

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

COMMENTS OF AT&T NEW ENGLAND, INC.
IN RESPONSE TO THE DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE'S REQUEST FOR COMMENT
AND NOTICE OF LISTENING SESSION DATED JULY 27, 2015

AT&T New England, Inc. d/b/a AT&T Massachusetts ("AT&T") submits these comments in response to the Department of Telecommunication and Cable's Request for Comment and Notice of Listening Session issued July 27, 2015 ("Request for Comment") seeking comment on the review and potential elimination of its regulations pursuant to Executive Order No. 562 ("Order 562").

When passing Order 562, Governor Baker promised that "this will be an intensive process that ultimately makes Massachusetts a more efficient and more competitive place to live and work, while driving economic growth." *See* Governor's Press Release accompanying Order 562. Order 562 directs state agencies to review existing regulations and to keep only those that are "mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents." *See* Order 562 at § 3. Order 562 mandates that all regulations that survive the review process *must* satisfy the seven pre-requisite conditions listed in Order 562, including a requirement that "there is a clearly identified need for governmental intervention that is best addressed by the Agency." *Id.*

Put simply, there is little, if any, clearly identified need for many of the Department's existing regulations. The existing regulations, now largely antiquated, were put in place to promote competition and to promote consumer protection. While a laudable goal at the time, that need no longer exists given current market realities. As such, many of the existing

regulations are no longer necessary, do not meet the requirements of Order 562 and should be eliminated.

First, with respect to competition in the telecommunications market place, the Massachusetts telecommunications industry proudly stands as one of the most competitive in the country. Massachusetts consumers have great choice from a wide variety of carriers offering both wired and wireless products, all of which offer a varied selection of technologies and functionalities. Because consumers have such a robust choice, there is a strong natural, competitive, market-based incentive for the service providers to secure, maintain and well-service those customers. If a customer is unhappy with its current provider's billing practices, quality of service, response times, installation intervals, etc., there are other carriers ready, willing and able to step up immediately to provide the desired services to that customer.

At core, then, it is that robust level of consumer choice that forces each carrier to fight for customers in a way that encourages the customer to choose its products based on the terms, conditions and quality of the plethora of services provided. For example, some prepaid wireless products are purchased on a *weekly* basis because that is what the customer prefers. The concept of a *weekly* payment option for a telephone service would have been an anathema to regulators at the Department who promulgated many of the now obsolete regulations, yet it is a reality in the marketplace because the consumer demands it and the carriers must meet these ever-changing demands in order to remain competitive. The existing regulations, implemented at the time to address a market where consumers did not have or may not have had a meaningful choice of provider, are no longer required. These consumers now have meaningful choices and no longer need these regulations to protect them. If they are unhappy with a service provider, they don't need to turn to a regulation to protect them – they turn to the many other available providers who

are happy to accommodate their needs and desires. In sum, the vigorous competition in the market place renders many of the existing regulations not only unnecessary, but clearly counter to the many requirements imposed by the Governor to justify maintaining an existing regulation.

Second, with respect to consumer protection, Massachusetts consumers enjoy an abundance of consumer protections. As a follow-up to the above competition discussion, providing premiere consumer protection is a competitive advantage. Carriers provide it because the market demands it. Without it, they cannot effectively and meaningfully compete. The telecommunications consumer expects its information and its rights as a customer will be protected by the provider; if that trust is betrayed, the consumer will switch to one of the many alternatives in the marketplace.

Moreover, existing, additional layers of protection already exist that are more than adequate to protect Massachusetts consumers. Specifically and by way of example, Massachusetts's consumer protection laws and the FCC's Truth-in-Billing rules already afford strong protections to Massachusetts consumers in the realm of billing. To the extent C.M.R. regulations exceed, are duplicative of or are unnecessary in light of the multitude of consumer protections that already exist at both the state and federal level with respect to consumer protection (or, for that matter, fail to satisfy any of the other prerequisites to maintaining a regulation), Order 562 requires they be rescinded or limited as appropriate.

While AT&T lists a number of existing regulations that should, at minimum, be considered within the scope of Order 562's mandate, some preliminary, overarching points are noteworthy. As a general matter, the questions to which interested stakeholders were asked to respond suggests that the scope of this review is too narrow and must be expanded. The questions listed at page 2 focus on "codifying", "unifying", "moving", "revising" and/or

“simplifying” regulations. While Order 562 certainly contemplates revising or simplifying regulations to the extent they meet the criteria set forth at page 2 of that Order, Order 562 clearly contemplates eliminating and rescinding the regulations that do not satisfy those criteria. Order 562 at Sections 2 and 3. As such, the *primary* focus of this session should be eliminating altogether those regulations that fail to satisfy the Governor’s criteria.

In addition, the Department should not limit its review to the formalized regulations under Titles 207 and 220 of the C.M.R., as page 1 of the Request for Comment and Notice of Listening Sessions suggests, since a large number of the Department’s most antiquated, unnecessary and onerous rules are not embedded in the C.M.R. but, rather, have been imposed via orders and informal directives over time. The clear intent of Order 562 is to eliminate state agency regulations that “inhibit business growth and the creation of jobs” and retain only those that are “essential to the health, safety, environment or welfare of the Commonwealth’s residents.” Order 562 at Introduction and ¶ 3. Many of these monopoly-era rules are burdensome to business growth and job creation. And because they were implemented in a landline-centric market environment where consumers lacked the choice of providers, services and technologies that exist today, the matters they address, the information they seek and the requirements they impose have little, if any, relevance to the pertinent issues in today’s much more dynamic, diverse and fast-paced telecommunications environment. While these regulations may have been relevant to a broad base of POTS customers years ago, they are hardly recognizable today. To comply with the real spirit, goal and directive of Order 562, then, this investigation should not be limited to an examination of formal C.M.R. regulations but should appropriately include a rigorous analysis of all the other existing arduous and arcane rules.

Finally, and not surprisingly, the existing regulations speak of filing paper copies, mailing paper copies, serving paper copies, posting notice in conspicuous places, making documents available for public inspection at a city or town clerk's office, etc. Not only do these requirements exemplify the antiquity of the regulations, but they impose unnecessary costs and burdens and can be accomplished via much less intrusive and alternatives. As the Department examines the substance of the regulations, it should also eliminate these outdated provisions and requirements.

Against the foregoing backdrop, AT&T suggests that, at minimum, the following specific regulations and/or advisory opinions be addressed during this examination process, eliminating the ones that are redundant and/or obsolete pursuant to the Governor's Order 562:

- 2002 Industry Notice "Customer Notice of Rate Increases." This Notice 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 makes Massachusetts anti-competitive. 1 day advance notice is much more competitive and consistent with what other states require.
- 2002 Industry Notice "Customer Notice of Rate Increases." This Notice prohibits website postings and a variety of other methods that are far more reasonable today for the posting of rate increases. Customers are very web savvy and a website posting or an email is a much more appropriate, much more reasonable and much less onerous form of notice for today's telecommunications consumer. Moreover, the rule is in direct conflict with the web posting provision enacted by the Legislature in the 2012/2013 Session. *See* 2014 Mass Acts ch. 287, §79.
- 220 C.M.R 26.00 Security Deposit and Late Payment. This rule regulates security deposits and late payment charges for business customers. The rule is onerous and unnecessary and should be eliminated for many reasons. First, almost all business customers have contracts with service providers that include provisions on both security deposits and late payment charges. Moreover, and as mentioned above, these customers have readily available alternatives if they cannot agree with a particular provider on these issues. As also noted above, various state and federal rules already provide adequate consumer protections in this area.

- 2004 Notice “Use of Contract Service Arrangements.” This Notice specifies the filing requirements associated with customer service arrangements and is overly burdensome given the scope of the product. These filings constitute just the small, intrastate components of overall much larger and broader national contracts, rendering the filing requirement unduly burdensome and essentially meaningless.

For all of the above stated reasons, AT&T supports a full review of all of the Department’s rules, in addition to its regulations, with particular focus on eliminating or severely limiting the ones that fail to satisfy the criteria of Order 562 including, at the very minimum, the specific rules and regulations set forth above.