COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Department of Telecommunications and Cable
Regulation Review Pursuant to Executive Order No. 562
To Reduce Unnecessary Regulatory Burden

Notice Seeking Comment On Hearing Officer
Recommendations – 220 C.M.R. §5.00 –
Tariffs, Schedules and Contracts

COMMENTS OF AT&T CORP.

Many of today's existing regulations are vestiges of the last century, put in place then to regulate an industry that is largely unrecognizable today. It is indeed an understatement to say that the industry and the competitive landscape have rapidly and dramatically evolved, while the regulations that burden and constrain the industry and the competitive landscape have not. The Administration, keenly aware of this regulatory time warp, realizes that regulatory reform is essential if the Commonwealth is to command a leading role in technology and communications in the 21st century and to achieve the goal of ushering in a wave of innovation that is critical to the Commonwealth's continued technology leadership. To that end, the Administration has created an important and meaningful – indeed, watershed – opportunity for the Commonwealth to modernize its regulatory landscape and to relieve itself and its residents and businesses of the many antiquated, unnecessary and, in some cases, counterproductive and harmful regulations that stand in the way.

Governor Charles Baker has taken a very bold and commanding step forward. On March 31, 2015, he issued Executive Order No. 562 To Reduce Unnecessary Regulatory Burden ("Executive Order"). Specifically, the Executive Order recognizes that "many of the regulations adopted by state government agencies and offices have imposed unnecessary cost, burden and complexity." It also recognizes that

such regulations inconvenience individuals, inhibit businesses and put Massachusetts at a competitive disadvantage vis-à-vis its state and foreign competitors. Determined to put a stop to those regulations that hinder the residents and businesses of the Commonwealth and that jeopardize its role as a technology and competition leader, the Executive Order issued a mandate to each government agency, including Massachusetts's Department of Telecommunications and Cable ("DTC"), to "reduc[e] the number, length, and complexity of regulations, leaving only those that are essential to the public good" and "to relieve the Commonwealth from the burden of unnecessary regulation."

Only by taking an aggressive stance can the DTC rise to this pivotal challenge and achieve these critical, innovative and pro-competitive goals and objectives. Now is not the time to be conservative. The DTC's analysis must not be hamstrung by how things have been done in the past or how they are done today. Rather, this regulatory baggage must take a back seat to the key analysis of whether a regulation is ***essential*** to the public's health safety and welfare. Any regulation that falls short of that very high standard – and a majority of them do – must be eliminated. AT&T is excited to be a part of this monumental undertaking and looks forward to working with the DTC to ensure the Commonwealth's place on the forefront of competition, innovation and technology leadership.

The Executive Order Very Clearly Prescribes the Standards To Roll Back Current Regulations and To Promulgate New Regulations.

The Executive Order is very clear that only those regulations "***which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents shall be retained or modified."*** (emphasis supplied) All regulations that fail to meet this strict standard must be eliminated. In order to meet this standard, the regulation at issue must meet all seven of the criteria set forth at page 2 of the Executive Order. The explicit charge of each agency's review, then, is to review existing regulations with the goal of eliminating, reducing and relieving the current regulatory burdens,

and certainly not re-instituting any regulatory requirements and burdens that have already been eliminated in the Commonwealth. The Executive Order also places the burden on the agency undergoing the review to demonstrate that all seven criteria are satisfied rather than placing the burden upon the regulated carriers to demonstrate that those criteria have not been satisfied. Executive Order, page 2.

On November 6, the DTC issued a Notice Seeking Comment on Hearing Officer Recommendation to 220 CMR §5.00 (Tariffs, Schedules and Contracts). While AT&T Corp. ("AT&T") appreciates the preliminary work done by the DTC in attempt to bring 220 CMR §5.00 (Tariffs, Schedules and Contracts) into substantial compliance with the Governor's mandate, AT&T is concerned – based upon the nature of some of the questions posed in the Notice – that the DTC has even hinted at the possibility of imposing ***new and additional regulatory burdens and requirements on carriers and re-imposing unnecessary regulatory burdens and requirements upon telecommunications companies from which they have already been granted regulatory relief by the Massachusetts legislature.*** Such regulations would be unlawful, would be contrary to good public policy, would directly violate and contradict the Executive Order's mandate and would fail to meet the Executive Order's standards for retaining an existing regulation and certainly the enhanced standard for imposing a new regulation.

Section 19F Baseline Regulations are Unnecessary and Unwarranted And Would Violate Legislative Mandate and the Executive Order Mandate and Standards

The key question posed in the Notice of Comment is whether the Department should implement baseline regulations involving Section 19F's electronic notice and online posting requirements similar to those already required of Section 19 filings and, if so, what language the Department should adopt. Quite simply, the answer is an emphatic "no". Section 19F quite clearly provides that a telecommunications carrier may post on its website the rates, terms and conditions upon which it offers

service, ***nothwithstanding the requirements of Section 19.*** The crux of the legislature's passage of Section 19F was to eliminate the regulatory burdens of Section 19 – not to mimic them. By explicit legislative mandate and design, the Section 19F requirements ***are supposed to be different than the requirements of Section 19***. In fact, the whole point is for telecommunications carriers who post their offerings on their websites to differentiate those offerings to better meet consumer demand and to provide consumers with additional choices, thereby enhancing competition and competitive choice. As such, any effort to reconcile those requirements is taking a clear step backward on the road to regulatory relief, progress and competitive advancement.

The premise of the questions posed by the DTC, consistency and homogeneity, are directly contrary to and inconsistent with the stated goals of the Governor and Administration. For example, a couple of the follow-up questions to the one discussed above are what definition or format the online postings should use and whether they need to retain the format already required of Section 19 filings. Again, the answer is a resounding "no" due to the obvious and basic differences in the nature of the filings. The Section 19 filings are filings made with and unique to the DTC. The Section 19F postings, on the other hand, are not Commission filings but are postings appearing on the carriers' websites. Many of the offerings posted on carrier websites to comply with Section 19F contain the same service terms and conditions that the carrier offers for that same or a similar service in other states. To require that carrier to maintain a Massachusetts-specific version, or to require that the website terms be posted in a Massachusetts-specific format would pose an unnecessary burden upon the carriers that is neither mandated by law, nor essential to the health, safety, environment or welfare of the Commonwealth's residents. Finally, such regulations would most certainly fail to satisfy the Executive Order criteria sufficient to qualify as a legitimate new regulation. The answer to the key question posed and the follow-up questions, then, is an answer that is both dictated by the clear legislative relief granted by Section 19F and by the plain mandate of the Executive Order – no.

Particularly troubling is the question as to how the Department should account for contract service arrangements of retail rates, terms, and conditions that veer from those rates, terms, and conditions posted online by a carrier. In December 2014, the Massachusetts legislature enacted MGL, ch. 159, Section 19F, ***which eliminated the requirement that telecom carriers file retail tariffs and contract service arrangements for the services it offers.*** The legislature has already lifted this regulatory burden and mandated this pro-competition policy regulatory relief and, consistent with Section 19F, AT&T and several other carriers no longer file retail contracts or tariffs, opting instead to post the rates, terms and conditions of their retail offerings on their websites. The DTC cannot now legally re-impose contract filing requirements on retail services. Section 19F recognized the constraints on innovation and competition stemming from the need to file retail tariffs and contracts as a matter of law. Hence, regulations implementing that section cannot include requirements that very section was enacted to eliminate. In fact, as noted above, no additional regulations are warranted with respect to Section 19F. That law has been in effect for almost a year and everything has progressed smoothly in its wake. No implementing regulations are mandated by law, nor are any essential to the health, safety, environment or welfare of the residents of the Commonwealth. In fact, the clear and unambiguous charge of the Administration and mandate of the Executive Order is to eliminate all unnecessary regulations in Section 19 – not to implement new Section 19F regulations to match the unnecessary regulations already in place.

Even assuming, for the sake of argument only, that the DTC had the authority to require the filing of retail tariffs and contracts (which, respectfully, it clearly does not) the proposal to expand the definition and scope of contracts directly contradicts, if not subverts, the Executive Order's mandate to eliminate all regulations that do not meet the standard enunciated in the Executive Order. Specifically, the proposed revisions to 220 CMR 5.00 expands the definition and scope of contract regulations. Currently, the definition of contracts is "contracts for the sale of gas or electric to which any gas

company or electric company is a party and any contract for the sale of water to which a water company is a party, expect contracts subject to M.G.L. c. 161, §94A and except contracts for the sale of electricity subject to the jurisdiction of the Federal Power Commission." Whether intentionally or not, the proposed revision would require the filing pursuant to Section 19 of all negotiated agreements where the rates, terms, and/or conditions differ from standard tariffed offerings and which is memorialized through language in a tariff filing approved by the DTC. The current definition does not include telecom service contracts, yet the proposals would sweep those in as well, despite the fact that the revisions fail to meet the standard and criteria set forth in the Executive Order.

While AT&T will not address all seven criteria in detail (as noted above, the burden is on the DTC to satisfy the criteria, not on the carriers to demonstrate they are not satisfied), it is self-evident that there is no clearly identified need for governmental intervention – the existing requirements have worked well for years and years. Finally, all new proposed regulations require an extensive business/competitiveness impact statement as set forth in Section 6 of the Executive Order. There is no such statement here. To make matters worse, the information proposed to be submitted with each contract is onerous, heavy-handed, unnecessary and presents concerns of carrier and customer confidentiality.

Requiring 30 Days Advance Written Notice Of Rate Increases Is Unnecessary and Creates a Competitive Disadvantage

As AT&T noted in its initial comments submitted in August, the current regulations contain many provisions that are redundant and/or obsolete pursuant to the Executive Order. One of those specifically enumerated by AT&T was the 2002 Industry Notice "Customer Notice of Rate Increases", which mandates that carriers provide business and residential customers 30 days advance notice of a rate increase. 30 days is way too long, is inconsistent with the standard established in the majority of

other states and, as a result, makes Massachusetts anti-competitive. Carriers should have the flexibility to differentiate their offerings and to respond to ever-changing market needs and demands in short order. 1 day advance notice is much more competitive and consistent with what a majority of other states require.

Rather than shorten the interval as AT&T recommended, the provision was taken from the 2002 Industry Notice and incorporated as the new Section 5.06. The 30 day time interval is not mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents. As such, the 30 day advance notice requirement should be reduced to a single business day.

References to Paper Requirements and Formats Should Be Eliminated From 207 CMR §5.00

While the DTC revisions address several provisions of 220 CMR 5.00, much of the existing language with respect to paper filings, paper copies, typewritten paper, bound paper/copies, paper dimensions, one-sided paper and three-hole punched paper still remain. In this age of electronic media, there is no need to file paper. In fact and to the contrary, the costs of filing paper greatly outweigh the benefits of paper filings – just one of the seven key criteria this requirement fails to meet in order to satisfy the Executive Order standard. Electronic filings are widely accepted and do not impose the same burdens of paper costs and handling, postage, administrative expense, etc. All remaining provisions of 220 CMR 5.00 should be modernized to accommodate electronic filings.

In conclusion, AT&T's comments focus on modernizing 220 CMR §5.00 by eliminating various aspects of its unnecessary, anti-competitive and/or counterproductive regulation and by ensuring that its reach is not expanded. Other commenters will focus on some of the same aspects and will undoubtedly raise others. The DTC must aggressively seize this unique and empowering opportunity by conducting its review with an eye toward what regulations can and must be eliminated rather than what

regulations it should keep. This is the time to modernize and reform the entire regulatory landscape to bring it current and position the Commonwealth for great things to come. This is the time to overhaul the entire regulatory framework rather than retain the current framework by tweaking existing regulations. This is the time to be bold. In fact, the Administration's goals and the Executive Order demand it. Take the pro-competitive lead of the legislature in enacting Section 19F and run with it, looking for opportunities to advance the Commonwealth's leadership in technology, innovation, communications and competition.

Respectfully submitted,

AT&T Corp.

By: Cheryl L. Hamill, Its Attorney
225 West Randolph, Suite 25A
Chicago, Illinois 60606
chamill@att.com
312-727-2424

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