

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Re:
Modernization of Department Billing and
Termination Consumer Protection Regulations

**INITIAL COMMENTS OF NEW ENGLAND CABLE
AND TELECOMMUNICATIONS ASSOCIATION**

I. Introduction

The New England Cable and Telecommunications Association, Inc. ("NECTA") submits these comments to the Department of Telecommunications and Cable ("Department" or "DTC") on potential revisions to (1) Billing and Termination Rules and Practices Relating to Telephone Service to Residential Customers, DPU 18448 (1977) ("Voice Rules"); and (2) Cable Television Billing and Termination of Service Regulations, 207 CMR 10.00 et seq. (1986, as subsequently amended) ("Cable Rules") [the Voice Rules and Cable Rules collectively referred to as the "Rules"].¹ The Rules impose detailed regulatory requirements in areas such as mandatory provision of information to consumers in connection with initial sign up and periodic changes in rates and charges; the manner in which billing should be accomplished; service termination; and informal and adjudicatory routes for resolving billing disputes.

The Department's July 7, 2011 revised Notice of Public Informational Forums and solicitation of written comments ("Notice") highlights the many changes in

¹ NECTA is a nonprofit organization and trade association that represents the interests of most cable television companies and affiliates in regulatory and legislative matters in New England. NECTA's members provide cable television, voice, high speed Internet access, and related communications services to residents and businesses across Massachusetts. With respect to voice services, all Massachusetts NECTA members offer facilities-based, interconnected Voice-over-Internet Protocol ("VoIP") services to residential and enterprise customers.

technology, regulation and governing statutes that have transpired since the 1970s and 1980s. Notice at 1-2. When the Rules were first promulgated, the traditional phone and cable providers served customers using first generation technologies with limited competition, no data or wireless offerings and no multi-service bundling. Understandably, the Rules include detailed prescriptive regulatory requirements to protect what were essentially captive customers.

Here in 2011, more than a quarter century later, multiple communications providers compete for residential and business customers in all segments of the wireline and wireless voice, video and data marketplaces. Many are free of direct Department regulation (e.g., providers of high speed Internet, interconnected VOIP (both over the top and fixed), direct broadcast satellite ("DBS"), satellite master antenna video ("SMATV"), Netflix and other types of over-the-top video).² Many are also subject to consumer protection requirements at both state and federal levels, including federal truth in billing rules applicable to most common carriers at 47 C.F.R. § 64.2401, detailed state consumer protection regulations at 940 CMR 3.00 et seq., and state and federal privacy/information security protections. In addition, many local cable franchise agreements contain consumer protection conditions. NECTA strongly supports the Department's preliminary conclusion that the Rules must "reflect and address" these marketplace realities and urges the Department to move forward with a streamlined, deregulatory environment in Massachusetts. Notice, p. 2.

² As the Notice reflects, the General Court recently deprived the Department of jurisdiction over the rates, terms and conditions of service by VOIP providers in the Commonwealth. See G.L. c. 25C, § 6A ("Massachusetts VOIP Statute").

As a result of the exponential increase in communications service competition and consumer choice and expansion of consumer protections by other governmental entities, NECTA requests that the Department eliminate outright all, or alternatively most, of the detailed regulatory requirements in the current Rules, as is required by the Massachusetts VOIP Statute, and as many other states have done.³ All communications providers understand that treating customers unreasonably puts at risk their existing and potential customer bases. In a competitive environment, regulatory requirements divert resources that could be better deployed in launching and expanding service offerings to consumers or adjusting pricing strategies, with no negative impact on customer service. In light of protections already afforded to communications customers under federal, state and local law, and strong policy statements by the Federal Communications Commission (“FCC”) of the problems that conflicting state regulatory schemes pose to the overall goal of advancing competition, there is no need for burdensome and duplicative Department-level protections applicable only in Massachusetts and only to some providers and some services.⁴ Marketplace forces serve as the best incentive for providers to maintain reasonable practices governing billing and service termination. Regulations should be preserved only where necessary to address a demonstrated need that cannot be met by other protections that already

³ In addition to the Massachusetts VOIP Statute, states that have deregulated retail voice services, either all services or all VOIP services, include Maine (2011), Wisconsin (2011), Michigan (2011), Texas (2011), Ohio (2010), Illinois (2010), Rhode Island (2009), Alabama (2009), Missouri (2008), Pennsylvania (2008), Washington, DC (2008), Tennessee (2007), New Jersey (2007), Delaware (2007), Maryland (2007), Indiana (2006), Kentucky (2006), Georgia (2006), Virginia (2006), and Florida (2003 & 2005). This list does not include the many states which have by statute limited cable television regulation.

⁴ See In the Matter of Vonage Holdings Corporation Petition for Declaratory Rulings Concerning an Order of the Minnesota Public Utilities Commission, 19 FCC Rcd 22404 at 22427 (2004) (discouraging different regulation in each state as counter to “the pro-competitive deregulatory policies the [FCC] is striving to further”).

exist within federal, state or local law, such as interconnection, wholesale pricing and other carrier safeguards relative to voice services.

Even though increased retail competition and the presence of alternative protections eliminate or minimize the importance of Department consumer protection regulation through the Rules, the Department has other roles of continuing importance. These roles include supervising wholesale tariffs, interconnection agreements and other carrier-to-carrier telephone dealings, reviewing cable rate filings and deciding municipal franchise appeals, adjudicating Eligible Telecommunications Carrier applications to qualify for Universal Service Fund subsidies, and supervising E-911 and other regulatory fee assessments. The Department should focus on these numerous tasks of importance to competition and public protection that require Department oversight.

II. Background

In 1996, the Department's predecessor initiated a proceeding to consider revisions to the Voice Rules. See generally Docket 06-8. Interested parties filed initial written and reply comments, but then the docket went into hiatus while the Governor re-organized the agencies to create the current Department and the separate Department of Public Utilities. Earlier this year, the Department closed Docket 06-8 and opened the instant docket to consider changes to the Rules. The Rules themselves are summarized as follows:

A. Voice Rules

The Voice Rules were implemented in the 1970s, prior to competition, to address New England Telephone's monopoly telephone service for residential customers. Over

time, the Voice Rules also were imposed by the Department on newly emerging competitive voice providers serving residential customers despite their different business models and the expanding competitive environment. These burdensome regulations include the following:

- Detailed regulations governing mandatory provision of written information to new customers at point of sale and Department authority to disapprove or modify such communications (Section 2);
- Nearly five pages of detailed regulations regarding all aspects of the billing and payment processes, including bill generation, time periods for customer payments, bill content, installation/restoration service charges, bill dispute process notices, and multi-lingual text requirements (Section 3);
- Nearly four pages of provisions governing security deposits, including provisions entitling consumers to appeal certain security deposit issues to the Department (Section 4);
- Nearly seven pages on all aspects of the service termination process, including specification of eligible grounds, mandatory notices (and associated specified time periods) and exemptions for illness and emergencies (Section 5);
- Nearly five pages on complaint procedures, including customer appeal rights (Section 6);
- More than two pages on deferred payment plans and appeal rights to the Department in the event such plan cannot be agreed to as between the customer and the provider (Section 7); and
- Several pages of requirements limiting termination rights relative to persons 65 years of age or older without prior Department approval (Section 8).

B. Cable Rules

The Cable Rules regulate licensed Massachusetts cable companies in a manner akin to that of Voice Rules and, once again, were implemented at a time where there was no or virtually no competition for video customers. The Cable Rules do not even apply to DBS providers, who serve approximately 1/3 of all multichannel video

customers nationally and compete fiercely against NECTA members, Verizon FiOS, RCN and municipal cable operators in the Commonwealth. The Cable Rules include the following:

- Detailed regulations governing mandatory provision of billing practices information to new customers at point of sale, with mandatory annual filings with the Department, municipal issuing authority, and the Company's local office of such materials, and 30 day prior notice to the Department, municipal issuing authority, and all affected subscribers of changes to such billing practices (Section 10.01);
- Regulation requiring provision to customers of service details prior to subscription and upon request, provision to the Department, municipal issuing authorities and affected subscribers of all changes in rates, terms and conditions, and prohibiting charging for services that are not requested by name (Section 10.02);
- Detailed requirements governing billing formats (Section 10.03);
- Limitations on advance billing for services (Section 10.04);
- Detailed provisions specifying procedures applicable to delinquent bills and service terminations, including late charges (Section 10.05);
- Limitations on disconnection and downgrade charges (Section 10.06);
- Very detailed provisions governing billing disputes and possible appeals to the Department (Section 10.07); and
- Provisions limiting practices and charges relating to security deposits (Section 10.08).

C. Public Hearing Process

The Department conducted a "listening tour" of public hearings across the Commonwealth in connection with this docket, with sessions held in the Berkshires, Springfield, Worcester and Boston. From all accounts, attendance from the public was relatively minimal and did not evidence specific facts about systemically poor provider performance that might support retention of the existing Rules or a market failure evidencing the need for Department-specific rules.

III. General Comments

A. Market Forces Should Be Presumed to Protect Consumers Absent a Demonstrated Need for Department Intervention.

Vibrant, multi-provider retail competition is a reality for nearly all consumers across all forms of communications services. The reality of competitive alternatives should be recognized in the Department's consideration of alternatives to the longstanding Rules. In determining changes to the Rules, NECTA urges the Department not to impose regulations on providers, with their attendant restrictions and cost of compliance, in the absence of a demonstrable need and a fact-based record establishing that a specific problem exists that requires the Department's attention and that cannot be resolved under existing federal or state law.

The reality of the competitive marketplace can be established through data. See DTC Competition Status Report, February 12, 2010 at 23, 46, 75 (detailing a steady increase of fair market share for competitive residential and business voice providers and competitive video providers from 2005-2008); see also, e.g., FCC Local Telephone Competition: Status as of June 30, 2010 (March 2011) (showing significant penetration by VOIP providers and competitive local exchange carriers ("CLECs") into local phone markets). It also can be confirmed anecdotally through wide availability of competitive alternatives offered to consumers over a variety of platforms. The end result is that residential customers can choose from a variety of voice services offered by incumbent and competitive local exchange carriers ("LECs"), cable providers offering interconnected VOIP services, over-the-top VOIP service providers such as Vonage,

Skype and Magic Box; and various wireless service options. Business voice customers can select an even greater variety of options. Video customers can choose among one or more local cable providers (in some Massachusetts communities, customers can choose from as many as three), several DBS providers, Internet-based providers of television shows and movies such as Netflix and Hulu, and, in some localities, SMATV providers. Similar or even greater competition exists for customers of high speed data and Internet access (including LEC-provided digital subscriber line (“DSL”), cable high speed modem service, and an increasing variety of wireless data options offered by AT&T, Verizon, Sprint, T-Mobile, and others).

In the current competitive environment, customers dissatisfied with the terms or service quality offered by one provider can readily switch to another provider, and often receive promotional incentives to do so. For any provider, losing a customer to a competitor is a substantial penalty to pay for failing to meet that customer’s expectations. As a result, service providers naturally focus their financial, operational and managerial resources on providing innovative, high quality services, not only to attract new customers but also to retain their existing customer base. Contrary to the environment within which the Rules were created, in which a government-authorized monopoly delivered services to captive customers, Massachusetts consumers can purchase communications services in much the same way that they can obtain any other freely available consumer good or service. In the absence of any clear facts demonstrating that these market forces are not sufficient to incent appropriate behavior by competing communications service providers, the Department should rely on existing

generally applicable federal and state consumer protection laws and avoid establishing largely duplicative, burdensome and costly new Department-specific regulations.

B. The Department May Not Act in Excess of Legal Authority.

Many of the specific questions in the Notice (discussed below) ask for input regarding whether “consumer protection regulations” should apply to certain communications services or to industries in addition to intrastate phone or cable television services. As framed, these queries beg two important questions: (1) whether the Department possesses legal jurisdiction to issue such consumer protection regulations even if the Department believes them to be desirable as a matter of policy;⁵ and (2) even if some form of regulation is appropriate and the Department possesses jurisdiction to act, whether the Department should be the entity taking action as compared to other federal, state or local bodies with authority to take action, such as the FCC, the Attorney General or a municipal cable franchise issuing authority. These two constraints should play a significant role in determining revisions to the Rules. The first is discussed in the subsections immediately below, and the second is addressed in Section III.C infra.

1. Prohibition on Regulation of VOIP Services

As observed in the Notice, in 2010 the General Court enacted a law limiting the Department’s jurisdiction to regulate VOIP services. The prohibition, codified in G.L. c. 25C, § 6A, reads in full as follows:

⁵ See Commissioner of Revenue v. Marr Scaffolding Co., 414 Mass. 489, 493 (1993) (explaining that “[a]n administrative agency has no inherent or common law authority to do anything. An administrative board may act only to the extent that it has express or implied statutory authority to do so.” (internal citations omitted)).

Except as set forth in subsections (c) to (f), inclusive, [authorizing application to VOIP services of consumer protection regulations, enhanced 911 fees, federal interconnection requirements and obligations for offering video services] and notwithstanding any other general or special law to the contrary, no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service.

This statute broadly deprives the Department of jurisdiction to impose any provision – including the Voice Rules – that “regulates or has the effect of regulating” any “terms or conditions” of VOIP services in the Commonwealth. Accordingly, to the extent the Rules remain in place at the end of the instant proceeding, VOIP services of NECTA members must be exempted from the Rules and no new or modified rules may be applied to those VOIP services.

2. Preemptive Federal Law

Well established legal principles in federal statutes and/or decisional law limit the Department's authority to regulate certain communications services. Based on these principles, services with full or at least partial preemption from state utility commission regulation include the following: (1) high speed Internet services such as using cable modems or DSL facilities;⁶ (2) several forms of VOIP services;⁷ and (3) certain aspects

⁶ In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, 17 FCC Rcd 4798, ¶ 60 (2002), aff'd National Cable & Telecommunications Ass'n v. Brand X Internet Services, 545 U.S. 967 (2005).

⁷ E.g., Minn. Pub. Utils. Comm'n v. FCC, 483 F.3d 570 (8th Cir. 2007) (exempting Vonage from State PUC regulation); In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service, 19 FCC Rcd 3307 (2004).

of wireless services.⁸ As with the VOIP prohibition discussed in the preceding section, any Rules enacted at the end of this proceeding should exempt the above services that are beyond the Department's regulatory authority.⁹

C. Existing Federal, State and Local Consumer Protections.

The existence of federal, state and local provisions that provide baseline protections to all or certain classes of communications consumers should be accounted for by the Department in reviewing continued existence and scope of the Rules.

Federal regulations also establish targeted consumer protections, including truth-in-billing requirements and Customer Proprietary Network Information ("CPNI") restrictions (47 U.S.C. §§ 222) as well as so-called "Red Flag Rules" (16 CFR § 681 et seq.) and other consumer-oriented regulations administered by the FCC.¹⁰ Also, voluntary consumer protection guidelines have been created by industry groups, such as the wireless industry consumer protections established by the Cellular Telephone Industry Association ("CTIA").¹¹

On the state level, the chief source of consumer protections is G.L. c. 93A ("Chapter 93A"), which provides for legal action by the Attorney General and by individual consumers for unfair and deceptive trade practices, with possible awards of up to treble damages and attorneys' fees for prevailing parties. See G.L. c. 93A, §§ 4, 9, 11. The Attorney General has promulgated a host of regulations in 940 CMR 3.00 et

⁸ See 47 U.S.C. § 332(c)(3)(A) (preempting state and local governments from regulating wireless rates and entry requirements).

⁹ While NECTA is not going to walk through the regulatory prohibitions herein, similar principles apply to DBS and SMATV video and over the top video services, among other unregulated services.

¹⁰ E.g., 47 CFR 76.1602 Customer Service - general information, 47 CFR 76.1603 Customer Service - rate and service changes, 47 CFR 76.1619 Information on subscriber bills; and 47 CFR 76.309 Customer service obligations (also noting 1602, 1603, and 1619).

¹¹ See CTIA's Voluntary Industry Guidelines at http://www.ctia.org/consumer_info/service/index.cfm/AID/10673.

seq. to add specificity to the general prohibition on unfair practices in Chapter 93A, including protections against, among other things, deceptive pricing and misrepresentations. 940 CMR 3.04, 3.05. The Attorney General's office has actively enforced the terms of Chapter 93A and implemented regulations through enforcement actions with respect to companies subject to utility-type regulation and many other non-utility industries.¹²

In this regard, the Department must consider that the Attorney General is charged by statute to be the chief State consumer protection enforcement agency. The AG consumer protection regulations are already applicable to Massachusetts communications providers and any additional burden by the Department is both unwarranted and unnecessary. When providers are already subject to regulation by one or more other consumer agencies, there is no benefit to be gained from redundant regulation by the Department. Moreover, the direct and indirect costs associated with extending the scope of Department-imposed consumer protections may very well be high for many providers and, ultimately, consumers.

Other Massachusetts statutes and regulations relevant to communications providers and their customers include anti-slamming provisions at G.L. c. 93, §§ 109-

¹² E.g., Amcan Enterprises, Inc. v. Commonwealth, 47 Mass. App. Ct. 330 (1990) (imposing multi-million dollar fine following Attorney General complaint proceeding under Chapter 93A); see also Lowell Gas Co. v. Attorney General, 377 Mass. 37 (1979) (upholding the application of consumer protection statute authority to entities regulated by the Department's predecessor); Massachusetts Wins Piece of \$13.2 Million DirecTV Settlement, Randolph Herald, December 16, 2010 (explaining that Massachusetts Attorney General and the Attorneys Generals of 48 other states reached a settlement with DirecTV, Inc. resolving allegations that the satellite television provider engaged in unfair and deceptive marketing and advertising practices (full article at http://www.wickedlocal.com/randolph/town_info/government/x74194697/Massachusetts-wins-piece-of-13-2-million-DirecTV-settlement#axzz1Vm60ci6X)).

113 and 220 CMR 13.00 et seq., and information security protections at G.L. c. 93H and 93I and 201 CMR 17.

Finally, at a local level, many municipal video franchises include consumer protection provisions applicable to cable television providers. For example, while compliance with the FCC Consumer Service Standards at 47 CFR 76.309(c) is not mandatory under federal or state law, they commonly are applied to cable operators during the cable licensing process.¹³ These regulations include specific requirements relating to time periods to perform installations and to begin working on service interruptions, call answer time, availability of customer service representatives, and credits for service and refunds.¹⁴

D. Consideration of Whether Costs to Providers and Consumers Exceed the Putative Benefits of Regulation.

A final possible limit to the Department's authority is the need to weigh the putative benefits against the likely costs of regulatory compliance and consider whether the Department's goals may be achieved through another means. This approach was taken by the Department's predecessor more than a decade ago, at the dawn of cable competition, in deciding not to impose statewide customer service regulations on cable operators. See Order, In Re Proposed Rulemaking 207 CMR 11.00, Docket No. R-26 (2000). As recited in the R-26 Order, Massachusetts agencies should "ensure that the costs of new regulations do not exceed the benefits that would be affected by the

¹³ See, e.g., Comcast (formerly AT&T Broadband) Renewal Cable Television License For The City of Methuen, Massachusetts at Section 7.1(d), p.34 (May 17, 2002) ("Licensee shall comply with all customer service regulations of the FCC (47 CFR 76) as they exist or as they may be amended from time to time. The FCC's customer service guidelines set forth at 47 CFR 76.309 are incorporated herein by reference and made obligations of the License pursuant hereto").

¹⁴ See 47 CFR 76.309(c).

regulations,” “consider alternative, less restrictive means of achieving their goals,” and “[in] striking the appropriate balance between the costs of the regulations and their potential benefits, [] review the likely impact on subscriber rates and the affect of state-wide regulations.” Id., p. 3.

Even though the 1990s Executive Order cited in the R-26 Order was withdrawn by a later administration, the Order describes a sound policy that should guide the Department’s consideration. In light of the incentives placed on Massachusetts communications providers by robust competition within and between market segments, express preemption of the Department’s ability to regulate many of the providers and/or services, and the presence of a host of consumer protection laws and regulations at federal, state and local levels, the benefits of a Department-issued set of regulations applicable to some providers and some services would be limited. In contrast, the costs of implementation – creating Massachusetts-specific sets of marketing materials, dispute and adjudications procedures, billing and termination procedures – likely would be disproportionately high.

E. Any Rules that Remain Should be Streamlined.

To the extent that the Department retains any of the Rules, the Rules should be substantially streamlined in terms of the number of regulatory issues covered and the specificity of regulatory provisions required of Massachusetts providers. Any party advocating retention or expansion of a particular provision in the Rules should be required to provide adequate record evidence that (1) a meaningful number of consumers have suffered actual harm due to the absence of the regulation, (2) the imposition of the regulation on all providers would provide consumers with material

additional protection, and (3) the benefits of imposing the regulation on all Massachusetts providers exceed the costs of regulation to individual providers, the state communications industry as a whole, and the consumers that ultimately will pay for regulatory costs through higher prices. The Department should eliminate or curtail individual rules that are not plainly justified.

IV. Comments on Specific Issues in Notice

- A. *Whether consumer protection regulations should apply to both wireline and wireless service, cable television service, and bundled services?*

NECTA Response:

As discussed above, the Department should not impose any additional consumer protection regulations unless it has legal authority over the service in question and there is a demonstrated need for the Department to take action. VOIP and high speed Internet services are exempt under any circumstances. Moreover, as discussed above, the AG has primary jurisdiction in this area and there is no evidence that the AG is not performing its role in making sure that Massachusetts market participants meet applicable consumer protection standards.

- B. *What particular consumer protections should apply to the provision of voice and cable services? In particular, what specific consumer protection rules are needed to address: (i) advertising and marketing; (ii) disclosures in general and point-of-sale disclosures in particular; (iii) written confirmation of sale and cancellation period; (iv) billing format and practices; (v) advance notice of changes in service, rates, or other contract terms and conditions; (vi) customer service and dispute resolution procedures; (vii) discontinuance or termination of service; and (viii) privacy issues?*

NECTA Response:

The Department should not impose any additional consumer protection regulations unless it has legal authority over the service in question and there is a demonstrated need for the Department to take action to cure a market failure. Furthermore, VOIP and high speed Internet service are exempt under any circumstances.

Moreover, all Massachusetts communications providers already are required to conduct (i) through (vii) in compliance with Chapter 93A, subject to significant enforcement from the Attorney General, and (viii) (privacy concerns) are amply protected under various legal guidelines, including federal red flag rules, federal CPNI statutes, and Massachusetts information security statutes and rules. Accordingly, absent a showing of market failure, no duplicative Department regulation is required in any of these areas.

- C. *Whether it is appropriate in today's market to promulgate a single set of consumer protection regulations of general application for wireline, wireless and cable television? Alternatively, should there be separate rules for wireline, wireless and cable television? Moreover, whether there should be specific, tailored consumer protections applicable only to selected services, and if so, then what should those protections be, and to what services should they apply?*

NECTA Response:

The Department should not impose any additional consumer protection regulations unless it has legal authority over the service in question and there is a demonstrated need for the Department to take action to cure a market failure. Furthermore, VOIP and high speed Internet services are exempt from Department

jurisdiction. To the extent that the Department adopts some form of reduced regulatory scheme, a streamlined light touch single set of regulations for all services in which Department regulation is confirmed to be necessary would be appropriate.

- D. *In light of the fact that a single service package from a provider may bundle services regulated by the DTC with services not regulated by the DTC, how should modernized consumer protection rules distinguish between the two, and how should the regulated and unregulated services be handled in the event of default in payment for the bundled package of services as a whole?*

NECTA Response:

The Department should not impose any additional consumer protection regulations unless it has legal authority over the service in question and there is a demonstrated need for the Department to take action to cure a market failure. Furthermore, VOIP and high speed Internet service are exempt under any circumstances. Insofar as the Department cannot exercise jurisdiction beyond the scope of its authority, services not regulated by Department must remain free of Department regulation. That many providers offer both Department-regulated and Department-unregulated services to consumers on a bundled basis should be seen as an opportunity to reconsider the need for regulatory intervention into the regulated portion of the bundle.

To amplify this point, NECTA believes that Department regulated services (such as local exchange service and cable television service) should not be regulated when bundled with other services. The competitive nature of bundled services across providers and consumers provides substantial marketplace incentives for providers to

include reasonable rates, terms and conditions for such packages. The popularity of such offerings in the marketplace demonstrates that consumers value multi-service bundles at a single competitive price and the Department should avoid imposing regulatory burdens that would discourage such pro-consumer practices.

To the extent that the Department nevertheless decides to apply rules to bundled service offerings which included at least one regulated service, the regulations should allow carriers to apply consistent billing, termination and credit requirements to the bundle as a whole. The provider should be subject only to the least restrictive set of requirements applicable to a regulated service contained within the bundle. Compliance with a single set of requirements would minimize associated billing system costs. Many billing systems are unable to account for different pay periods or schedules for separate pieces of bundled services. The Department should take care to avoid the need for costly system modifications to accommodate unique Department-mandated procedures for various components of the bundle. Similarly, nothing the Department does should prevent carriers from including multiple communications offerings on a single bill. To the extent there is any requirement to “break apart” a bundle for billing or other purposes, unacceptable costs would be imposed on providers and consumers.

- E. *In the event of termination of a bundled package of services, how should the cost of continued regulated/unregulated services be calculated?*

NECTA Response:

In the case of a terminated bundle, to the extent the customer remains with the provider, each individual service retained by the customer should be charged at the

provider's applicable rates, unless an alternative bundle or discounting arrangements are available.

- F. Whether multiple notices of discontinuance of service for telephone service are still needed (B&T Part 5 B), or is a single notice of discontinuance enough, and how much notice is appropriate?*

NECTA Response:

The Department should leave the issuance of notices for discontinuance of service to the market, subject to backstop regulation from Chapter 93A and other applicable legal protections. See 47 U.S.C. 214, 47 C.F.R. 1.764 (federal discontinuance requirements). In any case, service providers do not want to lose customers or damage their hard-won good reputations, and will implement policies in accordance with sound business practices to give customers opportunities to correct non-pay or late pay situations before initiating final termination of services. Providers who treat customers unfairly are certain to lose customers to competing providers.

Finally, there is no need for more than a single notice of discontinuance. The current requirements in the Voice Rules are extraordinarily burdensome. The ensuing process should be reasonable and not involve excessive requirements.

- G. Are the provisions regarding removal of account set forth in the current telephone billing and termination rules (B&T Part 5 C) still needed?*

NECTA Response:

No.

- H. Should there be changes in the current protections for telephone customers experiencing a personal emergency or serious illness (B&T*

Part 5 D), and for households with adult residents 65 years or age and older (B&T Part 8)?

NECTA Response:

Yes, these rules should be eliminated in their entirety. Competition in all market segments provides the best protections to customers 65 years and older and the current rules are overly burdensome, unworkable, and grossly over-inclusive. There is no factual basis from which to conclude that all consumers over the age of 65 suffer from financial difficulties that affect their ability to pay for their communications services, and it is unfair and improper to impose on all customers the distributed cost of often unnecessary regulatory benefits.

- I. *Are rules relating to security deposits, guarantees, and deferred payments set forth in the current telephone billing and termination rules (B&T Parts 4 and 7) still needed?*

NECTA Response:

No. As discussed above, providers have incentives to treat customers well and should be allowed to adopt practices applicable to these areas, subject to Chapter 93A and other applicable law.

- J. *Are the requirements applicable to cable television service relating to late charges, termination notices, and return check charges (207 CMR 10.05(3)-(4), (6) still needed?*

NECTA Response:

No. As discussed above, providers have more than sufficient incentives to treat customers well, including the constant concern that their customers can leave them for

other competitive options. Communications providers should be allowed to exercise discretion and adopt practices applicable to these areas, subject to Chapter 93A and other applicable law.

- K. *Should all regulated service providers be subject to the same compulsory dispute resolution process as is currently mandated for telephone wireline providers (B&T Part 6)?*

NECTA Response:

No. As discussed above, providers have incentives to treat customers well. Imposing the Department's onerous current compulsory dispute resolution provisions to all regulated providers would be unnecessary and excessively costly. Providers should be allowed to follow measures that afford protection to consumers at less cost, such as through arbitration provisions.

- L. *Should consumer protection regulations address cramming practices? If so, how?*

NECTA Response:

Cramming activities are already prohibited by 47 CFR 64.2401¹⁵ and also subject the provider to significant Chapter 93A sanctions from the Attorney General or individual complainants.

¹⁵ And see FCC Notice of Proposed Rulemaking (FCC 11-116), FCC Proposes Rules to Help Consumers Identify and prevent "Mystery Fees" on Phone Bills, Known as "Cramming" (July 12, 2011) (explaining that the proposed rules are meant to strengthen the FCC's Truth-in-Billing rules applicable to cramming).

- M. *Should consumer protection regulations protect small businesses in addition to individuals? If so, how should "small business" be defined?*

NECTA Response:

No. Commercial business customers enter into contracts with providers and these contracts govern the relationship, without the need for additional "consumer" protection requirements. Moreover, small businesses are sophisticated consumers, have multiple communications provider options from which to choose, and have traditionally been free from state regulation in Massachusetts. Consequently, business customers, large or small, do not need protection beyond that afforded under federal law and Chapter 93A. Any additional regulation on this class of providers and customers would have no discernable benefit and impose higher costs that would be passed along to all customers.

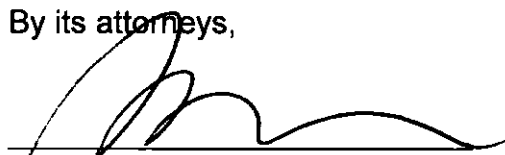
V. Conclusion

NECTA is pleased to provide the above comments in response to the Department's Notice. For the reasons discussed herein, the costs associated with the Rules appear to substantially exceed their limited benefits in light of marketplace discipline, additional federal and state consumer protections and legal prohibitions on the Department's regulation of many communications services in the Commonwealth. Accordingly, the Rules should be eliminated or substantially curtailed.

Respectfully submitted,

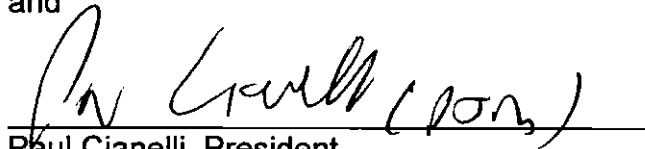
NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION,
INC.

By its attorneys,



Robert J. Munnelly, Jr.
Murtha Cullina LLP
99 High Street
Boston, MA 02110-2320
Telephone: (617) 457-4000
rmunnelly@murthalaw.com

and



Paul Cianelli, President
New England Cable and Telecommunications
Association, Inc.
10 Forbes Road, Suite 440W
Braintree, MA 02184
Telephone: (781) 843-3418
pcianelli@necta.info