Commonwealth of Massachusetts Department of Telecommunications Carriers

RE: Establishing Billing and Termination Practices for Telecommunications Carriers DTE 06-8

Comments of the Massachusetts Public Interest Research Group
7.10.06

I. INTRODUCTION

Massachusetts Public Interest Research Group (MASSPIRG) is a non-profit, non-partisan consumer and environmental advocacy organization with over 50,000 members across the state. MASSPIRG respectfully submits the following comments in response to the Department of Telecommunications and Energy Order dated April 7, 2006, which opened a Notice of Inquiry to address and update the established retail billing and termination practices for telecommunication carriers operating in Massachusetts.

In response to the Department's Notice of Inquiry, MASSPIRG supports the focus on consumer protection as detailed in the "Guiding Principles" outlined in D.T.E 06-8. Additionally, MASSPIRG strongly urges the Department to establish specific and enforceable regulations to ensure that consumers do in fact receive "basic consumer protections from their telecommunications providers." Finally, in keeping pace with an expanding and growing industry, MASSPIRG urges the DTE to expand the scope of the regulations to cover wireless carriers, VOIP and other forms of emerging voice communication services.

Telephone service, a necessity for communication in the modern world, has been revolutionized by the development and popularization of wireless communication. The number of wireless subscribers skyrocketed from approximately 24 million subscribers in 1994 to an estimated 170 million just over a decade later in 2005. Growing faster than the number of subscribers is the number of complaints from consumers about their telecommunication services.[1] With the ever-growing number of affected consumers, MASSPIRG would like to reemphasize the need for strong consumer protection for telecommunication subscribers.

II. DISCUSSION

Competitiveness in the Market

The Order states that the Department "will amend [the Practices'] consumer protection provisions to match the current competitive marketplace," and expresses a preference for relying on the competitive nature of the telecommunications market as opposed to enacting specific regulation to ensure adequate consumer protection.

While MASSPIRG recognizes that market competition provides carriers with the incentive to offer better terms than their competitors and gives consumers the ability to choose among carriers, MASSPIRG disagrees with the Department's premise that the telecommunication market is highly competitive and that alone is enough to protect consumers. In fact, while the scope of the wireless telecommunication industry for example has been rapidly expanding, the number of giant companies controlling the industry has declined. The six companies that controlled 80 percent of the cell phone market in 2004 – AT&T, Nextel, Spring, Cingular,

[1] A list of consumer complaints is attached as Attachment I.

Verizon and T-Mobile—dwindled down to just four firms in 2005 after the merging of Cingular and AT&T, and Sprint and Nextel. The reduced competitive nature of this oligopolistic market is detrimental to consumer interests and provides inadequate consumer safeguards.

An example of the competitive failure are the excessive "early termination charges" imposed on wireless customers. These fees are nothing but financial penalties of $150-240 per phone designed to prevent the market place from working by locking consumers into 2 year contracts and preventing them from switching to a carrier with better service or lower rates.

MASSPIRG believes that the enactment of strong, basic consumer protection regulations are necessary to protect the interests of telecommunication subscribers across the board. As past records show, relying almost exclusively on competitive market forces to regulate wireless service has failed to ensure quality service: documented complaints to the Federal Communications Commission (FCC) have increased 95.33 percent from 2002 to 2005, totaling 96,106 complaints over the last four years. These include 48,105 complaints about billing and rates and 12,108 complaints about contract early termination.[2] *Can You Hear Us Now*, a MASSPIRG report published in March 2005, outlines customers' dissatisfaction with billing practices among other issues.[3] Its survey results show that 42% of customers reported having billing problems with their provider. These statistics clearly show that the Department needs to enact strict regulations to ensure that consumers are given fair terms and accurate information.

Guiding Principles and Consumer Protection

Consumer protections and the "Guiding Principles". To ensure consumer protection, MASSPIRG recommends the adoption of the following consumer protections as they relate to the outlines principles.

A. *Guiding Principle:* "customers must receive accurate information in order to make informed decisions on their behalf"
Recommendation: In numerous surveys, consumers have reported great difficulties comparing cell phone plans because the terms, prices, and services of phone packages are not presented in a uniform manner. All wireless contracts and marketing materials must clearly spell out the terms of the contract in an easy-to-read, standardized format so consumers can compare costs. The disclosures must be made available and accessible to consumers comparing prices and services in both written and electronic formats. In addition, all providers must provide consumers with coverage maps that are as accurate as current technology would allow. These maps must be available on the provider's Internet site as well.

B. *Guiding Principle:* "customers must have adequate notice of any changes to the terms and conditions of their service"
Recommendation: Any material changes that the carrier makes to a phone contract must be provided to customers in advance, and customers must be given at least a 30 day opportunity to terminate the contract without penalty and to receive a pro-rated refund of the charges they paid for purchasing a phone for the carrier's network.

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[2] http://www.fcc.gov/cgb/quarter/
[3] The full text of *Can You Hear Us Now* is attached as Attachment II.

C. *Guiding Principle:* "customers must have adequate time to take action where action is required"
Recommendation: Consumers must have a trial period during which they can cancel any new service contract without having to pay the hefty contract termination fee. This gives the consumer time to see whether the phone works where and how it was promised. Consumers would have 30 days to cancel after having received their first bill.

D. *Guiding Principles:* "the Department's mission is not to absolve any party of the consequences of its actions; the Department will continue to hold carriers and their customers responsible for the consequences of their own actions; and the Department will resolve disputes between carriers and their customers upon request."
Recommendation: Customers must have the right to seek legal action through independent mediation, the Department, or court. Customers should be able to contest their bill if the telephone carrier provides misleading information about its services, renews or modifies the customer's contract without the customer's consent, refuses to cancel a service contract if requested within 30 days of the first bill, over bills the customer, or violates any of the provisions set forth in the Cell Phone Users' Bill of Rights. Telephone carriers may not seek retribution by way of terminating service if the customer takes legal action.

Retail Billing

Consumer problems with cell phone carriers' billing practices are the largest source of complaints filed with the FCC, including complaints about double billing, extra and unexplained fees, minutes charged to wrong months, and the inability of customer service representatives to correct these errors. MASSPIRG strongly supports regulations that insure that billing should be clear and accurate so customers can know exactly how much they are paying for each part of their service package.

It is extremely important for cell phone bills to be clearly organized. All mandated government taxes, surcharges and fees required to be collected from consumers and to be remitted to federal, state, or local governments must be listed in a separate section of the bill and clearly itemized. This section of the bill may not include any charges for which the carrier is not required to remit to the government. Roaming calls must also be itemized on the bill within 60 days of the call, and include the date and location of the call. Carriers may not charge customers extra to obtain an itemized bill.

Carriers should not be able to charge customers for calls made after a customer reports that his or her phone has been stolen, provided that the theft is promptly reported to the service provider. If a customer files a billing dispute with the state utility commission, unpaid disputed charges may not be subjected to late fees if the complaint is pending with the state.

Carriers should not be able to charge customers a fee to keep their number private, and must obtain customers express permission prior to making cell phone numbers public.

Termination Practices – Early Termination Fees are a Barrier to Fair Competition and Should be Prohibited

MASSPIRG advocates the elimination of all Early Termination Fees (ETFs) for cell phone service providing companies. These fees essentially 'lock' consumers into a contract with their current provider, often for periods extending beyond their initial contract, which prevents them from switching to another provider that offers better service or terms. As a result, consumers are forced to pay for packages with expensive service, add-on charges, and poor coverage. In addition to creating captive customers who are resigned to endure poor quality service if they wish to avoid an expensive penalty, ETFs inhibit competition in the cell phone industry, which in turn hinders the efficiency and fairness of the marketplace.

A report conducted by MASSPIRG in August 2005 entitled *Locked in a Cell: How Cell Phone Early Termination Fees Hurt Consumers* includes a national survey of 1000 consumers and their attitudes on early termination fees (ETFs), which can amount to $150 to $240 per phone.[4] Key findings in the report show that 36 percent of respondents replied that the fees had prevented them from switching services, and that early termination fees cost cell phone users more than $4.6 billion from 2002 to 2004.

Another significant problem regarding contract termination is that many consumers unknowingly extend the length of their contracts when they buy a new phone or alter the number of minutes on their calling plans. If they wish to terminate their initial contract, they must pay the exorbitant early termination fees. MASSPIRG maintains that carriers should not be able to extend a customer's contract without first obtaining his or her written permission.

III. CONCLUSION

The rising swell of customer dissatisfaction with the cell phone industry demonstrates a need for basic, common-sense consumer protections. MASSPIRG appreciates the Department's recognition of the importance of protecting retail customers from the unfair practices of telecommunication carriers. We strongly urge the Department to take this opportunity to adopt strict regulations that help to prevent telecommunication subscribers from becoming victims of highly questionable practices that undermine consumers' ability to choose the best telecommunication service for them.

Respectfully submitted,

Deirdre Cummings
Consumer Program Director

Attachments:

I. Examples of MA Complaints
II. Can You Hear Us Now, MASSPIRG
III. Locked in a Cell, MASSPIRG

[4] The full text of *Locked in a Cell: How Cell Phone Early Termination Fees Hurt Consumers* is attached as Attachment III.