

**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	)	D.T.E. 06-8
Termination Practices for Telecommunications	)	
Carriers	)	

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**REPLY COMMENTS OF XO COMMUNICATIONS SERVICES, INC. REGARDING  
NOTICE OF INQUIRY**

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Pursuant to the Order opening the above-encaptioned Notice of Inquiry (“Order”), XO Communications Services, Inc. (“XO”) respectfully submits these reply comments on the issues raised in the Order regarding the possible amendment of the Residential Billing and Termination Practices (the “Residential Practices”). In its opening comments on this matter, XO urged the Department not to expand the content or applicability of the Residential Practices. Rather, XO stated that the Department best can achieve its goals by relying instead on more broadly-framed provisions such as the Guiding Principles operating in conjunction with the vigorous competition in today’s market for telecommunications services to protect consumer interests. More specifically, XO urged the Department not to extend any of the Residential Practices to small business customers or to services delivered by emerging technologies such as Voice over Internet Protocol (“VoIP”). A number of commenters, representing a diverse cross-section of the telecommunications industry, strongly advocated similar positions on these issues.

As discussed in XO’s opening comments, the healthy and robust competition among carriers that exists in Massachusetts<sup>1</sup> is far more effective in advancing the interests of consumers than inflexible prescriptive regulations. In light of these “highly competitive” markets, there is no need for the Department to impose detailed, prescriptive measures that

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<sup>1</sup> The Department recognized in the Order that “intra- and interLATA toll markets, as well as the local exchange markets, are highly competitive, with numerous carriers competing in each market.” Order at 3.

would micro-manage the interaction between customers and carriers. Rather, the Department can rely upon competitive forces to protect consumers, addressing problems as they arise pursuant to more flexible and broadly-stated provisions such as the Guiding Principles.

Verizon Massachusetts (“Verizon”) agrees, observing that the Residential Practices “do not reflect the fundamental changes to industry structure and regulation and the increasingly competitive retail telecommunications market in Massachusetts.”<sup>2</sup> Like XO, Verizon urges the Department to “adopt a less prescriptive approach and instead establish broad ‘Guiding Principles’” that will give carriers the “discretion to meet those principles in a manner that appropriately balances the needs of consumers and carriers alike.”<sup>3</sup> As Verizon explained, “[a]ffording 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.”<sup>4</sup> The CMRS Providers agree that competition offers “significant incentives to competitors to behave in consumer-friendly ways . . . and allows consumers to ‘vote with their feet’ if a particular carrier’s prices or consumer practices are repugnant.”<sup>5</sup>

Similarly, Comcast Phone of Massachusetts, Inc. (“Comcast”) observes that “[i]n 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.”<sup>6</sup> Comcast urges the Department not expand or adopt any regulatory provisions unless there is “adequate record evidence” that consumers are suffering actual harm

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<sup>2</sup> Verizon Comments at 1.

<sup>3</sup> *Id.* at 2, 3.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> Comments of CMRS Providers at 4.

<sup>6</sup> Comcast Comments at 2-3.

and that the proposed provision or expansion would remedy that specific injury.<sup>7</sup> XO fully agrees that unless the Department can articulate a compelling reason to take specific action, the Department should not broaden the Residential Practices.

Commenters also consistently expressed opposition to any extension of the Residential Practices to small business customers. As XO explained in its opening comments, today even small business customers have relatively sophisticated voice and data service needs and are well-schooled in procuring such services. In addition, the needs of this group vary widely and carriers require a great deal of flexibility to respond effectively and efficiently to them, making heavy-handed regulatory requirements not only unnecessary but highly counter-productive.

Conversent Communications of Massachusetts Inc. (“Conversent”) agrees that extension of the Residential Practices to small business customers is unnecessary and would be harmful. As Conversent points out, “[b]usinesses generally are deemed to be more sophisticated in commercial and legal matters than individuals.”<sup>8</sup> Moreover, as Conversent correctly notes, there is “no evidence that small businesses are subject to consumer protection abuses that require additional regulation” and a “wide array” of consumer protection provisions already provide important safeguards to small business customers and other consumers.<sup>9</sup> XO agrees with Conversent that applying different requirements to one set of business customers would increase costs for carriers serving the business market which in turn would negatively impact the market.<sup>10</sup>

Verizon states that the “business market is extremely competitive . . .”<sup>11</sup> Verizon argues that “[a]ny 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

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<sup>7</sup> *Id.* at 11.

<sup>8</sup> Conversent Comments at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> Verizon Comments at 8.

market forces, rather than state-imposed conditions, should shape the relationship between business customers and their telecommunications providers.”<sup>12</sup> Similarly, AT&T Communications of New England, Inc. (“AT&T”) states that “regulation of the non-residential market, the most competitive part of the Commonwealth’s telecommunications market,” is unnecessary.<sup>13</sup> Importantly, the National Consumer Law Center (“NCLC”), one of the primary advocates of more prescriptive regulation for basic residential telecommunications service, “takes no position” on the application of the Residential Practices to business customers.<sup>14</sup>

Other commenters also echoed XO’s call for the Department to refrain from applying any of the Residential Practices to VoIP services. Like XO, Comcast asserts that “it is at best premature to consider any billing and termination regulations of VoIP services until the FCC has resolved the federal issues” in its *IP-Enabled Services Rulemaking*.<sup>15</sup> Verizon correctly observes that VoIP services “are offered in highly competitive markets” and “there is no public policy reason for the Department to take any action” in this area.<sup>16</sup> The CMRS Providers agree that healthy competition obviates the need for prescriptive regulation of emerging technologies.<sup>17</sup> Verizon also maintains that the Department lacks jurisdiction over VoIP services.<sup>18</sup> As in the context of business services, NCLC “takes no position” on the application of the Residential Practices to VoIP and other emerging technologies.<sup>19</sup>

For the reasons set forth in its opening comments and herein, XO joins the many other commenters discussed above in urging the Department not to extend the Residential Practices to

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> AT&T Comments at 9.

<sup>14</sup> NCLC Comments at 3, n.4.

<sup>15</sup> Comcast Comments at 5 (*In the Matter of IP-Enabled Services*, FCC 04-28, WC Docket No. 04-36, Notice of Proposed Rulemaking (2004)).

<sup>16</sup> Verizon Comments at 9.

<sup>17</sup> Comments of CMRS Providers at 10, n.36.

<sup>18</sup> Verizon Comments at 9.

<sup>19</sup> NCLC Comments at 3, n.4.

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.

Respectfully submitted this 10<sup>th</sup> day of July, 2006 at Boston, Massachusetts.

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