

**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 XO COMMUNICATIONS SERVICES, INC. IN RESPONSE TO  
NOTICE OF INQUIRY**

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**I. INTRODUCTION**

Pursuant to the Order opening the above-encaptioned Notice of Inquiry (“Order”), XO Communications Services, Inc. (“XO”) respectfully submits these comments on the issues raised in the Order regarding the possible amendment of the Residential Billing and Termination Practices (the “Residential Practices”). In the Order, the Department seeks comment on “updating and clarifying” the Residential Practices by “developing additional provisions or deleting existing provisions” in a manner consistent with certain “Guiding Principles” set forth in the Order.<sup>1</sup>

As discussed below, XO fully supports the Department’s goal of applying consumer protection provisions that “match the current competitive marketplace” and further the Department’s “longstanding policy of promoting competition in the telecommunications industry in Massachusetts.”<sup>2</sup> XO respectfully submits that the best way the Department can achieve this goal is not by expanding or extending the Residential Practices, but by relying instead on more broadly-framed provisions such as the Guiding Principles in conjunction with the vigorous competition in today’s market for telecommunications services to protect consumer interests.

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<sup>1</sup> Order at 3-4.

<sup>2</sup> *Id.* at 2.

Expansion of the content or applicability of the Residential Practices is unnecessary, would impede carrier efforts to respond to customer demands and competitive forces and would undercut the benefits consumers are realizing from the growth of competition. Moreover, the Department has not identified any specific issues or problems whatsoever that it might seek to address with the revision or expansion of the Residential Practices. Unless it can articulate a compelling reason to take specific action, XO respectfully submits that the Department should not broaden the Residential Practices.

## **II. BACKGROUND**

XO is a telecommunications provider offering nationwide communications solutions to businesses, agents and carriers. XO delivers a range of services including local and long distance telephone service, Digital Subscriber Line, Dedicated Internet Access and advanced network security solutions. XO also has constructed a backbone network serving 75 major metropolitan markets in the United States.

## **III. DISCUSSION**

In the Order, the Department states unequivocally that “actual competitive telecommunications markets are preferable to relying on regulation as a surrogate for competition.”<sup>3</sup> The Department also recognizes that “intra- and interLATA toll markets, as well as the local exchange markets, are highly competitive, with numerous carriers competing in each market.”<sup>4</sup>

XO fully agrees that healthy and robust competition among carriers is far more effective in advancing the interests of consumers than inflexible prescriptive regulations. With the “highly competitive” markets for telecommunications services that exist in Massachusetts, there is no need for the Department to impose detailed, prescriptive measures that would micro-manage the interaction between customers and carriers. Rather, the Department can rely upon competitive

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

forces to protect consumers, addressing problems as they arise pursuant to more flexible and broadly-stated provisions such as the Guiding Principles. Indeed, the Department itself recognizes that for certain issues “general guidelines” or a “range of parameters” are appropriate.<sup>5</sup> XO concurs and respectfully submits that such an approach should be standard in the absence of clear and compelling evidence of a specific problem that requires regulatory correction or oversight.

The competitive forces that have taken hold in today’s telecommunications markets ensure that carriers have strong incentives to provide adequate information to prospective customers regarding the nature and terms of their services and to treat existing customers fairly. Overly-prescriptive rules such as those embodied in the Residential Practices therefore are unnecessary. Moreover, such one-size-fits-all provisions inevitably prevent carriers from responding to consumer demands for innovative products and service arrangements and to the unique needs of their customers. For these reasons, the Department should move away from the heavy-handed regulatory approach of the past and rely more upon “actual competition” to achieve its ends. In this way, carriers would be free to respond to market dynamics and technological developments in a manner that most benefits consumers. The Department, on a case-by-case basis, could respond to any specific issues that might arise pursuant to a more generalized framework such as is embodied in the Guiding Principles.

For example, the Residential Practices include detailed requirements regarding information carriers must provide to customers regarding rates and services and the manner in which carriers must provide this information.<sup>6</sup> Similarly, the Practices include lengthy prescriptive requirements regarding the content of the bill and even the presentation of information contained in the bill.<sup>7</sup> However, carriers today compete to acquire and retain new

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<sup>5</sup> *Id.* at Attachment 1, Question A.2.

<sup>6</sup> Residential Practices, Part 2.

<sup>7</sup> *Id.* at Part 3.

customers against a number of other service providers, including entities offering service over different platforms and incorporating different technologies. As a result, each carrier has the strongest of incentives to ensure that customers are fully satisfied, which includes providing clear and useful information regarding the services offered and billing for those services in a customer-friendly and straightforward manner. If the carrier does not do so, it will be less likely to obtain new customers and it will be much more likely that the carrier's existing customers will leave for other carriers. A carrier unable to attract new customers or one that experiences high levels of customer "churn" will not survive long in the market. Moreover, each carrier will know what customer communication measures and billing practices are best-suited for and will be most well-received by its customers.

Expansion of outdated prescriptive measures such those contained in the Residential Practices would result in carriers having less flexibility to respond to the needs and demands of their customers in the most efficient manner possible. The Department can continue to fulfill its role of monitoring the functioning of the marketplace without such expansion of the current regulations. If real world experience indicates that there are specific issues regarding disclosures to customers, billing practices or other such areas covered in the Residential Practices, the Department could take appropriate, narrowly-tailored action to address the matter with an individual carrier consistent with the Guiding Principles.

In the Order, the Department requests comment on whether the Residential Practices, in their current or any revised form, should apply to small business customers or to services delivered by emerging technologies such as Voice over Internet Protocol ("VoIP"). XO respectfully submits that the answer to both of these questions is no.

For the reasons discussed above, prescriptive measures such as the Residential Practices are unnecessary and counterproductive and would be inappropriate and damaging in the business context. Even the smallest business customers today require relatively sophisticated voice and data services. As a result of innovations that have made advanced services more accessible and the resulting democratization of telecommunications technology, these entities are well-schooled

in procuring such services. Moreover, even among smaller business customers, communications needs vary widely and carriers require a great deal of flexibility to respond effectively and efficiently to those needs. As a result, heavy-handed regulatory requirements are unnecessary and would be counter-productive. The Department therefore should decline to extend any form of the Residential Practices to any business customers.

Similarly, the Department should not apply any of the Residential Practices to VoIP services. VoIP services still are in the early stages of development. It is far from clear what (if any) consumer issues might arise in this context, much less what sort of regulatory response would be appropriate and effective. The Federal Communications Commission (“FCC”) is considering the appropriate regulatory scheme for VoIP services in its *IP-Enabled Services Rulemaking*.<sup>8</sup> In its *Vonage Order*, the FCC preempted the application of state certification and related requirements to Vonage’s DigitalVoice service and all other VoIP services with the same capabilities.<sup>9</sup> The FCC expressly stated that it would resolve other issues regarding the interplay of federal and state regulation of VoIP services, including specifically issues regarding “consumer protection,” in its on-going *IP-Enabled Services Rulemaking*.<sup>10</sup> XO respectfully submits that any Department action regarding VoIP services would be premature and could impede the rollout of these innovative services in unpredictable ways.

#### **IV. CONCLUSION**

For the foregoing reasons, XO urges the Department not to extend the Residential Practices to business or VoIP services. Instead, the Department should rely on more broadly-framed provisions such as the Guiding Principles in conjunction with the vigorous competition in today’s market for telecommunications services to protect consumer interests.

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<sup>8</sup> *In the Matter of IP-Enabled Services*, FCC 04-28, WC Docket No. 04-36, Notice of Proposed Rulemaking (2004).

<sup>9</sup> *In the Matter of Vonage Holdings Corporation Pet. for Decl. Ruling Concerning an Order of the Minn. Pub. Util. Comm’n*, FCC 04-267, WC Docket No. 03-211, Memorandum Opinion and Order (2004).

<sup>10</sup> *Id.* at ¶ 14, n.46.

Respectfully submitted this 6<sup>th</sup> day of June, 2006 at Boston, Massachusetts.

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