

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**RE: Modernization of Department Billing And Termination
Consumer Protection Regulations; Public Informational Forums
And Comment**

REPLY COMMENTS OF THE NATIONAL CONSUMER LAW CENTER

On August 22, 2011, the National Consumer Law Center (NCLC) and other parties submitted Comments in response to the Department of Telecommunications and Cable's (DTC's or Department's) Notice of Public Informational Forums of June 30, 2011 (June Notice).¹

NCLC now submits its Reply Comments.

REPLY COMMENT

A. Contrary to the Assertions of AT&T and Verizon MA, Marketplace Competition Does Not Negate the Need for Consumer Protection Laws and Regulations.

Verizon MA, AT&T, and CTIA argue that the market imposes discipline that obviates the need for state regulation.² For example, even though states have jurisdiction over the terms and conditions of wireless service,³ Verizon MA argues that the Department should be hands-off when it comes to regulating service. Verizon MA cites to an outdated decision the Department

¹ Also filing comments were the Massachusetts Attorney General; AARP; MASSPIRG; Town of Weymouth; City of Worcester's Cable Service Division; Cambridge Consumers' Council; AT&T Corp. (AT&T); Verizon New England Inc. d/b/a/ Verizon Massachusetts (Verizon MA), CTIA-The Wireless Association (CTIA); XO Communications Services, Inc. ("XO Communications"), PAETEC Communications Inc. (PAETEC), tw telecom data services llc (tw telecom); and One Communications, (collectively, "CLECs"); New England Cable and Telecommunications Association, Inc. ("NECA"), Nancy W. Clapp; and John McCorkell.

² See generally Verizon MA Comments, AT&T Comments, and CTIA Comments.

³ NCLC Comments at 2-3.

made 17 years ago in 1994, when the Department found market forces adequate to protect against unjust and unreasonable wireless rates.⁴ However, almost two decades have passed since that decision, and consumer use of wireless service is far more widespread and relied upon by consumers in 2011, compared to 1994. Indeed, Verizon MA goes on to state that wireless subscribers now vastly outnumber landlines in Massachusetts.⁵ It notes, along with CTIA, that approximately 97% of Massachusetts residents are wireless subscribers and a significant number of residents in the state and the nation live in wireless-only households.⁶ However, rather than making a persuasive case for leaving wireless service solely in the hands of competitive market forces, this argument instead supports the imposition of wireless regulations in Massachusetts. Where Massachusetts customers have traditionally enjoyed protection under the current Billing and Termination (B&T) regulations, an absence of comparable protection for landline customers who migrate to wireless service does not make sense. Whether customers use landlines or wireless phones to make their calls, the purpose of making the call, and the public interest in helping Massachusetts residents to maintain a connection to a reliable, affordable dial-tone and adequate voice service quality, still remain. Further, the Department is justified in periodically investigating whether the impositions of new or revised regulations are needed, as part of its duties.

Verizon MA erroneously maintains that market forces, not regulation, are sufficient to protect telecommunications consumers' interests because "[s]ervice providers know that if they treat their customers poorly, they will take their business elsewhere...customer service no longer

⁴ Verizon MA Comments at 9 (citing Investigation by the Department of Public Utilities upon its own motion on Regulation of Commercial Mobile Radio Services, D.P.U, 94-73, Order (re. Aug. 5, 1994).

⁵ Verizon MA Comments at 4.

⁶ Verizon MA Comments at 4; CTIA Comments at 2.

[is] a legitimate regulatory concern.”⁷ However, not all consumers have the economic means to “shop around.” Massachusetts’ low-income Lifeline customers choosing wireless service have only had one wireless provider to “choose” from, to date.⁸ While a second carrier recently has been approved as an Eligible Telecommunications Carrier (ETC) to offer Lifeline service in Massachusetts, its date of entry into the market is unknown. Before the Department are a number of similar applications for ETC status by different carriers; however, those applications are pending, and no decisions to grant ETC status in these cases has issued as of yet. Up to this point, all Massachusetts Lifeline customers choosing to apply their benefit to wireless service have been served only by Safelink Wireless.

Massachusetts’ Lifeline customers and the advocates who represent them have informed NCLC of troublesome aspects of Safelink Wireless service, and in particular, customer service representatives who are not trained to answer basic consumer questions regarding the product they represent, and ineffective and inconsistent (or sometimes non-existent) record-keeping. This has led to numerous examples of frustration, innumerable hours, and even days spent by customers and advocates who attempt to solve enrollment and/or service concerns. Contacts with Safelink frequently become lengthy, tedious ordeals. Customers and their advocates speak to company representatives who appear to have little ability to help answer questions due to the representative’s lack of familiarity with the Safelink Lifeline product and/or lack of any knowledge of a customer’s prior contact with the company on a particular issue.

Perhaps the entrance of competitors may force improvements to Safelink Wireless service quality; however, without the Department’s mandating minimum levels of service

⁷ Verizon MA Comments at 5.

⁸ The Department recently approved the Application of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier, D.T.C. 10-11 (Sept. 9, 2011).

quality, there is nothing to guarantee that any newly designated ETCs will not also follow Safelink Wireless's model of under-investing in customer service and rolling out a product with serious flaws, funded with government subsidies. In addition to the need to set service quality standards for wireless Lifeline products, adequate outreach and education by service providers about Lifeline is essential, where at least 50% of those Massachusetts residents who are eligible in are not enrolled.⁹ Without Department oversight, there is no reason to assume that other wireless customers who are not on Lifeline will escape similar service quality and outreach problems.

AT&T argues that “[r]egulatory certainty is critical in the telecommunications marketplace, especially in these tough economic times” and that “unforeseen regulatory mandates” will present an obstacle to investment and innovation that could otherwise benefit customers.¹⁰ However, the Department’s current examination into revising its billing and termination regulations has included opportunity for parties to comment. New regulations that may issue as a result will provide clarity regarding reasonable customer expectations of customer service and service quality from their wireless providers. Similarly, wireless providers will gain certainty through revised billing and termination regulations that provide a uniform code of conduct for all such telecommunications providers in Massachusetts.

Regardless of whether a customer uses a landline or wireless phone, the Department should ensure, at minimum, that the customer’s ability to make basic voice calls at just, reasonable, and affordable rates is preserved.¹¹ One way to ensure this is to implement revised

⁹ See Universal Service Administrative Company, *2010 Lifeline Participation Rates by State*, available at http://www.usac.org/_res/documents/li/pdf/li-participation-rate-map-2010.pdf. (20%-50% of eligible residents are enrolled in Lifeline in Massachusetts).

¹⁰ AT&T Comments at 5.

¹¹ NCLC Comments at 2; 47 U.S.C. § 332(c)(3).

billing and termination regulations that apply to wireless providers, in addition to preserving B&T wireline customer protections, such that consumers can ensure that they receive the services that they expect and that they pay for.

Even in competitive markets, there is a need for laws and regulations. The credit and mortgage industries are an example. The presence of competition did not prevent the overselling and overvaluation of mortgage products that proved extremely harmful to consumers, the nation, and the global economy.¹² Additionally, regulation is needed even short of a global meltdown. Credit card companies are allowed to compete for customers, and yet, because the public interest demands it, they must be regulated to protect consumers.¹³ The CARD Act eliminates many tricks and traps in credit services, where like utility service, the terms and conditions of service can often be too dense or obscure for consumers to understand such that they can protect their own financial interests.

AT&T points to a voluntary Consumer Code for Wireless Service,¹⁴ but more is needed. While AT&T describes aspects of its wireless service plan offerings that can benefit consumers such as Unlimited Mobile-to-Mobile calling, that option is limited to calling other AT&T customers. There is no guarantee for a low-income consumer that a reasonable amount of calling time will be protected, such that the consumer can contact emergency services, social services, doctors, family, friends and employers.

¹² Predatory lending that contributed to the subprime lending crisis was enabled by lack of regulatory oversight. *See* Press Release, National Community Reinvestment Coalition (Oct. 13, 2008), available at http://www.nclc.org/images/pdf/foreclosure_mortgage/predatory_mortgage_lending/pr_cra-statement-oct08.pdf. *See also* Testimony of Diane E. Thompson, The Need for National Mortgage Servicing Standards (May 12, 2011) (current “foreclosure tsunami” could have been prevented with stronger, more aggressive regulation, including new regulations for mortgage servicers).

¹³ *See generally*, Lauren K. Saunders, Beyond the Credit CARD Act: Features of a Safer Credit Card (National Consumer Law Center, Nov. 2010) available at http://www.nclc.org/images/pdf/credit_cards/features-safer-credit-card.pdf .

¹⁴ AT&T Comments at 6,

AT&T describes its data plans for Smartphone users which offer unlimited Wi-Fi usage on AT&T's network,¹⁵ but neglects to acknowledge that many low-income consumers will not be using higher-cost Smartphones. Rather, low-income consumers may only be able to afford basic phones and basic service plans associated with lower charges. While AT&T asserts that "[c]ustomers are allowed to change plans at any time,"¹⁶ Department guidance is needed to ensure a low-cost, standalone, basic plan is always available to those who cannot afford telecommunications service with any other option. Currently, without any Department regulations in place to ensure this, there is no guarantee that AT&T or other providers will offer a reasonably priced plan for low-income wireless consumers to realistically afford and maintain service.

B. Regulated Services Should Be Clearly Protected Under the Department's B&T Regulations, Even When Bundled With Unregulated Services.

Verizon MA argues that if a customer fails to pay for a bundled product, "the provider should be free to cease providing the entire product, not just part of it."¹⁷ Verizon MA believes that the "Department need not be concerned that the consumer will be left without voice service, because the customer can still obtain service from other providers, including landline, CATV, VoIP, wireless and satellite carriers."¹⁸ This argument is based on a false assumption that a payment-troubled customer who is disconnected from basic, regulated service as part of bundled service, can always afford service from other providers. It must be rejected.

¹⁵ AT&T Comments at 7.

¹⁶ AT&T Comments at 7.

¹⁷ Verizon MA Comments at 12. NECTA similarly argues that local exchange service should not be regulated if bundled with other services. NECTA Comments at 17.

¹⁸ Verizon MA Comments at 12.

Currently, there is no effective competition for stand-alone basic local exchange service. For example, in Massachusetts, residential basic local exchange service from Verizon landline service is \$24.95 per month, compared to Comcast at \$34.99 per month.¹⁹ While VoIP may serve as a source for basic service, it is often offered as part of a much more expensive broadband bundle. The Department should ensure that basic service as a standalone product is always available from more than one provider. When basic voice service is part of a bundled product, the Department should require the carrier to ensure there is an ability for basic service to be unbundled. For public health and safety reasons, unbundling should apply when arrearages start to mount that put the payment-troubled customer at risk of disconnection. Or, as an alternative to unbundling, the Department could require carriers to allow payment-troubled customers of bundled products to pay only basic service charges and maintain basic service.

C. The Mere Fact that Technology Has Evolved for a Customer Making a Telephone Call Does Not Eliminate the Need for Continued State Protections.

The Department should reject Verizon MA's contention that "the B&T Rules no longer serve any useful purpose and should be eliminated,"²⁰ because adopting Verizon MA's position would result in abandonment of established protection for Massachusetts's vulnerable populations, such as seniors.

The mere fact that technology has evolved for a customer making a telephone call does not eliminate the need for continued state protections such as guarding against premature or

¹⁹ Compare Verizon MA's unlimited local pricing at <http://www22.verizon.com/Residential/HomePhone/LocalandLongDistance/LocalandLongDistance.htm> with Comcast's digital voice pricing with fine print, available at <http://www.bestcabledeals.tv/offer-details.htm>. Comcast offers a promotional \$19.99 for a limited six months only to new residential customers who are eligible, and after the promotional period, \$39.95 or other regular charges apply. See also Cablevision Optimum voice service pricing at <http://www.optimum.com/voice/pricing.jsp>. (basic voice service can only be obtained for \$19.95 per month when purchased in a bundle with other services, increasing the total cost to the consumer significantly).

²⁰ Verizon MA Comments at 1.

incorrect terminations of service, fair billing and notification requirements, and special protections that may exist for vulnerable groups such as the ill or the elderly.²¹ States have a critical role both in protecting those telephone customers who are migrating to broadband for basic voice service, and continuing to protect those customers who do not view new technologies as a substitute and therefore choose to maintain their traditional wireline phone service.

Nationally, while 53.5% of 25 to 29 year-olds relied solely on wireless telephones in the last half of 2010, only 7.7% of households with seniors aged 65 years and older relied solely on wireless service.²² The slower rate of wireless adoption among seniors may indicate discomfort with subscribing to, and using, wireless service. It may also indicate an affordability issue where many fixed income seniors cannot afford more expensive wireless service, so they opt to stay with landline service. For seniors who do use wireless, the same B&T protections that currently apply to keep seniors connected to their landline services and maintain a lifeline to medical, emergency, and other services, should also be enjoyed by seniors using wireless service.

Voice service, whether it is provided over landline or wireless platforms, truly is a lifeline to the world for vulnerable groups, such as seniors and the seriously ill. The Department has an obligation to act in the public interest and continue to protect these customers under its current regulations, and provide comparable protection to those vulnerable customers who migrate to

²¹ See Massachusetts Rules and Practices Relating to Telephone Service to Residential Customers, D.P.U. 18448 at Rule 5.15 (company shall postpone termination, or restore service, if a seriously ill person resides in customer's household) and Rules 8.1 – 8.2 (company shall not discontinue service for nonpayment if all household adults are aged 65 years or older).

²² See Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Healthy Statistics, Centers for Disease Control and Prevention, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2010, released June 2011, available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf> (Table 2).

wireless service as well. *See* B&T Part 5D (serious illness protections) and Part 8 (elder protections).

D. Notice Requirements Should Be Maintained.

Regarding the arguments raised against providing customers with multiple notices of discontinuance of service,²³ NCLC respectfully refers the Department to NCLC's Comments in which it discussed the public interest reasons for multiple notices to continue to be issued.²⁴ NCLC submits that the parties raising objections fail to present any compelling reason that overrides the public interest of continuing to meet customer expectations of adequate, multiple notice, such that the customers' service is not unexpectedly shut off and customers in transition have multiple opportunities to be alerted to the pending disconnection of their service.

E. Neither Precedent, Preemption, nor the Decisions of Other States, Obligate the Department to Waive Implementation of Regulations that Would Protect Wireless Customers from Unjust and Unreasonable or Unreasonably Discriminatory Rates.

CTIA points to the wireless industry's "cooperation" with the Department as "precedent," when it provided information, that the Department requested in June 2011, on network continuity operations.²⁵ CTIA seems to suggest that this isolated, recent example of responding to the Department's request should carry some sort of binding legal weight on the Department's decision of whether it may regulate the wireless industry. Of course, this characterization is wholly incorrect – this is neither case law, nor agency order and cannot be construed as legal precedent by any stretched interpretation.

²³ *See, e.g.*, Verizon MA Comments at 13-14, NECTA Comments at 19.

²⁴ NCLC Comments at 8-9.

²⁵ CTIA Comments at 7.

CTIA also points to Connecticut, New York, Washington, and Maine as examples of the trend of states declining to exercise jurisdiction over wireless providers.²⁶ However, it cites to consumer education materials, and not actual state Commission decisions for New York, Washington, and Maine, and this argument should be given little weight.

AT&T broadly states that rates and market entry are preempted, and that terms and conditions of service should be driven by market forces and competition rather than by regulation.²⁷ However, AT&T fails to recognize that state regulation of wireless rates is not always preempted. The federal Communications Act gives states the authority to regulate rates of wireless companies where market conditions fail to adequately protect consumers from unjust and unreasonably discriminatory rates.²⁸ Further, states have authority to ensure universal availability of mobile service at affordable rates.²⁹ As set forth in NCLC's Comments, federal preemption of rate regulation by states does not apply in every instance.³⁰

NCLC understands that Verizon MA Wireless is currently held to certain standards of conduct under an Assurance of Voluntary Compliance entered into with the Massachusetts Attorney General, along with attorneys general in 29 other states.³¹ Among other provisions, the Assurance states that material rates and terms during a sales transaction must be clearly and

²⁶ CTIA Comments at 8-9.

²⁷ AT&T Comments at 5.

²⁸ NCLC Comments at 2 (citing 47 U.S.C. § 332(c)(3)).

²⁹ NCLC Comments at 2.

³⁰ NCLC Comments at 2-4.

³¹ See <http://www.nasuca.org/archive/VERIZON%20WIRELESS%20AVC%20FINAL%20VERSION.pdf> ("Assurance").

conspicuously disclosed,³² imposes advertising obligations toward clarity of advertised rates and coverage,³³ and provides for a 14 day cancellation period.³⁴ The Assurance is a binding obligation, effective July 21, 2004.³⁵ Additionally, CTIA's Comments refer to an Assurance of Voluntary Compliance, entered into in 2006 with parties including the Massachusetts Attorney General, Verizon MA Wireless, AT&T, and Sprint, and which "continues to provide for the ongoing disclosure of material terms and conditions of service, coverage information, taxes and fees, and trial periods for new service."³⁶

The Department should issue regulations reflecting obligations in the Assurances. An Assurance itself can be modified,³⁷ and therefore fails to guarantee that any consumer protections under the Assurance will necessarily continue. Further, the CTIA Consumer Code, while incorporating some aspects of the Assurance, also appears to lack any guarantee of basic consumer protections continuing for wireless customers. Implementing regulations that reflect these obligations currently in effect and described in the Assurances of 2004 and 2006 would be a minimal step toward providing some security for wireless customers. Adhering to these standards of conduct should not be any additional burden to the wireless companies which signed onto the Assurances.

³² Assurance at 5, 13-14.

³³ Assurance at 9-10.

³⁴ Assurance at 11-12.

³⁵ Assurance at 18.

³⁶ CTIA Comments at 4.

³⁷ See, e.g., <http://www.nasuca.org/archive/VERIZON%20WIRELESS%20AVC%20FINAL%20VERSION.pdf> (2004 Assurance of Voluntary Compliance contains provision allowing for modification).

CONCLUSION

NCLC respectfully requests that the Department consider its Reply Comments provided in response to other parties' Comments regarding modernization of the Department's billing and terminations regulations.

Respectfully submitted,

/s/ Darlene R. Wong
Darlene R. Wong
Staff Attorney
National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245
(617) 542-8010
darlenewong@nclc.org

For: The National Consumer Law Center,
on behalf of its low-income clients

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