U. 18448 in no way reflect the current, competitive marketplace. Rather, they reflect an era when residential consumers had no choice of service providers and protection by regulation was required to ensure that customers were treated fairly by the incumbent local exchange company. Those conditions no longer exist. In this age of increasing local exchange services competition in

Massachusetts, it is far better to allow market forces to discipline carriers and to substitute a light regulatory touch for onerous billing and termination regulation.

A. COMPETITION IS THRIVING IN MASSACHUSETTS.

The most recent local competition statistics released by the Federal Communications Commission (the "FCC") demonstrate that competition and consumer choice for local exchange service is growing steadily nationwide – and growing even faster in Massachusetts. An April 3, 2006 FCC press release[1] based on the FCC's Form 477[2] statistics as of June 30, 2005 indicates that out of 178 million end-user switched access lines nationwide, 34 million belonged to CLECs. In other words, approximately 19% of access lines nationwide belong to CLECs.[3] A copy of the FCC press release is attached at Tab A.

The data for local exchange competition in Massachusetts show even more robust competition here. The FCC's Report[4] reveals that one-quarter of end-user switched access lines in Massachusetts were served by CLECs as of June 2005, which is one of the highest reported percentages in the United States. Indeed, in Massachusetts, CLEC share of end-user switched access lines has increased steadily since June 2000, from 8% to 25% as of June 2005. Moreover, 48% of lines reported by CLECs in Massachusetts were for residential service. Of 37 total reporting LECs in Massachusetts, 33 were CLECs. These statistics demonstrate that competition has increased substantially in the local telecommunications market since the Practices were

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1 "Federal Communications Commission Releases Data on Local Telephone Competition" (April 3, 2006), summarizing statistics reported in "Local Telephone Competition: Status as of June 2005," Industry Analysis and Technology Division, Wireline Competition Bureau (April 2006) ("FCC's Report"). The press release can be downloaded at << http://www.fcc.gov/wcb/iatd/comp.html >>.

2 FCC Form 477 is the data collection mechanism for the FCC's local competition and broadband data gathering program.

3 Approximately 32.2 million lines represent CLECs with 10,000 or more lines in each state.

4 A copy of the FCC's Report is attached at Tab B. *See* in particular Tables 7, 8, 12, and 13.

issued. In light of this overwhelming evidence of the good health of the Massachusetts local telecommunications market, the Department has chosen the right moment to revisit its Practices.

B. THE DEPARTMENT SHOULD ALLOW COMPETITION TO DRIVE THE MARKET.

As the Department has wisely noted, actual competition is preferable to regulation mimicking competition. *See* Order at 3. Over two decades ago in its ground-breaking 1985 decision in *Intra-LATA Competition* (D.P.U. 1731), the Department, after thorough analysis of the potential benefits of competition in post-divestiture intrastate telecommunications markets, found that local telecommunications competition would be superior to regulation as a means of achieving the important policy goals of economic efficiency and fairness.[5] The increasingly competitive environment in Massachusetts is a testament to the success of the Department's pioneering efforts to protect consumers and promote competition at times when both needed significant support. As a result, today there is a diversity of telecommunications providers and products available in the marketplace.

Comcast agrees that regulations intended to simulate the results of market competition are no match for competition itself. Given the positive trend in local exchange service competition in Massachusetts, regulators should impose at most minimal billing and termination requirements for residential local exchange service. The market's current blend of communications products makes it impractical and inefficient to mandate specific rules for the majority of the issues raised in Attachment I. Detailed and onerous rules would create a disincentive to providing these varied services, which would adversely impact competition and harm Massachusetts consumers. Streamlined and flexible regulation will enable carriers to

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5 *See Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition by Common Carriers in the Transmission of Intelligence by Electricity, Specifically with Respect to Intra-LATA Competition, and Related Issues*, D.P.U. 1731 (October 18, 1985).

respond to their customers' needs, and will facilitate a carrier's ability to react in the competitive marketplace. The consumer choice and satisfaction fostered by the marketplace will flourish under a lighter regulatory touch.

Therefore, Comcast respectfully suggests that any changes to the existing Practices should focus on removing regulatory burdens that inhibit – rather than encourage – the type of healthy competition present in the local telecommunications market today. General guidelines will serve each of the Guiding Principles that the Department has proposed in this proceeding.

C. THE SCOPE OF THE DEPARTMENT'S RULEMAKING SHOULD BE MINIMIZED TO REFLECT MARKET NEEDS AND DEPARTMENT AUTHORITY.

The Department's Order and questions in Attachment I raise several important issues and highlight the inefficiencies of the current regulatory framework. While Comcast takes this opportunity to comment on certain topics, its overarching position remains that minimal regulation and general guidelines will adequately protect consumers and foster competition in Massachusetts.

1. The Department Should Not Apply the New Practices To VoIP Services.

Question B(3) asks whether updated Practices should apply to voice over Internet protocol ("VoIP") services. There are several reasons why the Department should not regulate VoIP services. In its *VoIP Notice of Proposed Rulemaking (NPRM),* the FCC has solicited and received comments in a rulemaking proceeding designed to address "issues related to services and applications making use of Internet Protocol (IP), including but not limited to voice over IP services (collectively, IP-enabled services)."[6] Comcast believes it is at best premature to consider any billing and termination regulations of VoIP services until the FCC has resolved the

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[6] *In the Matter of IP-Enabled Services,* WC Docket No. 04-36, "Notice of Proposed Rulemaking," FCC 04-28, rel. March 10, 2004, ¶ 1 ("*FCC's VoIP NPRM*").

federal issues through its *NPRM*. The FCC's *VoIP NPRM* is expected to specify the regulatory framework for VoIP services. It would be a waste of resources for the Department to develop new billing and termination procedures applicable to VoIP service providers without first receiving the forthcoming FCC guidance regarding the scope and nature of permissible regulation of VoIP services.

Moreover, due to what the FCC has described as the inherently interstate nature of VoIP communications, state commissions do not have authority to regulate VoIP service offerings which have the characteristics outlined in the FCC's Vonage Preemption Order.[7] Indeed, VoIP services are fundamentally different than traditional services over the PSTN, as discussed at length in the FCC's Vonage Preemption Order.[8] Congress has given the FCC exclusive jurisdiction over interstate communications, which the FCC has acted to retain in the Vonage Preemption Order.[9] It is noteworthy the FCC has mandated carrier compliance on issues of public safety, such as E911 and CALEA, as a part of the national regulatory framework.[10]

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7 *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket No. 03-211, "Memorandum Opinion and Order," No. FCC 04-267, 19 F.C.C.R. 22404 (November 12, 2004) ("*FCC's Vonage Preemption Order*"). *See also In the Matter of Petition for Declaratory Ruling that Pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, "Memorandum Opinion and Order" No. FCC 04-27, 19 F.C.C.R. 3307 (Feb. 19, 2004).

8 *See generally FCC's Vonage Preemption Order.*

9 *See id.* & 47 U.S.C. § 152(a). The Department should decline to extend the new Practices to wireless service for similar reasons. Moreover, the wireless industry has flourished under its light regulatory framework. There is no evidence that wireless now needs regulation, and the new Practices should not apply to wireless service.

10 *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 & 05-196, "First Report and Order and Notice of Proposed Rulemaking," No. FCC 05-116, 20 F.C.C.R. 10245 (June 3, 2005); *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, "Notice of Proposed Rulemaking and Declaratory Ruling," No. FCC 04-187, 19 F.C.C.R. 15676 (August 9, 2004).

For these reasons, the Department should not extend the new Practices to VoIP services.[11]

2. **<u>The Department Should Treat Bundled Services As A Whole for Purposes of Billing, Termination, and Credit</u>.**

In Question B(2) of Attachment I, the Department asks whether the revised Practices should apply to specific services versus specific carriers. This question implicates several of the Department's other questions, including D(9) and F(1). Comcast believes that basic local exchange service "bundled" with intraLATA and interLATA toll and long distance services should not be regulated. Some other states, like Kentucky, already have deregulated bundled service offerings in recognition of the fact that the market will sufficiently shape reasonable rates, terms, and conditions for such packages.[12] The availability of bundled services which combine basic local exchange, toll, and long distance services in a calling plan for one flat price provides increased customer choice. The popularity of bundled service plans in the marketplace over the past several years demonstrates that consumers enjoy the option to bundle basic local exchange service, intraLATA toll services, interLATA long distance, as well as other services, for one competitive price. The Department should not promulgate regulations subjecting a carrier to regulation merely because the carrier's bundled service includes basic local exchange service, which would have the effect of discouraging carriers from including basic local exchange service as part of the bundle in the first instance.

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[11] There are other indicators that the Department's efforts to regulate VoIP would be a waste of resources. Virginia, Georgia, and Kentucky recently enacted laws which prohibit their state commissions from exercising jurisdiction over VoIP, citing the import of allowing market forces to shape rates, terms, and conditions for emerging communications technologies such as VoIP.

[12] Ky. H.B. 337, 06 Reg. Sess. (April 22, 2006).

If the Department nevertheless decides to regulate all or any portion of a bundle that includes basic local exchange service, the regulations should allow carriers to apply consistent billing, termination, and credit requirements to the bundle as a whole. Regulatory requirements that subject one part of a bundled service offering – for example, basic local exchange service – to distinct rules for billing, termination, and/or credit purposes would interfere with the ability of communications service providers to offer the kind of bundled services that have become so popular with consumers. Indeed, carriers would be required to make costly billing system adjustments or upgrades to accommodate specific Department-mandated regulations applicable to bundles.

Similarly, carriers should be permitted to include other communications offerings such as video and high-speed Internet services on a single bill. Customers who subscribe to a bundle that includes other products have no expectation of one product being treated differently for billing and termination purposes. Moreover, to the extent there is a requirement to "break apart" a bundle for the purpose of maintaining basic local exchange service, the costs to the customer only increase, as described below.

3. The Department Should Permit Streamlined Timelines for Collections and Disconnection.

Comcast urges the Department to permit service providers the option to maintain a single collections timeline for bundled bills, and to allow disconnection of basic local exchange service for non-payment of any portion of a bundled bill. Many carriers' billing systems are unable to account for different pay periods for separate pieces of bundled service. The conversion to such billing systems would be costly. Moreover, carriers should not be forced to provide services to customers who take advantage of bundled offerings but decline to pay for some undisputed portion of their services. This conclusion is directly in line with Guiding Principle 6 which expresses the Department's intent to make both carriers *and* consumers responsible for their actions.

Furthermore, the disconnection timeline and notice requirements mandated by the current Practices are burdensome. First, the notification methods required by the current Practices are needlessly elaborate because they require contact by two different means: mail and telephone. Going forward, the Department should not specify the method by which a carrier must notify customers of termination. Instead, a provider should have the option to choose the most efficient method of notification. For example, where all monthly billing and other communications to the customer are made electronically, the requirement that a paper termination notice also be mailed would result in unnecessary cost without providing any needed consumer protection or benefit.

Second, the current timeline and notification requirements for discontinuance are also burdensome, with Massachusetts requiring one of the longest customer notification periods in Comcast's affiliates' footprint nationwide – 15 days, two written notices, and a phone call.[13] The incumbent local exchange company is not the only provider of local exchange service, and customers no longer need the heavy hand of regulation to protect them from disconnection from the only service in town. Therefore, Massachusetts should accord carriers greater flexibility in terms of the disconnection timeline and notification. Comcast respectfully suggests the Department adopt disconnection guidelines similar to those set forth in the video regulations at 207 CMR 10.05. The video discontinuance timeline is reasonable and has been successfully implemented in the state for many years.

As set forth in the video regulations, the Department should permit local exchange companies to send a *single* notice of discontinuance of service after an account is delinquent

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[13] *See* Part 5 of the Practices, specifically Rules 5.4, 5.8, & 5.9.

(defined as thirty days past due). The carrier should thereafter be permitted to soft disconnect service eight business days after the notice of discontinuance. Moreover, as discussed above, carriers should have the option of providing disconnection notices in the same manner the customer receives monthly bills. The Department need not – and should not – impose requirements beyond these basic protections, especially where customers are subscribed to a carrier's bundled service offering. This procedure would provide customers with the basic protections, information, notice, and timing discussed in Guiding Principles 1, 2, 3, and 4, while also ensuring carrier and customer accountability as embodied in Guiding Principles 5 and 6.

4. The New Practices Should Include Less Onerous Special Protections Requirements.

Without question, the current Practices (Part 8) setting out special protections for senior citizens is impracticable, for the Department and for carriers. The Department should rescind the current process requiring, among other things, Department approval of disconnects of service for individuals who are sixty-five (65) years of age or older. Instead, the Department should promulgate a general rule mandating that carriers adopt policies which require them to work directly on a case-by-case basis with delinquent customers who have certified that all members of the customer's household are over 65 years of age to devise a payment plan and keep the account current. If the customer fails to abide by the payment plan, the customer should be processed through collections with a notice of disconnection, as with any other delinquent account. The rules should further allow a customer to seek Department intervention in the case of a billing dispute. This approach is practical and more efficient for carriers and the Department. Similarly, carriers should be permitted to handle emergency and serious illness requests on a case-by-case basis with the option of Department intervention in the event of a dispute.

D. General Guidelines Are Sufficient to Protect Consumers and Promote Competition with Respect to the Remaining Practices.

Comcast suggests that to the extent the Department concludes that revised Practices are required *at all* in light of the growing competition in Massachusetts, any new Practices should apply only to residential basic local exchange service.[14] Comcast urges the Department to adopt only general guidelines, leaving it to the carriers to adopt practices that are responsive to customers and reasonable in light of the competitive environment.

Carriers that ultimately succeed in the marketplace understand that it is in their best interest to develop reasonable policies. To the extent that carriers do not understand this fact, consumers will educate them – quickly. The availability of many alternatives in the current market – with respect to both different providers and different types of service offerings – ensures that competition will be sufficient to protect consumers on these basic issues. As the Department predicted long ago, competition now is strong enough to define the contours of the billing and termination practices of local telecommunications service providers.

E. The Department Should Decline to Regulate Unless there is Evidence that Regulation is Needed.

Comcast respectfully suggests that the Department require any party advocating a particular regulation to furnish adequate record evidence that: (1) a meaningful number of consumers has previously suffered actual harm due to the absence of the regulation; (2)

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[14] Other state commissions also have moved toward deregulation of local telecommunications service. *E.g.*, Texas, *Order Adopting New Customer Service and Protection Rules, §§26.21-24, 26.26, 26.27-29, 26.30, and 26.31 as Approved at the November 16, 2000 Open Meeting*, Docket No, 21423 (December 6, 2000); and Colorado, *In the Matter of Rules Relating to the Deregulation of IntraLATA Exchange Telecommunications Services for Telecommunications Service Providers and Telephone Utilities*, Docket No. 05R-440T, "Order Adopting Emergency Rules" (October 19, 2005). Oregon largely has declined to subject CLECs serving fewer than 50,000 lines in the state to the same regulations as ILECs. ORS 759.040. The Oregon Public Utilities Commission does have authority to promulgate special rules for such CLECs, albeit with the express objective of "minimiz[ing] the regulatory burden on these utilities." *See* ORS 759.005, 759.020, & 759.045.

imposition of the regulation on all carriers would provide consumers with material additional protection; and (3) the benefits of imposing the regulation on all carriers outweigh the costs of the regulation for individual carriers, the state's telecommunication industry in the aggregate, and consumers. Further, the Department should ensure that there is not a more efficient and adequate means of protecting consumers from the established misconduct, such as a consumer education campaign aimed at informing carriers and consumers of their billing and termination rights and obligations under existing regulation.

Where, as in Massachusetts, local exchange service competition has grown steadily over the years, the Department should avoid over-regulation which would discourage providers from serving Massachusetts consumers.

Conclusion

For the reasons detailed above, Comcast believes that the Department should revise its outdated and burdensome Practices which are especially mismatched with Massachusetts' current robust competitive local exchange services market. Instead, the Department should adopt a light regulatory scheme that would continue to support the trend of competitive growth in Massachusetts.

Respectfully submitted,

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June 6, 2006

BOS111 12025767.5