

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE
REPLY COMMENTS
OF
CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association®¹ (“CTIA”) hereby respectfully files these Reply 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”).²

INTRODUCTION AND SUMMARY

The Commonwealth of Massachusetts has long played a key role in the nation’s technological leadership. Studies have found that “if Massachusetts were a country, it would have one of the most R&D intensive economies in the world,” and that the Commonwealth remains at the forefront in national investment in new ventures and business formation.³ The Commonwealth’s position at the forefront of the nation’s innovation economy has shielded its

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 Massachusetts Department of Telecommunications and Cable, Revised Notice of Public Informational Forums, July 7, 2011.

³ See, e.g., MASSACHUSETTS TECHNOLOGY COLLABORATIVE’S JOHN ADAMS INNOVATION INSTITUTE, 2009 INDEX OF THE MASSACHUSETTS INNOVATION ECONOMY 32–33 (2009), available at http://web27.streamhoster.com/mtc/index_2009.pdf (“Massachusetts Innovation Report”). In the Commonwealth, investment in research and development amounts to approximately seven percent of GDP. In Japan, the country where investment in R&D comprises a percentage of GDP that is closest to the Commonwealth’s seven percent, R&D amounts to less than five percent of the country’s GDP. See *id.* at 32.

residents from some of the worst effects of the global financial crisis and subsequent recession, as high-technology workers suffered less job loss and income decline than others.⁴ In 2008, Massachusetts had a higher percent of workers in information technology occupations than all but one other state.⁵ The Commonwealth's software and communications industries added jobs faster than elsewhere in the United States between 2004 and 2009.⁶ Massachusetts inventors were granted more U.S. patents per capita than any other state or nation in 2008,⁷ and the Commonwealth leads the nation in per-capita venture capital investments.⁸ As CTIA outlined in its Initial Comments, the FCC reported in 2010 that over 6.3 million Massachusetts residents (or 97% of the Commonwealth's population) are wireless subscribers.⁹ 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.¹⁰

In Massachusetts, as elsewhere, mobile wireless service has played a paramount role in promoting technological advance and economic competitiveness. In 2010, American wireless providers reported capital investments totaling \$24.9 billion, much of which was devoted to the deployment of third- and fourth-generation mobile broadband networks.¹¹ Once made, these

⁴ See *id.* at 4.

⁵ See *id.* at 35.

⁶ See *id.* at 26.

⁷ See *id.* at 35.

⁸ See *id.* at 43.

⁹ 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.

¹⁰ See *National Health Statistics Report*, at Table 1, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

¹¹ See CTIA, *The Wireless Industry Overview*, at 7 (Aug. 30, 2011), available at http://files.ctia.org/pdf/083111_-_Wireless_Industry_Overview.pdf.

investments beget still more economic growth, as every dollar invested in wireless broadband generates an additional \$7-\$10 in value to the national economy.¹² Despite the financial crisis, software and communications services corporations headquartered in the Commonwealth had an average of more than ten percent growth in sales in 2008.¹³ That year, computer and electronic products comprised almost a third of the Commonwealth's manufacturing exports, amounting to approximately \$7.8 billion.¹⁴

Moreover, wireless providers and their partners continue to innovate, creating new goods and services that add value across the economy, from new handsets, mobile tablets, and e-readers to ring tones, applications and mobile content. These sub-markets have benefited Massachusetts consumers and businesses alike, bolstering the Commonwealth's economy at a time of lackluster national growth. To take just one example, Verizon Wireless has opened an LTE Innovation Center in Waltham, Massachusetts, making technical resources available to third parties and providing the supporting engineering expertise and technology necessary to foster innovation.¹⁵ The Innovation Center's mission is to foster "rapid development, developing the best and brightest solutions as efficiently as possible, so the world can benefit from new connectivity between people, places, and things."¹⁶ In partnership with the 4G Venture Forum, Verizon

¹² See *id.* Even using a conservative multiplier, a recent report from Deloitte L.L.P. concludes that the mobile industry's investments in 4G networks between 2012 and 2016 could result in up to \$151 billion in gross domestic product growth and creation of up to 771,000 jobs. See "The Impact of 4G Technology on Commercial Interactions, Economic Growth and U.S. Competitiveness" (August 2011), available at http://www.deloitte.com/view/en_US/us/Industries/Telecom-Telecommunications-Technology/5876e8199f2e1310VgnVCM1000001a56f00aRCRD.htm?id=us_rss_deloitteus_tmt_4g_090511.

¹³ See *Massachusetts Innovation Report* at 30.

¹⁴ See *id.* at 31.

¹⁵ See, e.g., Verizon Wireless, *Innovation Centers: Innovate*, available at <https://www.lte.vzw.com/InnovationCenters/tabid/9075/Default.aspx>.

¹⁶ *Id.*

Wireless and other entities also help to provide seed capital for projects developed at the Innovation Center.¹⁷

It is against this backdrop that the Department must consider the issues presented in this investigation. The mobile wireless industry can and will continue to promote innovation and investment in Massachusetts — but only if providers retain the flexibility to address consumer needs and to compete in responding to those needs. As described in detail below, the mobile wireless market is robustly competitive, ensuring that customer needs are met by providers facing the threat posed by their rivals. As detailed below, the overwhelming majority of Massachusetts residents have access to three, four, five, or more wireless providers. Prices continue to fall, even as usage increases. Providers continue to invest in their networks, vying to win and retain customers in a market that demands speedy response to user demand. Complaint rates are low and continue to fall.

In addition to these competitive forces, wireless customers are guarded by a web of state and federal legal guarantees, binding consumer-protection regulations, and enforceable “Assurances of Voluntary Compliance.” Wireless providers have employed tools and services (unlimited plans, usage monitoring technology) to address customer demands. They have also enacted a host of voluntary measures designed to ensure that their customers are able to select the most appropriate provider and plan, and to make new choices when appropriate.

But for some, these extensive protections are seemingly not enough: Ignoring the wealth of competition and the various protections just described, these commenters insist on detailed, prescriptive regulation designed for a monopoly-provider era that has long since passed. Indeed, some request regulation even where they admit that “[i]t remains to be seen” whether customers

¹⁷ See *id.* See also Verizon Wireless, *Innovation Centers: 4G Venture Forum*, available at <https://www.lte.vzw.com/4GVentureForum/tabid/6217/Default.aspx>.

will even adopt the services under consideration, much less whether consumers require additional protections.¹⁸

Such “preemptive” regulation is misguided, and would threaten the innovation and investment that the wireless industry has generated for years. As the Department and its predecessor agencies have long recognized, “actual competitive telecommunications markets are preferable to regulation as a surrogate for competition.” Thus, “[t]he Department [has] 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.”¹⁹ Federal law points to the same result, particularly in the context of mobile wireless services, which are to remain free from regulation — particularly state regulation — except where absolutely necessary. Such necessity is absent here. Excessive regulation would be inimical to Massachusetts consumers, and to the very industries that drive the state’s economic success. The Department should therefore decline to adopt intrusive requirements such as those being contemplated in this investigation.

Part I of these comments describes the wireless regulatory regime established by Congress in the federal Communications Act — a regime the limits state regulation and militates against any regulation except in cases of market failure. Part II discusses consumer satisfaction with wireless service offerings, including the complaint rate, which is low and still falling. Part III discusses the extensive competition in the wireless market, at both the national and state

¹⁸ See Comments of the National Consumer Law Center at 15, *Billing and Termination Reorganization*, Docket 11-6 (filed Aug. 22, 2011) (urging the Massachusetts Department of Telecommunications and Cable to regulate mobile payments) (“NCLC Comments”).

¹⁹ 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).

levels. Part IV addresses the web of legal requirements that already supplement competitive forces to protect customers in Massachusetts. Finally, Part V provides information regarding additional competition-driven steps that wireless providers have taken to provide customers with the tools they need to select providers and service plans and to manage their services to best suit their needs.

I. EXCESSIVE STATE MANDATES WOULD VIOLATE FEDERAL LAW AND CONTRAVENE THE DTC’S PREFERENCE FOR COMPETITION OVER REGULATION.

As an initial matter, the Department’s consideration of new billing and termination mandates must account for and respect the strict limits placed on state authority over wireless service by federal law, and the strong federal preference that the wireless market be governed principally by competition, not by regulation.

In 1993, Congress amended the federal Communications Act²⁰ to make clear that states lacked the authority to regulate the entry of, and rates charged by, providers of mobile telephone service (known in the statute as “commercial mobile radio service,” or “CMRS”). Specifically, Congress enacted the current version of Section 332(c)(3), which provides, in relevant part, that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service.”²¹ As many courts have recognized, Section 332(c)(3) reflects an exercise of the federal government’s power to preempt state authority.²²

²⁰ 47 U.S.C. § 151 *et seq.*

²¹ *Id.* at § 332(c)(3)(A).

²² Indeed, the Supreme Court of the United States has recognized that “[t]he Supremacy Clause of Art. VI of the Constitution provides Congress with the power to pre-empt state law.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S.

Since the 1993 amendment to Section 332, the FCC has made clear that this provision bars all state efforts to prescribe the rates wireless providers may charge, or the services for which they may apply such charges.²³ In 1994, the FCC stated its view that “Congress, by adopting Section 332(c)(3)(A) of the Act, intended generally to preempt state and local rate and entry regulation of all commercial mobile radio services to ensure that similar services are accorded similar regulatory treatment and to avoid undue regulatory burdens, consistent with the public interest.”²⁴ The next year, it explained that the amendment was meant to “establish a national regulatory policy for CMRS, not a policy that is balkanized state-by-state.”²⁵ The FCC also noted that Section 332(c)(3)(A) was intended to ensure that the wireless industry was governed principally by market competition rather than regulation: “While we recognize that states have a legitimate interest in protecting the interests of telecommunications users in their jurisdictions, we also believe that competition is a strong protector of these interests and that state regulation in this context could inadvertently become . . . a burden to the development of

355, 368 (1986). Congress may utilize this power by (among other things) “express[ing] a clear intent to pre-empt state law,” as it did in Section 332(c)(3)(A). *Id.*

²³ Where a federal statute preempts state law, a federal agency charged with implementing that statute is empowered to interpret the scope of the preemption, and to take related actions that themselves preempt state power. *See, e.g., id.* at 374.

²⁴ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1504 ¶ 250 (1994). Similarly, in 1999 the FCC asserted that “as a matter of Congressional and Commission policy, there is a general preference that the CMRS industry be governed by the competitive forces of the marketplace, rather than by governmental regulation.” *Southwestern Bell Mobile Systems, Inc.; Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments*, 14 FCC Rcd 19898, 19902 ¶ 9 (1999) (internal quotations omitted) (“*Southwestern Bell*”). *See also Petition of Pittencrieff Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 1735, 1745 ¶ 20 (1997) (observing that Section 332(c)(3) bars states “from prescribing, setting, or fixing rates” charged by CMRS providers) (“*Pittencrieff*”).

²⁵ *Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority over Intrastate Cellular Service Rates*, 10 FCC Rcd 7486, 7499 ¶ 24 (1995) (rejecting a California petition to retain control over CMRS rates).

this competition.”²⁶ Elsewhere, the FCC explained that the “overarching congressional goal” behind the revised Section 332 was to “promot[e] opportunities for economic forces — not regulation — to shape the development of the CMRS market.”²⁷ Thus, as the FCC has explained in summary, regulatory authorities must “clear substantial hurdles” before imposing new regulatory requirements on wireless service,²⁸ and should rely “on market forces, rather than regulation, except when there is market failure.”²⁹

Indeed, the federal government has exercised its authority to regulate the wireless market with a strong focus on consumer protection. Providers of wireless voice service are subject to basic protections set out in Sections 201 and 202 of the Communications Act, which require carriers to offer service on rates and terms that are just and reasonable and not unjustly or unreasonably discriminatory. Entities that violate these requirements face enforcement by the FCC itself and suits by injured customers — and the FCC has been aggressive in enforcing these requirements.³⁰ In addition, the FCC has also implemented a host of specific consumer-protection requirements. These include the Commission’s long-standing truth-in-billing and

²⁶ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1421 ¶ 23 (1994). See also *Petition of the Connecticut Department Public Utility Control To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, 10 FCC Rcd 7025, 7034 ¶ 14 n.44 (1995).

²⁷ *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, 9 FCC Rcd 7988, 8004 ¶ 29 (1994).

²⁸ *Petition of the Connecticut Department Public Utility Control To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, 10 FCC Rcd 7025, 7027 ¶ 4 (1995).

²⁹ *Jacqueline Orloff v. Vodafone AirTouch Licenses LLC*, d/b/a Verizon Wireless, 17 FCC Rcd 8987, 8997 ¶ 22 n.69 (2002), *aff'd sub nom. Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003).

³⁰ See Press Release, Federal Communications Commission, *FCC Investigation Into Verizon Wireless “Mystery Fees” Results in Record Settlement* (Oct. 28, 2010), available at <http://www.fcc.gov/document/fcc-investigation-verizon-wireless-mystery-fees-results-record-settlement> (announcing \$77 million settlement with Verizon Wireless over alleged fee overages).

slamming rules.³¹ The FCC continues to play an active role in safeguarding wireless consumers. By law, it drafts and publishes annual reports on the state of competition in the wireless industry.³² It is now considering rules addressing several issues relating to wireless service, including early termination fees,³³ “bill shock”³⁴ and cramming.³⁵ Moreover, the Federal Trade Commission has taken an active role in protecting consumers of broadband Internet access services, including wireless broadband offerings; its actions include an increased focus on advertising claims and customer privacy.³⁶

The states’ authority is even more limited in the context of wireless broadband Internet access. As the FCC has held, mobile broadband is an inherently interstate service.³⁷ As such, it is subject to federal jurisdiction, and has no distinct intrastate component subject to state regulation.

In light of the statute’s language, as interpreted by the expert agency charged with its interpretation, and the FCC’s close oversight of the mobile wireless industry, the Department must exercise great care before adopting onerous billing and termination requirements. The

³¹ See Truth-in-Billing Requirements, 47. C.F.R. § 64.2401 (2009); Carrier Liability for Slamming, 47. C.F.R. § 64.1140 (2009).

³² See 47 U.S.C. § 332(c)(1)(C).

³³ See Press Release, Federal Communications Commission, *FCC Seeks Information on Wireless Early Termination Fees* (Jan. 26, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295965A1.pdf.

³⁴ See *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, 25 FCC Rcd 14625 (2010).

³⁵ See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”); Consumer Information and Disclosure; Truth-in-Billing and Billing Format*, 2011 FCC LEXIS 2859 (2011).

³⁶ See, e.g., FEDERAL TRADE COMMISSION, PRELIMINARY FTC STAFF REPORT, PROTECTING CONSUMER PRIVACY IN AN ERA OF RAPID CHANGE: A PROPOSED FRAMEWORK FOR BUSINESSES AND POLICYMAKERS (2010); John Eggerton, *FTC Investigating Google Search, Ad Businesses*, MULTICHANNEL NEWS, June 24, 2011, available at <http://www.multichannel.com/article/470223-FTC-Investigating-Google-Search-Ad-Businesses.php>.

³⁷ See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, 22 FCC Rcd 5901, 5909 ¶ 18 (2007) (“Wireless Broadband Classification Order”).

Commonwealth's authority over CMRS and wireless broadband service is extremely limited, and further bounded by federal law's strong preference for market-based oversight over regulation. Unless there are strong grounds for believing that there has been a market failure that prevents competition and generally applicable legal requirements from guarding the interest of consumers, the Department must not impose new, market-distorting regulation. As discussed in more detail below, this threshold finding cannot be made here. Thus, additional regulation is both unwarranted and incompatible with federal law.

II. THE MOBILE WIRELESS MARKET IS ROBUSTLY COMPETITIVE.

There is no basis for a Department finding that competition in the mobile wireless market is inadequate to protect consumer interests. The overwhelming evidence — at both the national level and state level — demonstrates that the marketplace for mobile wireless service is robustly competitive. Claims to the contrary rely on cherry-picked statistics and assertions untethered to the reality of the competitive landscape.

In its *Fifteenth Wireless Competition Report* (“*FCC Report*”),³⁸ the Federal Communications Commission (“FCC”) recently concluded that “[d]uring 2008 and 2009, mobile wireless service providers continued to compete on the basis of price as well as on various non-price factors.”³⁹ The *FCC Report* further determined that “[a]s mobile voice service has become commoditized and mobile voice penetration is reaching saturation, mobile wireless service providers are differentiating themselves with the speeds, reliability, capabilities, and coverage of their mobile broadband networks and with the handsets/devices, applications, and other products

³⁸ *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*, 2011 FCC LEXIS 2636 (2011) (“*FCC Report*”).

³⁹ *Id.* ¶ 80.

and services that run on those networks.”⁴⁰ The FCC Report included a wealth of specific findings demonstrating vibrant competition beyond any doubt. For example, the FCC Report found the following:

- Over 94% of the U.S. population is covered by four or more wireless carriers, and about 90% are served by five or more providers.⁴¹
- Almost 92% of Americans are served by at least two mobile broadband providers, up from below 90% in 2008 and 72.5% a year before. Almost 82% of Americans live in areas covered by *three* or more mobile broadband providers, up from 76.1% last year and 50.7% the year before.⁴²
- 96.6% of rural POPs are covered by two or more mobile wireless providers, and 88.4% of rural POPs are covered by three or more such providers.⁴³ 69.1% of rural POPs are covered by two or more mobile broadband providers.⁴⁴
- Providers are responding to competition by investing in better and better networks. Despite continuing economic difficulties, incremental capital investment increased from \$20.2 billion in 2008 to \$20.4 billion in 2009. Wireless accounts for more than 30% of all telecommunications investment, nearly a quarter of all information and communications technology investment, and two percent of total investment in the U.S. economy.⁴⁵ Verizon Wireless, AT&T, Sprint, T-Mobile, Clearwire, and MetroPCS are

⁴⁰ *Id.* ¶ 104. The FCC expressly declined to find that the wireless market is *uncompetitive*. Instead, it stated that the wireless market was too complex to reduce to a single determination. “Given the complexity of the various inter-related segments and services within the mobile wireless ecosystem, the Report focuses on presenting the best data available on competition throughout this sector of the economy and highlighting several key trends in the mobile wireless industry.” *Id.* ¶ 2. As detailed below, the data presented by the report make clear that the market is characterized by extensive competition.

⁴¹ *Id.* at Table 5. These findings are even more significant given the FCC’s recognition that scale economies will tend to limit the number of providers in the wireless telecommunications market. “[E]conomics [sic] of scale are important in the mobile wireless industry. A high level of network deployment costs (a type of fixed cost of building network capacity) in relation to the number of customers may limit the number of firms that can enter and survive in a market.” *Id.* ¶ 61.

⁴² *Id.* at Table 7; *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*, 25 FCC Rcd 11407, 11450 Table 7 (2010); *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*, 24 FCC Rcd 6185, 6258 Table 10 (2009).

⁴³ *FCC Report* at Chart 48.

⁴⁴ *Id.* at Chart 49.

⁴⁵ *Id.* ¶ 208.

all in the process of deploying next generation networks, including but not limited to 4G LTE, HSPA+ or WiMAX networks.⁴⁶

- Prices continue to fall dramatically. Prepaid service growth has created “a trend to lower per-minute rates and increased usage and [average revenue per user] in prepaid services.”⁴⁷ Indeed, American consumers enjoy lower prices than consumers in nearly all other nations: Voice revenue per minute (“RPM”) equaled \$0.04 in the U.S., compared to \$0.09 in Canada; \$0.11 in the United Kingdom; \$0.16 in Germany, \$0.09 in South Korea, and \$0.25 in Japan.⁴⁸ Text messaging prices declined from \$0.011 per message in 2008 to \$0.009 in 2009.⁴⁹ Average smartphone prices net of subsidies decreased from \$220 in 4Q06 to \$120 in 4Q09, with average price of all handsets after discounts falling from \$85 in 4Q06 to \$50 in 4Q09.⁵⁰ Although average monthly data traffic per subscriber grew 78% between 2008 and 2009, wireless data service ARPU rose only 22% in that period.⁵¹
- Prepaid providers reduced prices in response to increased competition in that market segment. These providers have shifted away from local calling plans in “in favor of the flat-rate nationwide coverage model that dominates the postpaid service segment,” and have developed new simplified plans bundling together all charges, taxes, and fees. Prepaid providers also introduced all-you-can-eat data plans and new smartphone offerings.⁵²

Indeed, as the following chart indicates, the most recent data from the U.S. Bureau of Labor Statistics’ Wireless Price Index documents that as of July 2011 the price of wireless service has fallen some 40% since December 1997.⁵³

⁴⁶ *Id.* at Table 11.

⁴⁷ *Id.* ¶ 95. *See generally id.* ¶¶ 96-102.

⁴⁸ *Id.* at Table 44.

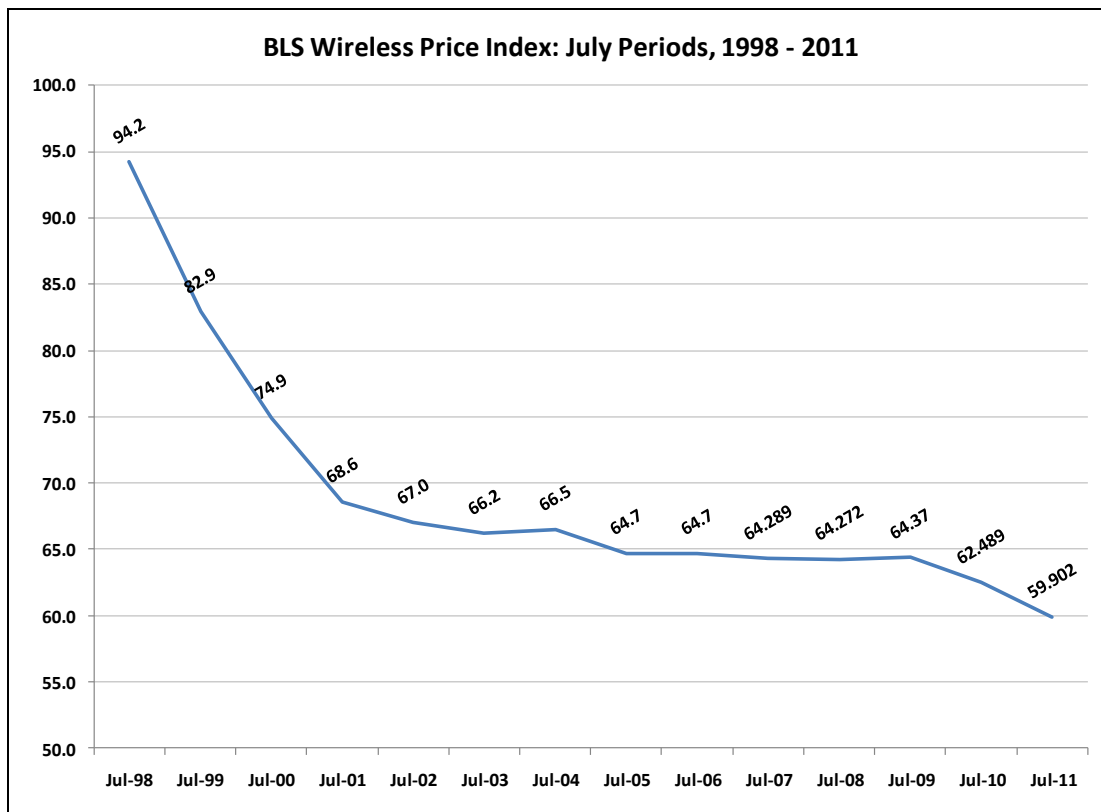
⁴⁹ *Id.* ¶ 193.

⁵⁰ *Id.* ¶ 334.

⁵¹ *Id.* ¶¶ 186, 203.

⁵² *Id.* ¶¶ 100-102.

⁵³ *See* Bureau of Labor Statistics Consumer Price Index – All Urban Consumers, Series ID CUUR0000SEED03, available at <http://data.bls.gov/pdq/querytool.jsp?survey=cu>.



Source: U.S. Bureau of Labor Statistics (Dec. 1997 = 100)

Competition in Massachusetts is as robust as competition nationwide. In its most recent Competition Status Report, the Department found that 98.5% of Massachusetts residents had a choice among three or more facilities-based mobile wireless providers, 96.7% had a choice among four or more providers, and 90% had a choice among five providers.⁵⁴ Moreover, additional wireless completion exists via mobile virtual network operators (“MVNOs”) and additional entry via other competitors is imminent: In the past year alone, wireless providers such as Conexions Wireless, Virgin Mobile, and YourTel have applied to the Department for eligible telecommunications carrier status, promising additional entry in the near future.⁵⁵ In

⁵⁴ MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE, COMPETITION STATUS REPORT 52 (2010) (“Massachusetts Report”).

⁵⁵ See, e.g., *Petition of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier in the State of Massachusetts*, Docket No. Telecomm 10-11 (Oct. 19, 2010); *Petition of YourTel America Inc for Designation as an Eligible Telecommunications Provider*, Docket No. Telecomm 11-1 (Feb. 10, 2011); *Petition of*

Massachusetts, as elsewhere, the mobile wireless market is more competitive than any other communications market.

Parties urging pervasive regulation in this proceeding ignore these statistics. The Attorney General emphasizes the FCC Report's finding that at "year-end 2009, the four nationwide service providers accounted for just over 90 percent of the nation's mobile wireless subscribers (including wholesale subscribers), with AT&T and Verizon Wireless together accounting for 62 percent."⁵⁶ But the Attorney General neglects the FCC's conclusion that market-share statistics cannot, on their own, establish that a market is not competitive: "Shares of subscribers and measures of concentration are not synonymous with a non-competitive market or with market power — the ability to charge prices above the competitive level for a sustained period of time. High market concentration may indicate that a firm or firms potentially may be able to exercise market power, but market concentration measures alone are insufficient to draw such a conclusion."⁵⁷ What matters is whether customers are able to switch from their provider to another. As demonstrated above, the overwhelming majority of Massachusetts customers have access to service from multiple providers, ensuring that providers will behave in the manner most likely to keep their customers satisfied.

Extensive competition in the mobile wireless market — both nationally and in Massachusetts — refutes any suggestion that the Department should extend and/or expand decades-old regulation designed for an environment in which only one provider — New England Telephone — offered service. Parties arguing that regulation formerly applied to the monopolist

Nexus Communications, Inc. for Designation as an Eligible Communications Carrier, Docket No. Telecomm 11-7 (June 9, 2011).

⁵⁶ Comments of The Commonwealth of Massachusetts, Office of the Attorney General at 6, *Billing and Termination Reorganization*, Docket 11-6 (filed Aug. 22, 2011) ("Attorney General Comments").

⁵⁷ *FCC Report* ¶ 54.

must be extended to cover all communications providers⁵⁸ miss the point: The extensive regulation of the past was only appropriate in the context of monopoly service. Today, customers enjoy myriad options, including but of course not limited to the broad range of wireless providers discussed herein. To the extent that a provider were to fail to protect consumer interests, customers are free to “vote with their feet” by switching to alternative providers. There is thus no cause for the adoption of outdated regulation designed for a time when there was no market to police the sole provider’s behavior.

III. WIRELESS COMPLAINT STATISTICS DO NOT SUPPORT CLAIMS THAT BILLING/TERMINATION REGULATION IS NEEDED.

Unable to demonstrate an absence of competition in the mobile wireless marketplace, proponents of regulation in this investigation resort to assertions of consumer dissatisfaction with their wireless service.⁵⁹ But these claims are contrary to both the lack of public commentary during the Department’s public forums conducted this past August 2011 and the empirical data. At the public forums, not a single customer called for increased regulation of wireless providers’ business practices. Complaints regarding wireless service are exceedingly rare. Moreover, third-party data indicate that wireless-related complaints are resolved at a very high rate, and that consumer satisfaction with mobile wireless service is extremely high and climbing.

The Attorney General’s office alleges in its comments that it has received 593 complaints as of August 22, 2011 “concerning cable, satellite television, wireless telephone and landline

⁵⁸ See, e.g., Attorney General Comments at 3 (stating that wireless consumer protection requirements “are more important now than ever because wireless service has evolved from a discretionary, optional service to being many customers’ sole way of reaching the public switched telephone network”); NCLC Comments at 3 (“There continues to be a need for consumer protection regulations regarding telecommunications services from which consumers obtain essential basic voice service.”); *id.* at 4 (“Customers using new telecommunications technologies should receive no less protection than that which wireline customers have received in maintaining adequate, continuous and reliable telecommunications service for their households.”).

⁵⁹ See, e.g., Attorney General Comments at 2; Comments of AARP at 4, *Billing and Termination Reorganization*, Docket 11-6 (filed Aug. 22, 2011).

telephone services,” and a total of “1,250 complaints” falling into those categories in 2010.⁶⁰ Even if correct, these statistics cannot serve as an evidentiary basis for imposing new regulations on wireless service, for a variety of reasons. *First*, the Attorney General’s figures fail to differentiate among the various categories of service, precluding any assessment platform-specific complaints. For example, it could be that the vast majority of complaints are addressed to cable, in which case they would mean nothing in the context of the wireless market.

Second, the Attorney General’s figures do not evaluate the complaint *rate* — *i.e.*, the number of complaints *per customer* — or assess how it compares to complaint rates in other competitive industries. Indeed, even if all 1,250 complaints cited applied to wireless service — and clearly they did not — that would only amount to one complaint per every 5,088 mobile wireless subscribers, based on the FCC’s subscribership data.⁶¹ If one quarter (*i.e.*, 312.5) of the complaints were wireless-oriented, that would yield a rate of roughly *one* complaint for every 20,376 customers. Neither the Attorney General nor any other commenter has demonstrated that this complaint rate warrants the adoption of additional, industry-specific regulation. In fact, CTIA aggregated data reflecting complaints received by wireless service providers from the Attorney General and the DTC for 2010 that totaled 327, comparable to the preceding calculation. That is less than one complaint a day over a total customer base of more than 6 million. It amounts to a complaint rate of roughly five-thousandths of one percent (0.005%). Indeed, fewer than a quarter of the aggregated complaints were billing-related, amounting to less than two-thousandths of one percent (0.002%) of the customer base.

⁶⁰ Attorney General Comments at 2.

⁶¹ According to the FCC, there were 6,367,000 wireless subscribers in Massachusetts as of June 30, 2010. *See* Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2010*, rel. Mar. 21, 2011, at Table 17 (Mobile Telephone Facilities-based Carriers and Mobile Telephony Subscribers). Dividing that by the 1,250 complaints reported yields a rate of one complaint for every 5,094 customers.

Third, even aside from avoiding discussion of the complaint rate, the Attorney General does not provide any information regarding the rate at which complaints are resolved successfully by the provider. The Better Business Bureau (“BBB”) tracks complaint resolution rates across a broad array of industries. According to BBB statistics, in 2010, 95.1% of consumer complaints regarding “Cellular Phone Service and Equipment” were resolved successfully by the provider.⁶² This figure is well above the overall cross-industry figure of 75.8%.⁶³ Based on the CTIA wireless complaint data discussed above, that would equate to fewer than 16 unresolved complaints over the year, or *about one unresolved complaint for every 400,000 Massachusetts mobile phone subscribers*. This complaint rate simply does not warrant intrusive new regulation.

Finally, CTIA notes that even the Attorney General’s figures reveal that the complaint rate is falling. Although the Attorney General states that the complaint figures for 2006 through 2009 are “similar” to the figure for 2010, the 593 complaints received during the first seven-and-a-half months of 2011 amounts to significantly below half of the total number received for 2010. If the 2011 trend continued for the remainder of the year, the result would be 925 complaints — a decline of over 25% from the 1,250 complaints received in 2010.⁶⁴ Moreover, the 1,250 complaints “concerning cable, satellite television, wireless telephone and landline telephone services” reported for 2010 amount to less than 63% of the 1,993 complaints reported by the

⁶² See UNITED STATES BETTER BUSINESS BUREAU, STATISTICS SORTED BY INDUSTRY 20 (2010), *available at* <http://www.bbb.org/us/storage/16/documents/stats%20pdf/2010/US%20Sorted%20by%20Industry.pdf>.

⁶³ *Id.* This figure is consistent with the wireless industry’s extensive efforts to address consumer concerns, described more fully below.

⁶⁴ August 22 is the 234th day of the year. 593 complaints during 234 days equates to 925 complaints during 365 days.

DTC for 2008 relating to wireline and cable voice services alone.⁶⁵ These figures imply a rather dramatic decline in the 2010 complaint rate, given that the number of wireless, ILEC and non-ILEC end users as of June 30, 2010 far exceeds the number of combined ILEC and non-ILEC wireline end users.⁶⁶

As one might expect given the levels of competition, low (and falling) complaint rates, and high complaint resolution rates discussed above, consumers are extremely satisfied with their wireless service. A recent FCC study found that 92% of wireless consumers are “very” or “somewhat” satisfied with their wireless service overall.⁶⁷ The Government Accountability Office (“GAO”) found that “overall, wireless phone service consumers are satisfied with the service they receive,”⁶⁸ and determined that 84 percent of adult wireless consumers are very or somewhat satisfied with their wireless phone service.⁶⁹ Likewise, *Consumer Reports* surveyed customers regarding satisfaction, finding that four out of five conventional contract providers scored between 60 (“fairly well satisfied”) and 80 (“very satisfied”).⁷⁰ Data from the FCC Report confirm high levels of consumer satisfaction: Problems per 100 calls dropped from 5 to 4 during

⁶⁵ Massachusetts Department of Telecommunications and Cable, *Competition Status Report: February 12, 2010*, at 26, available at http://www.mass.gov/Eoca/docs/dtc/compreport/CompetitionReport_Combined.pdf.

⁶⁶ There were 6,367,000 wireless end users, and 3,838,000 combined ILEC and non-ILEC end users, as of June 30, 2010, according to the Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2010*, rel. Mar. 21, 2011, at Table 17 (Mobile Telephone Facilities-based Carriers and Mobile Telephony Subscribers), Table 12 (Non-ILEC Total End-User Switched Access Lines and VoIP Subscriptions by State), and Table 13 (ILEC Total End-User Switched Access Lines and VoIP Subscriptions by State), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf.

⁶⁷ See Press Release, Federal Communications Commission, FCC Survey Finds 4 Out Of 5 Americans Don’t Know Their Broadband Speeds, (June 1, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-298525A1.pdf.

⁶⁸ GAO, FCC NEEDS TO IMPROVE OVERSIGHT OF WIRELESS PHONE SERVICE 8 (Nov. 2009), available at <http://www.gao.gov/new.items/d1034.pdf> (“GAO Report”).

⁶⁹ *Id.*

⁷⁰ *FCC Report* ¶ 225.

the first half of 2009.⁷¹ Moreover, users are staying with their mobile wireless providers for longer, further indicating their increasing satisfaction: The average industry-wide lifetime of a wireless subscription increased from 48 months in the fourth quarter of 2008 to 50 months in the fourth quarter of 2009.⁷² These positive trends — including falling “trouble” figures, increased satisfaction, and longer subscription lifetimes — are exactly what one would expect in a competitive marketplace.

IV. THE ATTORNEY GENERAL ALREADY ENJOYS EXPANSIVE ENFORCEMENT AUTHORITY UNDER GENERALLY APPLICABLE LAW AND THE ASSURANCE OF VOLUNTARY COMPLIANCE.

To the extent that parties urging increased regulation suggest that Massachusetts consumers would otherwise be left without legal protections, this claim is simply wrong. In fact, in addition to the federal protections discussed above, mobile wireless consumers are protected by multiple layers of legal protection at the state level. These include (1) the generally applicable requirements of Chapters 93 and 93A of the Massachusetts General Laws, which have protected consumers in countless competitive industries for decades, as well as other generally applicable provisions of the General Laws; (2) consumer protection regulations issued by the Attorney General; and (3) the industry-specific Assurance of Voluntary Compliance (“AVC”) executed by the largest mobile wireless providers, which is itself enforceable.⁷³

First, the interests of Massachusetts mobile wireless customers are safeguarded by the bedrock consumer protection requirements set out in the Commonwealth’s General Laws. Chapter 93 provides general protections against monopolistic behavior and restraints on trade,

⁷¹ *FCC Report* ¶ 223.

⁷² *Id.* at Table 25. As this figure indicates, the average customer maintains service with his or her provider for far longer than could be explained by any “early termination fee.”

⁷³ In addition to these mechanisms, Massachusetts consumers are protected by industry-crafted protections, described further in Part V.

and subsections 108-113 of that Chapter specifically outlaw “slamming” practices. Chapter 93A declares unlawful all “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce,”⁷⁴ and authorizes the Attorney General to make rules and regulations interpreting that prohibition.⁷⁵ The Attorney General also may bring suit to enjoin any such unfair or deceptive practices and to compensate victims.⁷⁶

Second, the Attorney General, acting pursuant to the authority granted by Chapter 93A, has issued extensive consumer-protection regulations that already apply to mobile wireless providers.⁷⁷ These regulations address many of the core issues that might be covered by new communications-specific billing and termination requirements. For example, the Attorney General’s consumer protection regulations bar false and deceptive advertising,⁷⁸ deceptive pricing⁷⁹ and other misrepresentations.⁸⁰ A seller must “disclose to a buyer prior to any agreement the price or cost of any services to be provided,” and “[n]o claim or representation shall be made which represents or implies, in advertising or otherwise, that a product or service

⁷⁴ MASS. ANN. LAWS ch. 93A, § 2(a).

⁷⁵ *See id.* § 2(c).

⁷⁶ *Id.* § 4.

⁷⁷ *See generally* 940 MASS. CODE REGS. § 3.

⁷⁸ *See id.* §§ 3.02-3.03 (“No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.”).

⁷⁹ *See id.* § 3.04 (“No claim or representation shall be made by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to a product.”).

⁸⁰ *See id.* § 3.05 (No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect.”).

may be purchased for a specified price when such is not the case. . . .”⁸¹ Other generally applicable regulations — such as those pertaining to debt collection and to personal information of Massachusetts residents — provide additional consumer protections.⁸²

Third, the AVCs negotiated between various mobile wireless providers and the Attorney General of multiple states — including Massachusetts — afford the Commonwealth’s wireless customers still more protection. The AVC agreements were negotiated by the attorneys general of thirty-two states and the three largest wireless carriers (Verizon Wireless, Cingular Wireless, and Sprint PCS) in 2004. The AVC agreements were reached as settlements after the attorneys general conducted inquiries concerning carriers’ consumer relations (*e.g.*, advertising, online brochures, *etc.*) in connection with state consumer protection and trade practice statutes. The AVC agreements became effective on July 21, 2004, and do not specify a termination date. The AVCs set out a host of *enforceable* requirements by which the largest mobile wireless providers have agreed to abide. These include a wide range of consumer protection mandates. For example:

- Carriers must disclose all materials terms and conditions regarding offers to consumers “in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable,” and “in proximity to” related information.⁸³ Covered information includes that regarding recurring charges, number of peak and off-peak minutes offered, peak and off-peak hours, overage charges, roaming charges, minimum contract terms, early termination fees, other mandatory service initiation fees, material terms of cancellation and return policies and related fees, and applicable taxes and surcharges.⁸⁴

⁸¹ *Id.* § 3.13.

⁸² *See id.* § 7; 201 MASS. CODE REGS. § 17.

⁸³ *See* Assurance of Voluntary Compliance ¶¶ 9, 17-23, available at <http://www.nasuca.org/archive/CINGULAR%20AVC%20FINAL%20VERSION.pdf> (“AVC”). For purposes of these Reply Comments, CTIA cites to the AVC entered into by Cingular. However, the various AVCs are identical in material respects.

⁸⁴ *Id.* ¶ 18.

- Carriers may not misrepresent their geographic coverage areas, the geographic boundaries applicable to calling plans or the charges that apply to calls made outside such boundaries, or the availability of enhanced features in a particular area.⁸⁵
- Carriers must offer customers a 14-day cancellation period free from any early termination fees, and subject to refund of any activation or non-usage-based fee charged.⁸⁶
- Carriers may not misrepresent, expressly or by implication, any term or condition of any product or service, and must clearly disclose any material terms regarding minimal terms of service that apply to any promotional offer.⁸⁷
- Carrier bills must separate out taxes, fees, and other charges that the carrier is required to collect and remit to third parties from monthly charges and all other discretionary charges, except when the taxes, fees, and other remitted charges are bundled into a single rate. Bills must not represent, expressly or implicitly, that discretionary fees are taxes.⁸⁸
- Carriers must provide information to consumers explaining how the consumer can contact the carrier, and must respond in good faith within a reasonable period of time to all complaints or requests for bill adjustments.⁸⁹

As noted above, these mandates are enforceable by the Attorney General, which may direct a carrier to explain a failure to comply with its AVC's terms⁹⁰ and may take appropriate remedial action in the courts of the Commonwealth.⁹¹

In short, Massachusetts wireless consumers are already protected by an extensive web of state law, detailed regulation, and enforceable private commitments, even apart from the robust

⁸⁵ See *id.* ¶¶ 24-30.

⁸⁶ See *id.* ¶ 31.

⁸⁷ See *id.* ¶¶ 32-35.

⁸⁸ See *id.* ¶ 36.

⁸⁹ See *id.* ¶¶ 37-38.

⁹⁰ See *id.* ¶ 63.

⁹¹ See *id.* ¶ 65. See also *id.* ¶ 49 (“This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.”).

protections afforded by the competitive marketplace. Additional billing and termination requirements are unnecessary.

V. WIRELESS PROVIDERS CONTINUE TO TAKE NEW STEPS ABOVE AND BEYOND THE LEGAL REQUIREMENTS DESCRIBED ABOVE TO PROTECT CONSUMERS' INTERESTS.

In addition to the myriad protections afforded to consumers by extensive competition and the web of legal requirements discussed above, the mobile wireless industry has taken additional steps to ensure that customers are treated appropriately and have every opportunity to tailor their experience to meet their needs.

For many years, mobile wireless carriers including AT&T, Verizon Wireless, Sprint Nextel, T-Mobile, Clearwire, US Cellular and others have subscribed to the CTIA Consumer Code.⁹² The Consumer Code applies to voice and data services, including prepaid service offerings.⁹³ Signatories to the Consumer Code agree to (1) disclose rates and terms of service, (2) make available maps detailing service areas, (3) provide all material terms and conditions whenever service is initiated or modified, (4) permit a 14-day trial period without any early termination fee for cancellation, (5) disclose in detail all materials charges and conditions, (6) identify taxes, fees, and other remitted charges separately from charges retained by the carrier on billing statements, (7) provide customers the right to terminate service for changes to contract terms, (8) provide ready access to customer service, (9) promptly respond to customer inquiries and complaints received from government agencies, and (10) protect consumer privacy.⁹⁴

⁹² CTIA — The Wireless Association®, *Consumer Code Participants*, available at <http://www.ctia.org/content/index.cfm/AID/10623>.

⁹³ See generally CTIA — The Wireless Association®, *CTIA Consumer Code of Wireless Service*, available at <http://files.ctia.org/pdf/ConsumerCode.pdf>.

⁹⁴ See *id.*

MassPIRG has argued that the Consumer Code is inadequate, urging instead the adoption of a so-called “Massachusetts Cell Phone Users Bill of Rights.”⁹⁵ MassPIRG’s proposals, however, are unnecessary and unwarranted. In many cases, MassPIRG seeks to mandate steps that carriers are already taking. For example, MassPIRG urges the Department to require coverage maps that show service at the street level. However, the four national wireless providers *already* provide street level coverage information, which includes data on coverage strength and the availability of various services. Likewise, MassPIRG proposes that customer contracts be limited to a single year. Wireless providers already offer one-year contracts, as well as two-year and prepaid contracts that allow consumers to select a plan that fits their needs; and several offer unlimited plans to provide consumers predictable costs related to their wireless service and significantly minimize customer dissatisfaction with overages. These options permit customers to save money by committing to longer service periods, to manage monthly costs, or to avoid contracts altogether. MassPIRG’s proposal would reduce customer choice and force customers to forfeit the benefits offered by longer contract periods. Similarly, MassPIRG seeks a requirement that forces carriers to separate taxes and fees from other carrier charges, even though the Customer Code already requires them to do so. MassPIRG seeks to require providers to obtain express consumer consent before including the consumers’ wireless number in any 411 directory, even though every national carrier already follows this approach and maintains a privacy policy that prohibits publication of such numbers without such consent.

In other cases, MassPIRG seeks to tweak or expand obligations in ways that would increase costs — and therefore prices — without any demonstrated benefit to consumers. For

⁹⁵ See generally MassPIRG, *Industry’s Code of Conduct Fails to Protect Consumers*, available at <http://www.masspirg.org/issues/business-practices-amp-corporate-accountability/cell-phone-users-bill-of-rights/-industrys-code-of-conduct-fails-to-protect-consumers>.

example, MassPIRG urges the adoption of a standardized tabular format for disclosure of material information. Wireless providers compete nationally, using national marketing and standardized materials across their services areas. If the Department were to require a state-specific format for the disclosure of information, wireless providers would need to develop unique documents for Massachusetts, increasing the costs for consumers in the state. Likewise, MassPIRG proposes to extend the 14-day trial period contemplated by the Consumer Code to 30 days after a consumer receives their first bill. MassPIRG provides no credible justification for 30 days following customer receipt of an initial bill as a minimum trial period standard, nor does MassPIRG explain why the market cannot adequately ensure that carriers select an appropriate period. In fact, two of the four national carriers *already* offer 30-day trial periods, and another offers a 20-day trial period.⁹⁶

Even apart from the Consumer Code, the wireless industry has taken a variety of steps to ensure that customers are empowered to make informed choices among providers and service plans. Earlier this year, CTIA developed two guides designed to aid consumers facing these choices. The first is a “General Wireless FAQ,” which providers are encouraged to make available to answer the most important questions asked by many consumers. Topics addressed by the FAQ include service plan areas and limitations, fees and surcharges, contract terms, the carrier’s treatment of third-party content and devices, the availability of usage-management tools, the availability of parental controls, any relevant trial periods, and international usage.⁹⁷ The second document is a checklist offering specific questions designed to provide consumers

⁹⁶ See e.g., Return policies for AT&T, available at <http://www.wireless.att.com/cell-phone-service/legal/return-policy.jsp>, Sprint, available at <http://www.sprint.com/landings/returns/?INTNAV=ATG:FT:30Day>, and T-Mobile, available at http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_ReturnPolicy..

⁹⁷ See CTIA — The Wireless Association®, *General Wireless FAQ*, available at <http://files.ctia.org/pdf/WirelessFAQ.pdf>.

with more details about their service options. While the checklist is designed to enable customers to ask the questions presented to prospective carriers, various carriers have proactively made the answers to the questions available on their websites.⁹⁸

In addition to the above, carriers offer consumers their own tools to manage their accounts and choose the appropriate service plans. Earlier this year, CTIA assembled and submitted to the FCC a chart summarizing the options made available by nine leading providers. CTIA appends that chart to these comments as Attachment 1. Every day, carriers are innovating to improve the customer experience and achieve success in the competitive marketplace. In the past six months alone, major carriers have announced new service plans to meet specific customer needs,⁹⁹ and unveiled tools to assist customers in monitoring and managing their usage,¹⁰⁰ to increase account security,¹⁰¹ and even to curb distracted driving by minors.¹⁰² The

⁹⁸ See, e.g., Verizon Wireless, *General Information*, available at http://support.vzw.com/clc/faqs/Wireless%20Service/ctia_checklist.html; AT&T, *CTIA Wireless Consumer Checklist*, available at http://www.wireless.att.com/learn/en_US/pdf/CTIA_Wireless_Consumer_Checklist.pdf?source=EC0000zzz0000000U&wtExtndSource=ctiachecklist&wtSourceUID=rw464w.

⁹⁹ See Press Release, Verizon Wireless, *Verizon Wireless Bundles Data Allowance for Popular Applications in New Value Pack Offer for Basic Phones* (June 1, 2011), available at <http://news.vzw.com/news/2011/06/pr2011-05-31.html>; Press Release, AT&T, *International Travelers Can Use a Lot More Data With New Global Packages from AT&T* (July 12, 2011), available at <http://www.att.com/gen/press-room?pid=20292&cdvn=news&newsarticleid=32148&mapcode=wireless-networks-general|broadband>; Press Release, T-Mobile USA, *T-Mobile Unveils Affordable and Worry-Free Unlimited Data Plans* (July 20, 2011), available at <http://newsroom.t-mobile.com/articles/t-mobile-unveils-unlimited-data-plans>.

¹⁰⁰ See Press Release, Verizon Wireless, *Verizon Wireless Makes It Easy for Customers to Monitor and Manage Data Usage* (July 7, 2011), available at <http://news.vzw.com/news/2011/07/pr2011-07-01d.html>; Press Release, Verizon Wireless, *Customers Can Manage Their Families' Wireless Lives with Usage Controls from Verizon Wireless* (May 23, 2011), available at <http://news.vzw.com/news/2011/05/pr2011-05-20.html>; Press Release, Sprint, *Sprint Helps Customers Make Informed Buying Decisions, Manage Wireless Usage and Bills* (March 7, 2011), available at http://newsroom.sprint.com/article_display.cfm?article_id=1811.

¹⁰¹ Press Release, AT&T, *AT&T Invests in Mobile Device Security Platform* (Aug. 11, 2011), available at <http://www.att.com/gen/press-room?pid=20619&cdvn=news&newsarticleid=32381&mapcode=enterprise|mk-enterprise-security>; Press Release, AT&T, *Password Protect Your Voicemail* (Aug. 5, 2011), available at <http://www.att.com/gen/press-room?pid=20606&cdvn=news&newsarticleid=32374&mapcode=corporate>; Press Release, Sprint, *Sprint and McAfee Offer Customers Mobile Security Applications to Help Protect Information on Their Wireless Devices* (Aug. 10, 2011), available at http://newsroom.sprint.com/article_display.cfm?article_id=2003; Press Release, Sprint, *Sprint Partners with*

MassPIRG proposals would replace this dynamic innovation and customer-tailored approach with a one-size-fits-all regulatory mandate appropriate only in the monopoly days of the past.

In sum, even apart from the many legal mandates protecting Massachusetts customers, the wireless industry has enacted numerous voluntary measures that further safeguard those consumers — all without the additional burdensome requirements sought by some parties to this proceeding.

CONCLUSION

For the reasons discussed above and in CTIA's opening comments, CTIA urges the Department to continue its current policy approach with respect to wireless service. That approach has facilitated the development of a vibrant marketplace wherein consumers benefit each day from actions taken by carriers responding to competition, as well as from background consumer protection requirements and voluntary efforts already in place. The Department should refrain from applying additional regulations to wireless service.

Lookout to Offer Customers Mobile Security Protection (June 15, 2011), available at http://newsroom.sprint.com/article_display.cfm?article_id=1948.

¹⁰² See Press Release, *Drive Back to School Safely with New Mobile App Designed to Curb Texting Behind the Wheel* (Aug. 30, 2011), available at <http://www.att.com/gen/press-room?pid=20882&cdvn=news&newsarticleid=32644&mapcode=community/mobile-devices>; Press Release, *Sprint Drive First Application Helps Parents Combat Distracted Driving* (Sept. 12, 2011), available at http://newsroom.sprint.com/article_display.cfm?article_id=2037.

Respectfully submitted this 16th day of September, 2011.

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Attachment 1

	Trial period	Point of sale information/ documentation	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to check use info/balance from web site, device	Post-paid plan bill shock preventative tools	Provides international roaming information/alerts	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract
AT&T	30-day ⁱ	Follows CTIA Consumer Code	Yes ⁱⁱ	Yes ⁱⁱⁱ	Yes ^{iv} , dial *BAL# for account balance, *MIN# for minutes, and *DATA# for data use	Smart Limits - determine how and when the phone can be used and sends an alert when the limit for texts or minutes is reached ^v	Yes ^{vi} /No	Yes ^{vii}	Yes ^{viii}
Sprint Nextel	30-day ^{ix}	Follows CTIA Consumer Code	Yes ^x	Yes ^{xi}	Yes ^{xii} , dial *2 for use and balance, and *4 for minutes balance	Spending Limit - set a max balance for a given time. For multiple phones accounts, users set spending limits per phone ^{xiii}	Yes ^{xiv} /No	Yes ^{xv}	Yes ^{xvi}
T-Mobile USA	14-day (30 days in CA) ^{xvii}	Follows CTIA Consumer Code	Yes ^{xviii}	Yes ^{xix}	Yes ^{xx} , dial #MSG# for text balance, #MIN# for minutes used, #BAL# for current balance	Use Controls - set allowances for voice and texts, and set times when calls, texts and data are restricted ^{xxi}	Yes ^{xxii} /Yes ^{xxiii}	Yes ^{xxiv}	Yes ^{xxv}

Verizon Wireless	30-day ^{xxvi}	Follows CTIA Consumer Code	Yes ^{xxvii}	Yes ^{xxviii}	Yes ^{xxix} , dial #BAL for balance, #MIN for minutes balance, #DATA for text and data use	Family Allowances - set the minutes, messages, and downloads each person gets; automatic notice upon reaching allowance ^{xxx}	Yes ^{xxxi} /Yes ^{xxxii}	Yes ^{xxxiii}	Yes ^{xxxiv}
	Trial period	Point of sale information/ documentation	Ability to change plan w/o contract extension	Ability to purchase service w/o a contract (prepaid)	Ability to check use info/balance from web site, device	Post-paid plan bill shock preventative tools	Provides international roaming information/alerts	Ability to bring your own phone	Ability to pay full price for a handset and take service w/o a contract
Cricket Wireless	30-day ^{xxxv}	Follows CTIA Consumer Code	Yes ^{xxxvi}	Yes ^{xxxvii}	Yes ^{xxxviii} , dial *PAY or *611 for account balance	No post-paid plans	International Roaming requires the purchase of roaming minutes, therefore overage is impossible ^{xxxix}	Yes ^{xl}	Yes ^{xli}
Metro PCS	30-day ^{xlii}		Yes ^{xliii}	Yes ^{xliv}	Yes ^{xlv} , dial *99 or 611 for account balance.	No post-paid plans	Does not provide international roaming	Yes ^{xlvi}	Yes ^{xlvii}
US Cellular	30-day ^{xlvi}	Follows CTIA Consumer Code	Yes ^{xlix}	Yes ^l	Yes ^{li} , dial #BAL (#225) for current balance, voice minutes and text messages	Overage Protection - set allowances for voice and text, alerts when subscriber is nearing or over limit ^{lii}	Yes ^{liii} /No	No ^{liv}	Yes ^{lv}
TracFone Wireless	30-day ^{lvi}		Yes ^{lvii}	Yes ^{lviii}	Yes ^{lix} , voice balance and service end date displayed on device	No post-paid plans	Does not provide international roaming	No ^{lx}	Yes ^{lxi}

Southern LINC Wireless	15-day ^{lxii}	Follows CTIA Consumer Code	Yes ^{lxiii}	Yes ^{lxiv}	Yes ^{lxv} , dial 646 to hear how many peak and off-peak minutes you have used in your current billing period	Budget Manager Plan - fixed amount of minutes, so no overage charges ^{lxvi}	Does not provide international roaming	Yes ^{lxvii}	Yes ^{lxviii}
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Endnotes from Chart

ⁱ <http://www.wireless.att.com/cell-phone-service/legal/return-policy.jsp> (Last accessed June 9, 2010).

ⁱⁱ See <http://www.wireless.att.com/answer-center/main.jsp?t=solutionTab&solutionId=KB61945> (Last accessed June 9, 2010).

ⁱⁱⁱ <http://www.wireless.att.com/cell-phone-service/go-phones/index.jsp> (Last accessed June 9, 2010).

^{iv} <https://www.att.com/olam/dashboardAction.olamexecute> (Last accessed June 9, 2010) (must create an account and sign in).

^v <http://www.wireless.att.com/learn/articles-resources/parental-controls/smart-limits.jsp> (Last accessed June 10, 2010).

^{vi} See www.att.com/global; Know Before You Go: <http://www.wireless.att.com/learn/international/roaming/know-before-you-go.jsp>; Verify Rates: <http://www.wireless.att.com/learn/international/roaming/international-roaming.jsp>; Travel Guide: <http://www.wireless.att.com/learn/international/roaming/travel-guide.jsp>; FAQ on International Roaming: <http://www.wireless.att.com/learn/international/roaming/faq.jsp> (Last accessed June 9, 2010)

^{vii} <http://choice.att.com/flash/customersdevices.aspx> (Last accessed June 9, 2010).

^{viii} <http://www.wireless.att.com/learn/basics/shopping-faqs.jsp#106> (Last accessed June 9, 2010).

^{ix} <http://www.sprint.com/landings/returns/> (last accessed June 9, 2010).

^x http://support.sprint.com/support/article/Change_your_plan_anytime_without_fees_or_extending_your_service_agreement/case-gz982789-20091023-165539 (Last accessed June 9, 2010).

^{xi} <http://www.boostmobile.com/about/mediacenter/index.html> (Last accessed June 9, 2010).

^{xii} http://www.sprint.com/index_c.html (Last accessed June 9, 2010) (click “check my usage”, log in required).

^{xiii} http://support.sprint.com/support/article/Learn_about_the_Account_Spending_Limit_program/case-wh164052-20100120-111115 (Last accessed June 10, 2010).

^{xiv} Information about travelling internationally with a Sprint phone: http://shop.sprint.com/en/services/worldwide/travelabroad_sprint.shtml; International Voice: <http://shop.sprint.com/en/services/worldwide/internationalcoverage.shtml>; International Data: http://shop.sprint.com/en/services/worldwide/intl_data_services_coverage.shtml (Last accessed June 9, 2010).

^{xv} See http://nextelonline.nextel.com/en/legal/legal_terms_privacy_popup.shtml (Last accessed May 29, 2009)

^{xvi} See http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions (Last accessed May 29, 2009)

^{xvii} *Id.*

^{xviii} http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed Dec. 7, 2009) (although some promotional plans require customer to sign another service contract).

^{xix} <http://www.t-mobile.com/shop/plans/Prepaid-Plans.aspx> (Last accessed June 9, 2010).

^{xx} http://www.t-mobile.com/shop.aspx?WT.srch=1&WT.mc_id=151m1 (Last accessed June 9, 2010) (click on “My T-Mobile” in the top right corner of the screen to register and to sign in and check minutes and messages used)

^{xxi} https://wbillpay.verizonwireless.com/vzw/nos/uc/uc_overview.jsp (Last accessed June 10, 2010).

^{xxii} What to do before using your phone while traveling internationally: <https://support.t-mobile.com/doc/tm22038.xml?related=y&Referring%20Related%20DocID%20List%20Index=1&docid=694&navtypeid=6&pagetypeid=7&prevPageIndex=4>; International Roaming Information: http://www.t-mobile.com/International/RoamingOverview.aspx?tp=Inl_Tab_RoamWorldwide (Last accessed June 9, 2010).

^{xxiii} Once registered on foreign carriers’ networks, customers receive the following free text message alerting customer to check settings: “Free T-Mobile Msg: CAUTION: Charges while roaming are higher for voice, web, email & applications. Alter device settings or call +1-505-998-3793 for rates.”

^{xxiv} http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true&WT.srch=2&Result_Inq=answer&InqSource=TMO (Last accessed June 9, 2010) (see number six).

xxxv http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=Individual&WT.z_shop_plansLP=individual (Last accessed June 9, 2010) (Even More Plus plans have no annual contract with phones sold at retail prices).

xxxvi http://www.verizonwireless.com/b2c/globalText?textName=RETURN_POLICY&jspName=footer/returnPolicy.jsp (Last accessed June 9, 2010).

xxxvii <http://news.vzw.com/news/2007/10/pr2007-10-01a.html> (Last accessed June 9, 2010).

xxxviii <http://www.verizonwireless.com/b2c/splash/prepay.jsp?lid=/global/plans/prepaid> (Last accessed June 9, 2010).

xxxix <http://www.verizonwireless.com/b2c/index.html> (Last accessed June 9, 2010) (click on “MyVerizon” in task bar and usage can be viewed upon login).

xxx https://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=FamilyWireless&tp=Svc_Tab_FW101FamilyAllowances&WT.z_unav=mst_disc_save_FA (Last accessed June 10, 2010).

xxxi www.verizonwireless.com/global (Last accessed June 9, 2010).

xxxii Verizon Wireless sends a free text message to customers when they turn on their phone in a foreign county welcoming them to the country, providing dialing instructions for calling from that country back to the U.S., and sending them the 24/7 customer service number for global customers. If the customer is located in a CDMA country, Verizon Wireless also provides the customer with the data roaming rates for that country. Mobile Broadband customers using VZ Access Manager and operating their device outside of the U.S. must click-through a disclosure screen providing information about potential data charge rates before being allowed to connect.

xxxiii http://www.verizonwireless.com/b2c/globalText?textName=CUSTOMER_AGREEMENT&jspName=footer/customerAgreement.jsp (Last accessed June 9, 2010) (see “My Wireless Device”); *see* http://support.vzw.com/clc/faqs/Equipment/faq_phones.html (Last accessed June 9, 2010).

xxxiv <http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewStoreIndex&lid=/global/phones+and+accessories> (Verizon’s online phone shop allows pricing options of 1 and 2 year contracts and month-to-month) (last accessed June 9, 2010); *see also* http://news.cnet.com/8301-1035_3-10048123-94.html (Last accessed June 9, 2010).

xxxv <http://www.mycricket.com/support/return-policy> (Last accessed June 23, 2010).

xxxvi <http://www.mycricket.com/support/topic/Cricket-Wireless> (Last accessed June 23, 2010).

xxxvii <http://www.mycricket.com/paygo/prepaid-mobile-phone-guide> (Last accessed June 23, 2010).

xxxviii <https://account.mycricket.com/> (Last accessed June 23, 2010); <http://www.mycricket.com/support/topic/Cricket-PAYGo-Account-Balance> (Last accessed June 30, 2010).

xxxix *See* <http://www.mycricket.com/support/topic/Roaming> (Last accessed June 23, 2010).

xl <http://www.mycricket.com/support/topic/Purchasing-a-Cricket-Phone> (Last accessed June 23, 2010).

xli <http://www.mycricket.com/cell-phones> (Last accessed June 23, 2010).

xlii http://www.metropcs.com/customer_support/returnpolicy.aspx (last accessed June 23, 2010).

xliii http://support.sprint.com/support/article/Change_your_plan_anytime_without_fees_or_extending_your_service_agreement/case-gz982789-20091023-165539 (Last accessed June 9, 2010).

xliv http://www.metropcs.com/customer_support/faq.aspx#13 (Last accessed June 23, 2010).

xlvi http://www.metropcs.com/customer_support/billpay/myaccount.aspx (Last accessed June 23, 2010) (click “check my usage”, log in required).

xlvi http://www.metropcs.com/customer_support/number_portability.aspx (Last accessed June 23, 2010).

xlvi *See* <http://www.metropcs.com/shop/phonelist.aspx> (Last accessed June 23, 2010).

xlvi <http://www.uscellular.com/uscellular/common/common.jsp?path=/site/legal/customer-service-agreement.html> (last accessed June 24, 2010).

xlix <http://www.uscellular.com/uscellular/plans/showPlanDetails.jsp?planid=prod610262> (Last accessed June 23, 2010).

l <http://www.uscellular.com/uscellular/common/common.jsp?path=/products-services/index.html> (Last accessed June 23, 2010).

li <https://login.knx.uscc.com/nidp/idff/sso?id=33&sid=0&option=credential&sid=0> (Last accessed June 23, 2010) (must create an account and sign in).

lii <http://www.uscellular.com/uscellular/common/common.jsp?path=/overage-protection/index.html> (Last accessed June 24, 2010).

liii <http://www.uscellular.com/uscellular/common/common.jsp?path=/services/international/index.html> (Last accessed June 24, 2010).

liv <http://www.uscellular.com/uscellular/support/faq/faqDetails.jsp?topic=number-portability.html#Q9> (Last accessed June 30, 2010) (see number nine).

lv http://www.uscellular.com/uscellular/cell-phones/showPhones.jsp?prepaid=Y&_requestid=1035164 (Last accessed June 24, 2010).

lvi <http://www.tracfone-orders.com/bpdirect/tracfone/Start.do?action=view&market=GSM5AT> (Last accessed June 30, 2010).

lvii <https://www.tracfone.com/direct/ValuePlans?app=TRACFONE&lang=en> (Last accessed June 30, 2010) (click “Terms and Conditions”).

lviii *See generally* <http://www.tracfone.com/> (Last accessed June 30, 2010).

lix <https://www.tracfone.com/direct/MyAccount?app=TRACFONE&lang=en> (Last accessed June 30, 2010) (log in required); *see also* http://www.tracfone.com/redirect_landing.jsp# (Last accessed June 30, 2010) (click “getting started”, then “adding airtime”).

lx http://www.tracfone.com/redirect_landing.jsp# (Last accessed June 30, 2010) (click “promotions and services”, then “number portability”, then “Will I be able to use my existing carrier’s equipment when I move to TracFone?”).

lxi <http://www.tracfone-orders.com/bpdirect/tracfone/Start.do?action=view&market=GSM5AT&aid=&vid=&vc=&saheid=&com=&zip=20009&locale=en&siteType=T> [R&gotoPhonelist=true&AID=](http://www.tracfone-orders.com/bpdirect/tracfone/Start.do?action=view&market=GSM5AT&aid=&vid=&vc=&saheid=&com=&zip=20009&locale=en&siteType=T) (Last accessed June 30, 2010).

lxii <http://www.southernlinc.com/customersupport/returnpolicy.asp> (Last accessed June 30, 2010).

lxiii <http://news.vzw.com/news/2007/10/pr2007-10-01a.html> (Last accessed June 9, 2010).

lxiv <http://www.southernlinc.com/prepaid/> (Last accessed June 30, 2010).

lxv http://www.southernlinc.com/customersupport/abbreviated_dialing_codes.asp (Last accessed June 30, 2010).

lxvi http://www.southernlinc.com/consumer/service_plans/all_plans.asp#BUDGET (Last accessed June 30, 2010).

lxvii <http://www.southernlinc.com/simfaqs.asp> (Last accessed June 30, 2010).

lxviii <https://onlinestore.southernlinc.com/phones.aspx> (Last accessed June 30, 2010).