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June 6, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 06-8 – Investigation by the DTE on its own Motion to Establish Retail Billing and Termination Practices for Telephone Carriers

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced proceeding are the original and five copies of Verizon Massachusetts' Comments.

Thank you for your assistance in this matter.

Sincerely,

Barbara Anne Sousa

Barbara Anne Sousa

cc: Andrea Saia, Esquire
Judith F. Judson, Chairman
James Connelly, Commissioner
W. Robert Keating, Commissioner
Paul G. Afonso, Commissioner
Brian Paul Golden, Commissioner

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	)	**D.T.E. 06-8**

COMMENTS OF VERIZON MASSACHUSETTS

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA"), files these comments in response to the Department's April 7, 2006, Notice of Inquiry ("NOI") to establish updated retail billing and termination practices for telecommunications carriers operating in Massachusetts. *NOI*, at 3. Attachment I to these Comments contains Verizon MA's responses to the questions in the Department's NOI, as well as Verizon MA's recommendations where applicable.

As discussed below, Verizon MA supports the Department's proposal to amend existing consumer billing practices to match the current competitive marketplace. As noted by the Department, the existing retail residential billing and terminations practices were adopted by the Department almost 30 years ago, in D.P.U. 18488 and, therefore, do not reflect the fundamental changes to industry structure and regulation and the increasingly competitive retail telecommunications market in Massachusetts. *Id.* at 3-4. Nor do they recognize the Federal Communications Commission's ("FCC") development of consumer policy guidelines applicable in a pro-competitive marketplace.[1]

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[1] *See Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 F.C.C.R. 7492 (1999) ("*TIB Order*"); *see also Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-170, CG Docket No. 04-208, 20 F.C.C.R. 6448 (2005) ("*Second TIB Order*").

Like the FCC, the Department should adopt a less prescriptive approach and instead establish broad "Guiding Principles" to ensure that consumers are informed and adequately protected. Those Guiding Principles would apply equally to all tariffed, landline telecommunication services provided to the primary local line of a residential customer regulated pursuant to Massachusetts General Laws c. 159, § 12. Those Principles should not, however, be extended to include additional local residence lines – or business services, in-state long distance services, wireless services or any other non-tariffed services that are not subject to the Department's existing residential billing and termination rules or are not subject to the Department's jurisdiction at all.

DISCUSSION

A. The Department Should Replace The Current Prescriptive Rules With Guidelines Governing Billing and Termination Practices for Residential Customers.

In its *DPU 18448 Order*, issued December 19, 1977, the Department prescribed specific rules and practices regarding the provision of telephone services to residential customers. They included rules relating to the type of information appearing on customer bills, security deposit procedures, disconnection notices, resolution of disputed claims, deferred payment arrangements, and the discontinuance of services to elderly customers, the seriously ill and those with a personal emergency. These rules are now outdated and unnecessary in this highly competitive telecommunications marketplace that the Department has recognized exists in Massachusetts.

The telecommunications industry has undergone dramatic changes since 1977, including the break-up of the Bell System, the surge of local and long distance competition in the residential and business markets, the expansion of wireless services, the development of new technologies and service offerings, and the deregulatory mandate of the Telecommunications Act

of 1996 ("1996 Act"). In addition, since the issuance of its *DPU 18448 Order*, the Department and the FCC have provided for affordable Lifeline telephone services for low-income, residential subscribers in Massachusetts. In light of these changing circumstances, the Department should not adopt new prescriptive rules governing carriers' billing of residential customers. Rather, the Department should establish Guiding Principles that will bind telecommunications carriers while allowing them discretion to meet those principles in a manner that appropriately balances the needs and interests of consumers and carriers alike. This is consistent with the more flexible approach followed by the FCC in establishing its truth-in-billing principles.

Since 1977, the Department has consistently applied the principle that less regulation is necessary where competition is sufficient to disciple markets. The Department in its NOI cited some of the many cases in which the Department adopted or modified its regulatory requirements to match changing market conditions. *NOI*, at 3. The most fundamental industry change since 1977 has been the divestiture of AT&T in 1984 and the subsequent opening of the intrastate communications markets to competition by the Department in 1986 – ten years before federal legislation made it national policy to open all communications markets to competition. Since that time, Massachusetts has been at the forefront of developing competition in all communications markets, and the Department has been a leader in matching regulatory requirements to the evolution of the market. The Department has long recognized that rules that were necessary and appropriate in a monopoly environment are no longer called for in this highly competitive market. In fact, the Department now relies on competitive markets to fulfill its most fundamental statutory duty – ensuring that rates are "just and reasonable" – for all but basic residential services.

In its decision in D.T.E. 01-31, the Department concluded that Verizon MA's retail services, with the exception of Residence Basic Exchange Service, were subject to market-based competition. *See e.g., D.T.E. 01-31 Order*, at 125 (2002). As a result, the Department has provided Verizon MA with pricing freedom for these services. The Department should now bring its 1977 residential billing and termination practices in line with its previous decisions regarding the competitive telecommunications marketplace.

Other industry developments support a reduction in prescriptive billing and termination rules. For example, in 1977, customers relied on their landline telephone as their only means of communication, and the Department adopted specific rules in the event of a "serious illness and personal emergency" to ensure that those customers retain a link to the outside world. *See e.g.*, D.P.U. 18448 *Order*, Rule 5.15. Today, however, customers have many services other than a landline telephone for their communications needs.

According to FCC data, there are now roughly the same number of mobile telephone lines in Massachusetts as there are landlines: 4,334,828 landlines (for incumbent and competitive local exchange carrier lines combined) versus 4,313,846 wireless lines.[2] Also, many customers now rely on e-mail and instant messaging for a significant portion of their communications, and the Internet access that underlies e-mail and instant messaging often is provided over wireless devices, such as Blackberries, or over cable networks. In addition, customers are able to use their broadband Internet access for voice services, such as those provided by VoIP providers.

The 1977 billing and termination rules also presumed that it was necessary to adopt specific protections for customers who were on a fixed income. As noted earlier, there were no

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2 "FCC Local Telephone Competition: Status as of June 30, 2005," (April 2006), Tables 10, 11, and 14.

low-income subsidy programs for Massachusetts customers in 1977, so it was appropriate at the time for the Department to adopt specific requirements for billing and termination of accounts for elderly customers. However, today, the Lifeline program offers Massachusetts income-eligible customers in the elderly community and in other groups one of the largest discounts off basic residential telephone services in the country. Thus, it is no longer necessary for the Department to maintain age-specific rules as a proxy for income-related protections.

All of these industry developments lead to the conclusion that it is no longer appropriate or necessary for the Department to prescribe detailed rules for carrier billing and termination. The Department can adopt its Guiding Principles without further prescription and rely on those principles, in concert with the FCC's truth-in-billing rules, to govern any dispute resolution. Indeed, the many market choices that customers have today, compared to 1977, will ensure that customers are adequately protected from unreasonable billing and termination practices.

B. The Department's Proposed Guiding Principles Parallel the FCC's Truth-in-Billing Guidelines and Will Provide Adequate Protection to Consumers in a Competitive Market.

In its *TIB Order* issued in 1999, the FCC did not mandate comprehensive rules that would rigidly govern the details or format of carrier billing practices. *TIB Order* at Appendix A; 47 C.F.R. 64.2001. Instead, the FCC recognized that broad truth-in-billing guidelines "will compel subject carriers to provide consumers with clear and necessary information in order to make informed choices and safeguard themselves against fraud." *TIB Order* at ¶ 27. Although the FCC incorporated these guidelines into rules "because we intend for these obligations to be enforceable to the same degree as other rules," most of the details regarding compliance with these obligations were left to the carriers. *Id.* at ¶ 9. The rules adopted in the *TIB Order* already control the actions of carriers who operate in Massachusetts, thus eliminating the need for the Department to adopt redundant requirements. Before modifying its billing and termination

rules, the Department should review the rules that already apply to all carriers in Massachusetts pursuant to the *TIB Order*.

By declining to adopt prescriptive rules, the FCC permitted carriers the flexibility to satisfy its truth-in-billing guidelines in a manner that best suits their needs and those of their customers. That approach "appropriately balances the rights of consumers and the concerns of carriers, in furtherance of the deregulatory thrust of the 1996 Act." *Id.* at ¶ 11. Moreover, to prevent the potential for balkanized state regulation in this area, the FCC subsequently preempted a state's ability to enforce inconsistent state rules. *Second TIB Order* at ¶ 2.

Like the FCC, the Department in its *NOI* has proposed Guiding Principles for updating its billing and termination practices for residential customers as follows:

1. Customers must receive certain basic consumer protections from their telecommunications providers, even in a competitive market;
2. Customers must receive accurate information in order to make informed decisions on their own behalf;
3. Customers must have adequate notice of any changes to the terms and conditions of their service;
4. Customers must have adequate time to take action where action is required, and that some classes of customers may require additional time to act;
5. The Department's mission is not to absolve any party of the consequences of its actions;
6. Carriers and their customers are responsible for the consequences of their own actions; and
7. The Department will resolve disputes between carriers and their retail customers upon request.

These Guiding Principles individually and/or collectively underlie every major rule and consumer safeguard established by the Department in 1977.

For example, the Guiding Principles continue the requirements of providing adequate information and notice to residential customers, as well as Department review of disputes. In

particular, Guiding Principle No. 4 ensures that all residential customers will receive notice and a reasonable time to respond to any action that affects their telecommunications service, such as rate changes or discontinuance of service. It acknowledges that "adequate time to take action" may differ based on the customer's circumstances (*i.e.*, emergency or financial hardship). Therefore, just as the 1977 Rules require additional time and notice requirements for certain consumer groups, this Guiding Principle would require that carriers tailor their individual practices to take into account the needs of these particular customers.

Because the Department's proposed Guiding Principles are instructive – not prescriptive - in nature, they properly allow carriers increased flexibility to address the needs and demands of residential customers. Affording carriers the latitude to determine the manner in which to implement the Department's Guiding Principles is reasonable and necessary in this increasingly competitive telecommunications marketplace, in which carriers with practices that fail to address consumer needs and concerns will invariably lose market share as customers migrate to carriers with more favorable policies. Accordingly, the Department should adopt its proposed Guiding Principles and not impose detailed, rigid rules for carriers, particularly since the FCC's truth-in-billing rules already address many of the issues that are the subject of the Department's NOI.

C. Verizon MA's Responses to the Department's Questions in Attachment I Demonstrate that Detailed Billing Rules Are Not Warranted and Should Be Eliminated.

The Department should minimize the "process nature" of its existing billing rules and the resultant micro-management of carriers' billing practices. Instead of focusing on strict, defined billing provisions that undermine a carrier's ability to adapt and differentiate itself in the increasingly competitive marketplace, the Department should establish its proposed Guiding Principles as an overall regulatory framework that is flexible enough to encourage competition

among carriers and adapt to the changing telecommunications environment without constant regulatory review and correction.

Verizon MA explains in its responses to the questions in the *NOI* (see Attachment I appended hereto) that the competitive marketplace provides the best assurance for the Department that carriers will act appropriately toward their residential customers. Under the Guiding Principles, the Department may exercise its discretion in resolving customer complaints or disputes, but is not bound by a strict process of enforcement, as currently exists under the 1977 rules. This mirrors the FCC's *TIB Orders* and is an appropriate approach in today's competitive environment.

The Department has recognized the competitive nature of all residential and business services, with the exception of Basic Residence Service, and, therefore, billing practices should be in line with those determinations. They should not apply to additional residential and business lines. Customers with an additional residential line clearly do not demonstrate a financial hardship with respect to their primary residential line, and there are no universal service concerns related to anything other than the primary residential lines.

In addition, consistent with the basic regulatory principle that *less* regulation, not more, is appropriate in an increasingly competitive market, the Department should not expand its regulation of billing practices to business services, in-state long distance, wireless, Internet or other non-tariffed services not already subject to the 1977 billing rules.

There is no public policy basis for expanding to business customers the protections designed for residential consumers. The Department has never regulated carrier billing and collection practices with respect to business customers and rightfully so. The business market is extremely competitive and all carriers act at their peril if they do not meet their business

customers' needs or fail to adopt commercially reasonable business practices. Business customers normally contract for services and can negotiate terms and conditions. These customers – especially larger companies and government entities - are generally sophisticated purchasers of telecom services who are fully aware of their options in choosing providers and offerings and are informed of the terms of their agreements. Any imposition of billing and collection rules in the business market would be a substantial step backwards and fly in the face of the Department's repeated recognition that market forces, rather than state-imposed conditions, should shape the relationship between business customers and their telecommunications providers.

Regarding wireless and VoIP (Voice Over Internet Protocol) services, the Department has no jurisdiction to regulate them and thus has no authority to impose billing and termination requirements.[3] Only traditional wireline services are regulated by the Department under Chapter 159 of Massachusetts General Laws. However, even if the Department had jurisdiction, there is no public policy reason for the Department to take any action. Wireless and VoIP services are offered in highly competitive markets to customers who have chosen to subscribe in lieu of or in addition to traditional landline services. The universal service and essential public service considerations that supported regulatory intervention in traditional landline monopoly markets simply do no exist here. To the contrary, as the Department noted in its NOI, "actual competitive telecommunications markets are preferable to relying on regulation as a surrogate for competition." *NOI*, at 3. In this case, there is no need for the regulatory surrogate since

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[3] *See* Massachusetts General Court repeal of M.G.L. c. 159 §§ 12A-12D that had formerly given the Department authority over commercial mobile radio services; *Investigation by the Department of Public Utilities upon its own motion on the Regulation of Commercial Mobile Radio Services*, D.P.U. 94-74 (1994) (finding that the wireless market was sufficiently competitive and there was no need for Department to petition FCC for authority to re-institute rate regulation); *See also*, In the Matter of Vonage Holdings Corp. Petition for Declaratory Ruling, *Memorandum Opinion and Order*, 19 F.C.C.R. 22404, ¶¶ 18-19 (2004) (preempting state regulation of VoIP services).

these services have never been offered in a monopoly environment. Therefore, the Department can and should rely on competitive market forces to ensure that wireless and VoIP customers are adequately protected.[4]

CONCLUSION

For the foregoing reasons, the Department should adopt its proposed Guiding Principles in lieu of the current, outdated billing rules promulgated by the Department in DPU 18448 in 1977. Those Guiding Principles not only mirror the FCC's truth-in-billing principles, but also provide a more functional and flexible regulatory framework that reflects the evolving nature of today's competitive telecommunications environment. To the extent that the Department sees a need for some more specific requirements, Verizon MA has suggested in the Attachment several amendments to current rules. Verizon stresses, however, that such specific requirements are not necessary and not in keeping with the Department's evolution of regulatory requirements over the past 30 years.

Respectfully submitted,

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Dated: June 6, 2006

[4] Wireless providers are already subject to some of the FCC's truth-in-billing requirements, so there is no public policy need for the Department – even if it had jurisdiction – to adopt redundant rules for such services. *Second TIB Order* at ¶ 1.