

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE

INITIAL COMMENTS
OF
CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association®¹ (“CTIA”) hereby respectfully files these Initial Comments with the Massachusetts Department of Telecommunications and Cable (“Department”) in response to the Notice of Public Informational Forums dated July 7, 2011 (the “Notice”). The Notice seeks comment regarding the Department’s efforts to evaluate billing and termination rules based on the “realities” of today’s market. The Notice also seeks stakeholder input on “the appropriate scope and application of minimum consumer protection rules” in light of dramatic innovations in telecommunications technology. As discussed more fully herein, the wireless industry offers Massachusetts consumers an exceptional variety of products and services, and invests vigorously in networks and other assets within the Commonwealth. CTIA respectfully submits that the best approach is continued restraint by the Department regarding the adoption of any additional state-specific regulation of wireless billing and termination practices. The existence of a vibrant and competitive marketplace, coupled with wireless-specific industry standards, initiatives, and tools provides consumers routine access to an abundant amount of consumer-friendly information and recourse regarding their service.²

¹ CTIA is an international organization representing the wireless communications industry. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. CTIA advocates on behalf of its members at all levels of government. The association also coordinates the industry’s voluntary best practices and initiatives, and sponsors the leading North American wireless trade shows. CTIA was founded in 1984 and is based in Washington, D.C.

² CTIA’s comments in this matter are limited to the Department’s consideration of additional state-specific regulation of “other terms and conditions” under Section 332 of the federal Telecommunications Act of 1996 (the “Telecommunications Act”). Pub. LA. No. 104-104, 110 Stat. 56 (1996). CTIA herein respectfully reserves its right to argue the limitations of the Commonwealth of Massachusetts jurisdiction to regulate non-voice services offered by wireless providers (i.e. mobile broadband services, text messaging, etc.). With respect to mobile broadband service, the Federal Communications Commission (“FCC”) has unanimously found that wireless mobile broadband service is not a commercial mobile service because it is not an “interconnected service” as defined in the Telecommunications Act and the FCC’s rules. *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, 5916 ¶ 42 (2007). *See also, In the Matter of Petition for*

I. WIRELESS CONSUMERS HAVE ACCESS TO AND BENEFIT FROM A VIBRANT MARKETPLACE IN THE COMMONWEALTH.

The FCC reported in 2010 that over 6.3 million Massachusetts residents (or 97% of the Commonwealth's population) are wireless subscribers.³ According to the Centers for Disease Control, 16.8% of adults in Massachusetts were living in wireless-only households from mid-year 2009 to mid-year 2010, while 14.7% were living in wireless-mostly households.⁴ As the Department notes in its most recent *Competition Status Report*, there are six facilities-based wireless service providers operating in Massachusetts.⁵ The Department's own analysis establishes that approximately 99.5% of Massachusetts consumers can choose between at least two wireless providers.⁶ In addition, a growing number of mobile virtual network operators ("MVNOs") also provide service in the Commonwealth through partnerships with facilities-based wireless providers.

Subscribers enjoy a wide variety of choices for their wireless service, from the latest in broadband-enabled Smartphones to basic pre-paid and post-paid cell phone service. Pre-paid and pay-as-you-go wireless service plans are increasingly popular among various demographics, with approximately 21% of all customers nationwide choosing these options.⁷ Prepaid service has become a popular option for wireless subscribers, with over 63 million prepaid and pay-as-you go subscriptions nationally at year-end

Declaratory Ruling that Text Messages and Short Codes are Title II Services or are Title I Services Subject to Section 202 Non-Discrimination Rules, WT Docket No. 08-7. Similarly, the FCC is also currently considering whether early termination fees ("ETFs") are considered "rates" for purposes of preemption of state regulation under Telecommunications Act Section 332. As a result of the FCC's pending consideration of ETFs, CTIA directs the Department's attention to the FCC's conclusion that ETFs are "a valid *quid pro quo* for the rate reductions included in long-term plans," and as such, should be subject to unified national regulation. See *Ryder Communications, Inc.*, 18 FCC Rcd 13603, 13617 (2003); See also, *In the Matter of Consumer Information and Disclosure Truth in Billing and Billing Format IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36.

³ See, *FCC Local Telephone Competition: Status as of June 30, 2010*, available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf, Table 17.

⁴ See *National Health Statistics Report*, at Table 1, available at: <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

⁵ See *Massachusetts Department of Telecommunications and Cable Competition Status Report*, February 12, 2010, ("Competition Status Report") at Page 50 ; recently viewed at http://www.mass.gov/Eoca/docs/dtc/compreport/CompetitionReport_Combined.pdf.

⁶ *Id.* at 52.

⁷ See CTIA, *Prepaid Wireless Service in the United States: A Snapshot*, at Page 3.

2010.⁸ According to a recent survey conducted by MyRatePlan.com, eight carriers offer more than two dozen pre-paid service plans in the Pittsfield, Massachusetts area alone.⁹ Older citizens are no exception to this growing trend and are also adopting these plans in large numbers. Tracfone (the largest prepaid MVNO) has reported that more than 40 % of its customer base is over age 46.¹⁰

As the number of wireless subscribers has increased and competition has deepened within the Commonwealth, consumers have demanded and benefitted from increased wireless service quality. Massachusetts consumers have also made use of existing processes for inquiries and complaints regarding their wireless service available via the Department or the Massachusetts Attorney General's Office. These processes enable consumers to benefit from collaboration between the state agency and wireless providers to address consumer issues and concerns. This is consistent with similar collaboration between state attorneys general and public utility commissions in other states. Each year, CTIA provides updated wireless provider contact information to all state public utility commissions, including the Department, to ensure prompt resolution and coordination of consumers' issues with service providers.

At one or more of the recent public informational forums in this matter, the Massachusetts Attorney General's Office stated that in 2010 it had received 798 billing or service termination complaints concerning cable, satellite television, wireless telephone service and wireline service combined. While each consumer inquiry or complaint is important to the respective service provider and its customer, the total number of complaints represents less than 0.013% of the 6.3 million wireless subscribers in Massachusetts – and that assumes that all complaints concerned wireless service, which they clearly did not. This is consistent with a finding by the American Consumer Satisfaction Index that, over the past several years, wireless consumer complaints regarding billing issues has declined as carriers provide more tools and information to enable customers to monitor their usage.¹¹ These trends illustrate that the current

⁸ See *id.*; on a year-to-year basis, prepaid and pay-as-you-go subscribership increased by 12.1% from year-end 2009 to year-end 2010.

⁹ See <http://www.myrateplan.com/>.

¹⁰ See TracFone/NET10/Straight Talk Activation Survey – Jan. 1, 2011 to Feb. 15, 2011.

¹¹ See, *ACSI Commentary May 2010*, American Customer Satisfaction Index (May 18, 2010), http://www.theacsi.org/index.php?option=com_content&task=view&id=216&Itemid=230.

approach should be maintained in lieu of adopting any state-specific regulations on billing and termination practices of wireless providers. Such state-specific regulations would limit wireless providers' ability to collaborate with state agencies for the benefit of any individual wireless consumer.

II. ADDITIONAL STATE-SPECIFIC CONSUMER PROTECTION REGULATIONS ARE NOT NECESSARY OR APPROPRIATE

Existing regulations, national industry consumer protection standards, and the myriad of wireless carrier resources and tools for consumers to make informed decisions regarding their purchase of wireless products and services, are sufficient to protect consumers. Over the past decade, consumers and the national economy have mutually benefitted from the explosive growth, innovation and investments of the wireless industry across the country. In 2006, the nation's three largest national carriers (AT&T, Sprint and Verizon Wireless) cooperated with some thirty state attorneys generals, including the Office of the Massachusetts Attorney General, to adopt an Assurance of Voluntary Compliance ("AVC") regarding certain consumer practices of the wireless industry. The AVC continues to provide for the ongoing disclosure of material terms and conditions of service, coverage information, taxes and fees, and trial periods for new service. Since the adoption of the AVC, CTIA and its members established the CTIA Consumer Code in 2007. The CTIA Consumer Code includes many of the same tenets of the AVC, plus additional guidelines to inform consumers about wireless terms and conditions, while balancing the competitive dynamic that exists in the industry and the overall need to maintain a national framework for wireless consumer practices.¹² In its Twenty-First Century Communications policy statement, the National Conference of State Legislatures ("NCSL") recognized that the CTIA Consumer Code addresses a wide variety of consumer concerns. NCSL also concluded that "government must acknowledge the interstate nature of the wireless industry" and that state-specific wireless service regulations "will hinder the seamless provision" of such services nationwide.¹³ Further, the wireless industry's successful resolution of the vast majority of consumer issues is reflected by recent data from the Better Business

¹² For additional information about the CTIA Consumer Code, including a list of participating carriers, *see*, http://www.ctia.org/consumer_info/index.cfm/AID/10352.

¹³ *NCSL Twenty-First Century Communications Policy Statement* at Page 9; available at: http://files.ctia.org/pdf/Twenty_First_Century_Communications.pdf.

Bureau (“BBB”). The BBB reports that 95.1% of consumer complaints regarding “Cellular Phone Service and Equipment” have been resolved by the provider.¹⁴

In response to wireless consumers demand for additional tools and services to monitor usage and account balances, wireless service providers offer a variety of resources for users to maintain access to and receive updates on their usage and available balances via their handset or the Web. A more detailed description of such services follows.¹⁵

Shortcuts and Websites: A host of wireless providers, including AT&T, Sprint Nextel, T-Mobile, Verizon Wireless, and others, offer simple shortcuts that consumers may dial or text directly from their handsets to check their usage. Some carriers allow usage verification via websites. Smartphone customers also have advanced options for account management directly from their phones.

Alerts and Cut-Off Mechanisms: Many wireless carriers also provide text-based usage alerts and cut-off mechanisms designed to limit or prevent overages. These services generally feature carrier generated alerts to customers notifying customers as they approach plan limits. Some services even allow customers to set their own spending limit above which the service is temporarily suspended until the account balance is reduced.¹⁶

Parental Controls: Numerous wireless carriers provide extensive controls to enable parents to monitor and control their family’s voice, text and data usage in order to avoid billing overages. Examples of the tools available include usage monitoring; setting allowances for minutes, messages and data; automatic notifications when approaching usage limits; time of day usage restrictions; and number blocking.

All-Inclusive Plans: Most carriers offer a variety of all-inclusive rate plans where some, most, or all usage restrictions are lifted and usage is unlimited. Such plans are designed to avoid overage issues entirely. Pre-paid plans also negate overages, as service is only available up to the limits funded in advance.¹⁷

¹⁴ See, *United States Better Business Bureau 2010 Statistics Sorted by Industry*, at Page 20; available at: <http://www.bbb.org/us/storage/16/documents/stats%20pdf/2010/US%20Sorted%20by%20Industry.pdf>.

¹⁵ For a detailed description of carriers’ notification tools, see Comments of CTIA, *Measures Designed to Assist Consumers to Avoid “Bill Shock”*, CG 10-206 and 09-158 at Pages 17-18; available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025498> (Jan. 11, 2011). See also, Comments of T-Mobile, USA, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025478> ; Comments of Verizon Wireless, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025467> ; Comments of Tracfone Wireless, Inc., available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025498> ; Comments of Sprint Nextel, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025466>; and Comments of AT&T, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025461> (outlining carriers’ consumer communications resources).

¹⁶ Even after overage limits have been exceeded, 911-functionality remains operational.

¹⁷ *Id.*

Wireless consumers continue to demand improved quality of service from their providers. The billing and termination practices of wireless providers are also subject to effects of this competitive market discipline. The FCC has documented non-price rivalry factors in several of the past CMRS Reports.¹⁸ Consumer surveys conducted by J.D. Power & Associates and Consumer Reports further document these factors.¹⁹ Consumer demand and the effects of a fiercely competitive industry that competes every day to earn new customers and maintain existing ones -- coupled with existing rules and regulations -- is sufficient to ensure that basic consumer protections are provided to consumers in the Commonwealth.

The pressure applied to service providers by the presence of vigorous competition in the marketplace has long been accepted by the Department as the preferred means of regulation. As long ago as 1985, “[t]he Department determined that while simulation of the results of a competitive market is a principal goal of regulation, actual competitive telecommunications markets are preferable to regulation as a surrogate for competition. The Department endorsed competitive markets over regulation as the best way to achieve its policy goals for telecommunications, because competitive markets promote economic efficiency, technological innovations, and a greater sensitivity to customer demands.”²⁰ As illustrated herein, the competitive telecommunications market in Massachusetts has driven and continues to drive innovation, economic efficiency, and sensitivity to consumer demands. As described herein, the competitive market has and will continue to perform the very role that the Department long ago envisioned. CTIA respectfully submits that, while the Department should continue to monitor the market

¹⁸ See generally, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, (“CMRS Competition Reports”) available at http://wireless.fcc.gov/index.htm?job=cmrs_reports.

¹⁹ See generally, J.D. Power & Associates Telecommunications Ratings, recently viewed at <http://www.jdpower.com/telecom>; See also, Consumer Reports Cell Phones and Services, recently viewed at <http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/cell-phones-services/index.htm>.

²⁰ See, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, DTE Docket No. 01-31 Phase I, 2002, Mass. PUC LEXIS 10 *1, *44-45 (May 8, 2002)(internal citations to *Massachusetts IntraLATA Competition Order*, D.P.U. 1731 (1985) omitted).

to ensure that it is efficiently responding to consumer demands, the Department should recognize that, because of vigorous competition in the market, there is no need for any additional regulation.

III. DEPARTMENT PRECEDENT REFLECTS A REGIONAL AND NATIONAL TREND OF LIMITED JURISDICTION OVER WIRELESS SERVICE.

Wireless providers in Massachusetts routinely share information with the Department and otherwise cooperate with the Department on important issues in the Commonwealth. For example, after a recent tornado in Springfield, Massachusetts, four of the major wireless carriers operating in the Commonwealth provided information on network continuity operations within one business day upon the Department's request (made on June 8, 2011). CTIA respectfully submits that this example is reflective of longstanding cooperation between the Department and the wireless industry; and is a basis for the Department to conclude that no additional state-specific regulation of the wireless industry is necessary. In addition, given the Attorney General's existing responsibility for consumer protection matters generally, the Attorney General's suggestion that it may need to act "on behalf of" the Department on wireless consumer protection matters is unwarranted.

The federal regulatory approach toward wireless services focuses on consistent, nationwide standards. In the Telecommunications Act, Congress recognized that national regulation is not only appropriate, but essential to the operation of a seamless, interstate telecommunications network.²¹ Importantly, the Department has also acknowledged the primacy of federal standards for wireless consumer protection²² and Congress's efforts to ensure that wireless services would flourish without regard to state lines.²³

The Department has referenced its limited state regulatory role in proceedings that involve wireless issues on several occasions. A 1994 Order eliminating the requirement for CMRS providers to obtain a

²¹ See e.g., 47 U.S.C. § 332(c)(3)(A), which established a unified national framework of wireless regulation and preempts state regulations of rate terms or structures, and of market entry issues. To the extent that new regulations limit market entry by new wireless providers, such measurements would be preempted by federal law and impermissibly regulate rates.

²² See, *Competition Status Report*, at 50; ("According to the FCC, Congress created the statutory classification of [wireless] in order to promote the consistent regulation of mobile radio services that are similar in nature....Wireless Voice rates are generally unregulated and are intended to be governed by market forces").

²³ See, 47 U.S.C. § 332(c).

certificate of public convenience and necessity concluded that market forces were adequate to protect wireless consumers from unreasonable terms and conditions.²⁴ The Department affirmed its forbearance from regulation of CMRS terms and conditions in more recent comments regarding its jurisdiction over eligible telecommunications carrier status.²⁵ Given the substantial adoption of wireless service by Massachusetts consumers and the healthy competition in the wireless marketplace, the imposition of additional service quality or onerous state-specific billing and termination regulations is inconsistent with established Congressional and Department policy; and will result in significant changes to how wireless carriers operate and how consumers access the vast array of services the industry offers. With the inherently mobile nature of wireless communication and the need for seamless interstate rules, a patchwork of inconsistent state regulations would increase costs to consumers and threaten the very mobility that Massachusetts wireless consumers enjoy.

Regionally and nationwide, other states have limited the adoption of state-specific regulation, including billing and termination regulations, over wireless service. For example, after an extensive two year review of the wireless marketplace via the processing and managing of consumer inquiries and complaints, the Connecticut Department of Public Utility Control (now the Public Utilities Regulatory Authority) concluded that effective competition and ongoing collaboration with the wireless industry on consumer inquiries and complaints made it unnecessary to impose quality of service standards on CMRS providers operating in the state.²⁶ In addition, other states in the region have also concluded after investigation that no additional regulations were necessary and, in lieu of adopting specific rules,

²⁴ See, Order, *Investigation by the Department of Public Utilities upon its own motion on Regulation of Commercial Mobile Radio Services*, at Page 14, (Aug. 5, 1994).

²⁵ See, Comments of the Massachusetts Department of Telecommunications and Cable, *In re: Federal-State Joint Board on Universal Service Virgin Mobile U.S.A., L.P. Petition for Limited Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts*, CC Docket No. 96-45, at Page 5.

²⁶ See, *DPUC Implementation of Section 16-247t of the General Statutes, Cellular Mobile Telephone Directories and Customer Inquiries and Complaints Regarding Cellular Mobile Telephone Service*, Order, April 28, 2008, Docket No. 07-05-03, available at: <http://www.dpuc.state.ct.us/dockhist.nsf/8e6fc37a54110e3e852576190052b64d/b3d67f39ce1c7beb85257486005602c0?OpenDocument>.

employed detailed consumer education materials with input from the industry.²⁷ For example, the Office of the Washington State Attorney General provides constituents with resources on how to dispute charges directly with wireless service providers.²⁸ Likewise, the New York Public Service Commission Consumer Guide to Telephone Service encourages wireless consumers to “initially contact the [wireless] company” with issues, and provides both the contact information for the Office of the New York Attorney General and the FCC as additional recourse.²⁹

The Department’s restrained approach towards wireless regulation has been a primary enabler of the innovation and consumer choice available to Massachusetts consumers today. In light of the consistently low level of wireless service complaints, industry-initiated consumer tools and resources, the effective collaboration between the Department and wireless carriers, and the vibrant competitive marketplace, CTIA respectfully submits that continuation of this restrained approach is appropriate for ensuring continued innovation and competitiveness.

IV. CONCLUSION

CTIA commends the Department and its Staff for its encouragement of stakeholder input via this Notice, which has critical impact on telecommunications service in the Commonwealth. The Department’s existing policy, which limits its application of existing billing and termination regulations to wireless service providers, has aided in the development of a vibrant marketplace wherein consumers benefit each day from the effects of existing rules, industry practices and innovative tools. CTIA urges the Department to continue this approach by refraining from the application of any additional regulations to wireless service.

²⁷ See, Maine Office of the Public Advocate (“OPS”) consumer education materials, *available at*: http://www.state.me.us/meopa/telephone/wireless_service.html; and further materials provided by OPA regarding the purchase of wireless products and services at <http://www.state.me.us/meopa/ratewatcher/index.htm>.

²⁸ See, <http://www.atg.wa.gov/ConsumerIssues/CellularPhones/Help.aspx>.

²⁹ See, Consumer Guide to Telephone Service, *available at*: <http://www.askpsc.com/askpsc/page/askpsc/page/?PageAction=renderPageById&PageId=59945025b4d0f4b2d99204ce41db5051>.

Respectfully submitted this 22nd day of August, 2011.

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