COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department	)	
of Telecommunications and Energy on its own	)	D.T.E. 06-8
Motion to Establish Retail Billing and	)	
Termination Practices for Telecommunications	)	
Carriers	)	

Reply Comments of RNK, Inc. d/b/a RNK Telecom

Pursuant to the Order opening the above-captioned,[1] RNK Inc. d/b/a RNK Telecom ("RNK"), by its attorneys, hereby respectfully submits the following reply comments.

I. Introduction

RNK Inc., a small, privately-held company, based in Dedham, Massachusetts, and founded in 1992, has grown from its initial niche of local resale and prepaid long distance calling cards to an Integrated Communications Provider, marketing local and interexchange telecommunications services, as well as Internet Services and IP-enabled services. RNK is a registered Competitive Local Exchange Carrier ("CLEC") in Massachusetts, and offers wholesale and retail residential and business telecommunications services via resale and its own facilities. Via its own facilities, RNK serves a variety of customers, including IP-Enabled telephone customers, with a broad range of telecommunications and non-telecommunications services.

[1] *Order Opening A Notice of Inquiry to Establish Retail Billing and Termination Practices for telecommunication Carriers* (April 7, 2006)

II. Residential Billing and Termination Practices Should Not Expand To Small Businesses or Services Delivered By Emerging Technologies Such As Voice Over Internet Protocol ("VoIP")

Although RNK supports the Department's intention of protecting Massachusetts consumers, and strives to provide clear bills and excellent 24-hour customer service, RNK believes that current federal "truth in billing" and other rules, in addition to a competitive market with VoIP, adequately protect Massachusetts consumers and make further rules unnecessary, and may even increase the cost of VoIP services. Further, RNK supports the position of Level 3 Communications, LLC ("Level 3") requesting that the Department carefully consider asserting jurisdiction in applying billing and termination standards to VoIP providers and other emerging technologies .[2]

Level 3 makes a strong argument that based on the FCC's Order in the Matter of Vonage Holdings Corporations Petition for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order, FCC 04-627 (Nov. 9, 2004)[hereinafter "Vonage"], it would be prudent for the Department to delay any action extending residential and small business protections to VoIP services. [3] The Federal Communication Commission ("FCC") stated that it is currently considering the appropriate regulatory scheme for VoIP Services in its IP-Enabled Services Rulemaking.[4] Although the FCC acknowledged in its Vonage Order that states would continue to have a role in protecting consumers from fraud, it would be limited in the context of state general laws governing business within their state, [5] and expressly stated that the FCC will resolve other issues regarding the interplay of federal and state

[2] Comments of Level 3 Communications, LLC (June 15, 2006), at para. 1
[3] Id
[4] Id. at para. II
[5] Id.

regulation of VoIP services, specifically including issues regarding consumer protection, in its own-going IP-Enabled Services Rulemaking.[6] Because serious questions exist as to the ability of the Department to assert jurisdiction over VoIP in general, and certainly at this point in time, RNK requests that the Department not extend any new residential billing and termination restrictions to VoIP services, until the FCC acts.

If, however, the Department chooses to assert jurisdiction and extends new billing and termination regulations to VoIP services, RNK agrees with Level that any such new regulations should not extend to carriers providing underlying wholesale network components and services to VoIP providers as these carriers have no actual relationship with a retail customer.[7] This is also analogous to what presently occurs with wholesale telecommunications providers and resellers, with the reseller having the obligation to communicate with its end users and not the wholesale carrier. As to any regulations imposed on providers servicing retail VoIP customers, RNK requests that such regulations take into consideration the relative newness of the technology, and the innovative strides the VoIP industry has taken with respect to self-service online sign-up and account management, the demand for innovative service and pricing plans, and flexible and non-traditional payment structures and methods (e.g., online check, credit/debit/ATM cards, and third-party services such as Paypal®). [8]

To this end, RNK recommends that the Department hold a technical session and specifically ask for common billing practices used by VoIP providers. It is these highly

[6] *In the Matter of Vonage Holdings Corporations Petition for Declaratory Ruling Concerning and Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, FCC 04-627 (Nov. 9, 2004) at para. 14, n. 46

[7] Comments of Level 3 Communications, LLC (June 15, 2006), at para. III

[8] By way of example, many VoIP providers do not "mail" physical invoices or notices. Further, communications with end users occur via email or readily available and robust administrative account web interfaces, and billing disputes are often handled via email, web interface, and over the phone should the first two methods be insufficient

efficient and functional billing practices that contribute to the lower costs of VoIP as compared to traditional telecom, and which also reflect a widespread acceptance and potentially a preference of electronic communication by the consumers themselves.

RNK also concurs with Conversant Communications of Massachusetts, Inc. ("Conversant")[9] and XO Communications Services, Inc. ("XO") assessment that these residential practices also not extend to small businesses.[10] There is no indication that small business customers are in need of additional protections afforded to residential customers, and, indeed, the public policy concerns that may apply to residential end users are certainly absent in the context of business customers.[11] Furthermore, carriers require flexibility to meet the small business customers' needs. Lengthy prescriptive requirements for small businesses are unnecessary and would increase costs to carriers that would ultimately increase retail prices to customers since, on average, business customers tend to carry larger billing amounts than residential. Unlike residential telecommunications, the competitive forces in the small businesses telecommunications and VoIP markets ensure that carriers provide adequate information to customers and that they are treated fairly.[12] A robust market will ensure that if a carrier is not treating a customer fairly, the customer will find another carrier willing to treat them properly. Since the incentive for fair practices is already thriving in the small business market, the Department does not need to extend the residential protections to this area. Finally, if the Department does decide to establish some form of billing regulations for business customers, the Department should recognize the differences in public policy concerns and

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[9] Comments of Conversant Communications of Massachusetts, Inc. (June 6, 2006) at page 2, para. 1
[10] Comments of XO Communications Services, Inc., (June 6, 2006) at page 4. para 3
[11] Comments of Conversant Communications of Massachusetts, Inc. (June 6, 2006) at page 2, para. 2
[12] Comments of XO Communications Services, Inc., (June 6, 2006) at page 3. para 2

economic exposure associated with business customers who are, in general, more savvy and have more choices. Any billing regulations imposed on carriers for business should be streamlined to meet these realities.

In sum, RNK concurs with Conversant's, Level 3's and XO's position that residential billing and termination practices not extend to small businesses or VoIP services. However, if the Department does decide to establish billing regulations for business and VoIP customers it should do so in a way that acknowledges the nature of each of these services, and allows the cost savings of billing efficiency to continue to be passed on to the consumers.

III. Any Regulations Should Permit Flexibility in Regards to Billing Format, Frequency and Process

RNK believes that the Department should permit the delivery of bills in any reasonable manner in which the customer and carrier agree. In particular, the Department should recognize the increasing use of digital technology and allow electronic billing if the customer is in agreement [13] AT&T makes a strong argument that although a monthly billing option should be required, the frequency of bills should also be an issue agreed upon between the parties and not regulated by the Department.[14] Weekly or biweekly periods may allow some customers to better budget their telephone and/or VoIP service. Flexibility as to billing format, frequency, and process is essential in order to maintain low costs for customers.

[13] RNK provides electronic billing to customers providing e-mail information as well as web-site access to customer billing and accounts.
[14] Comments of AT & T Communications of New England (June 6, 2006) at page 7, para 1.

IV. Providers Should Be Allowed to Assess Credit Requirements, Deposits and Late Payment Charges

RNK agrees with AT&T's position that it is critical that providers be allowed to require deposits from new customers,[15] and that the Department should not impose limits on the amount.[16] Providers must be allowed to set a high enough fee to deter late payments. Among other reasons, there is a time value associated with money, and requiring companies to incur the costs of overhead for time periods when customers are late in paying for a properly rendered service is unfair, and generally not allowed in other industries. If one does not pay his/her credit card bill, he/she will be assessed interest. Here, if there is an amount that is properly disputed, the late fee can be suspended pending resolution, however, if the provider prevails then the late fee should be assessed.[17] To allow otherwise encourages customers to dispute bills without legitimate reasons, other than wanting an interest-free loan.

RNK also agrees with Verizon that providers be allowed to require assurance of payment by requiring a deposit.[18] Requirement of a deposit should be allowed for both the residential and the non-residential customer. In many instances, customers, certainly those with poor credit histories use a service for the initial month or so, but never pay. If a customer has no intention of paying, a reasonable deposit is the only way a provider will be paid for its services. Furthermore, in a VoIP context, many VoIP carriers provide customers with expensive equipment along with the service. Without assurance of payment via a deposit, many carriers may be left with little recourse and no ability to recoup the costs of this equipment, which then causes the cost of service to rise for

[15] Id. at page 9, para. 3
[16] Id. at p 10, para. 1
[17] Id.
[18] Comments of Verizon Massachusetts Attachment (June 6, 2006) at question E4

customers paying in a timely fashion. Therefore, the use of deposits is essential in the providers' ability to operate effectively and efficiently

V. VoIP Providers Should Have a Right to Refuse Service

In a competitive market, with a default telephone service provider, VoIP service providers (especially since VoIP services, as a technical prerequisite, necessitate consumers maintain[19] other "non-basic" services such as Digital Subscriber Line and/or cable modem service), should be able to refuse service to customers who do not meet reasonable consumer credit requirements. Given that VoIP providers operate in a competitive market, and because they lack traditional common carrier protections, such as tariffed or statutory limitations on liability for content of transmissions made by their customers, or for any losses resulting from failure of or damage to their services and infrastructure, they are subjected to significantly greater business risk—and should have correspondingly wider discretion in choosing their customers than traditional common carriers.

Of course, if the Department chooses this course, VoIP providers would be still forbidden to engage in unfair or deceptive practices, such as those outlined in M.G.L. ch. 93A, and elsewhere. It would be patently unfair to tip the competitive scales against VoIP providers, by saddling them with common carrier regulations, while they would be denied the "benefits of the bargain" enjoyed by regulated common carriers. It would be more appropriate to treat IP-enabled services as "private carriage," beyond the reach of Departmental regulation, and allow providers and consumers engage on mutually-beneficial terms. Until these services become so ubiquitous that providers have the market power to effectuate—and only if providers engage in abusive or unconscionable

[19] Either from an affiliated or a third-party broadband provider.

discriminatory service policies (e.g., such as those that would discriminate in provision of services based on race, religion, or gender) government should not attempt to dictate who providers may sell to, or on what terms.

VI. Notice of Termination Requirements Should be Flexible

While it is reasonable to require companies to provide customers advanced notice of termination of services, it is not reasonable to require multiple, time and format specific notices. RNK supports AT&T's conclusion that a single notice is appropriate.[20] RNK also supports AT&T's assertion that an electronic termination notice to an e-billed customer is certainly appropriate given that electronic communications have been agreed upon and are in fact the standard means of communication for the particular customer.[21] Regarding the length of any such notice, flexibility based on the type of customer and service would be best, and, it is important to not allow an overly long time frame.

VII. Providers Should Be Able To Terminate All Services In A Bundled Package If A Customer Fails To Pay For A Service

RNK supports Verizon's position that when a customer fails to pay for a service included in a "bundled" package, the entire bundled package can be terminated for non-payment.[22] Verizon argues persuasively that since customers purchase bundled services for a single price; providers should be permitted to remove those services as a package for non-payment.[23] In further support of Verizon's position, RNK agrees that many providers do not have the technical capabilities to separately disconnect long distance from local service in a bundled package. Thus, for providers unable to separate bundled services, the ability to terminate the entire package is necessary to avoid having to

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[20] Comments of AT & T Communications of New England (June 6, 2006) at page 10, para 2.
[21] Id.
[22] Comments of Verizon Massachusetts Attachment (June 6, 2006) at question F1.
[23] Id.

provide free services to a non-paying customer. In the alternative, should the Department disagree, RNK argues that non-paying bundled customer retail services be allowed to be terminated, while critical emergency services such as “911” be kept in tact (i.e., “soft” dial tone).

VIII. Conclusion

In conclusion, while RNK supports the Department’s intention of protecting Massachusetts consumers, RNK believes that current federal “truth in billing” and other rules, in addition to a competitive market with VoIP and small business telecommunications, adequately protect Massachusetts consumers and make further rules unnecessary, and may even increase the cost of VoIP services. RNK firmly believes any new residential billing and termination requirements not extend to small businesses or VoIP services and that any new regulations for residential customers not be unnecessarily burdensome and allow for provider flexibility.

Respectfully submitted, by the undersigned,

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