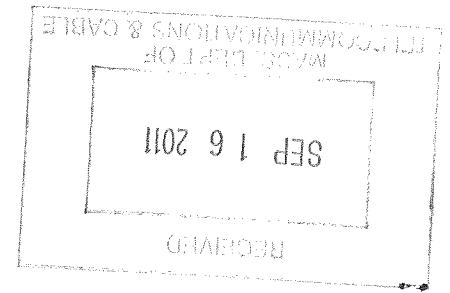


**Commonwealth of Massachusetts**  
**Department of Telecommunications and Cable**



**Reply Comments of AT&T Corp.**

AT&T Corp. (“AT&T”), on behalf of itself and certain of its affiliates, submits these Reply Comments pursuant to the schedule set forth in the Department of Telecommunications and Cable’s (“Department”) Notice of Public Informational Forums dated July 7, 2011.

The Office of the Attorney General (“AG”) and some of the consumer groups filing comments have urged the Department to adopt various billing and termination regulations that would be applicable to wireless carriers.<sup>1</sup> AT&T urges the Department to recognize that the market-driven nature of the wireless industry together with the existing consumer protection laws already in place for Massachusetts consumers negate the need for additional wireless regulation. The Department should instead streamline the existing billing and termination rules that currently apply to telephone and cable television service providers. The Department should not develop and adopt Massachusetts-specific billing and termination regulations for wireless carriers.

**I. AT&T Educates its Customers and Provides Innovative New Services.**

There are existing laws and regulations in place that protect wireless consumers. Several Federal Communications Commission (“FCC”) requirements such as truth in billing, customer privacy network information rules and 911 and E-911 regulations, to name only a few, apply to

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<sup>1</sup> These additional commentors include MassPIRG, the Cambridge Consumers’ Council, AARP and the National Consumer Law Center. AT&T will not respond to all of the comments filed and the absence of a response to these or other parties does not mean that AT&T agrees with the comments nor does it waive its right to object at a later date, if necessary.

the provisions of wireless services.<sup>2</sup> In Massachusetts, the AG has statutory authority to enforce the Massachusetts consumer protection statutes and state consumer protection regulations that have been promulgated.<sup>3</sup>

Not only are there laws and regulations in place that protect wireless consumers, but the wireless industry itself has taken steps to ensure that its customers have the tools available to make sound decisions. In 2003, the CTIA Consumer Code for Wireless Service (“Code”) was developed by the industry to address issues of the greatest concern to wireless consumers. The Code was recently updated to take into account texting and data services, ensuring that the Code is a living document. Each carrier that signs the Code agrees to implement the ten practices, which include clearly disclosing rates and terms of service that enable consumers to make informed decisions, providing reasonable notice of any material changes to the terms and conditions of service and the right to terminate the subscriber agreement, making coverage maps readily available and allowing a trial period for wireless service. AT&T is one of the wireless carriers who has committed to and certifies annually that it complies with the Code.

Three wireless carriers in the industry also entered into an Assurance of Voluntary Compliance (AVC) with the Attorneys General of 33 states (including the Commonwealth of Massachusetts), regarding certain practices to ensure that wireless carriers do not violate state consumer protection and trade practice statutes. Cingular Wireless, now known as AT&T Mobility was one of those carriers, and AT&T applies the terms of the AVC on a nationwide basis.

In addition to supporting and complying with industry-wide practices, AT&T has taken its own steps. AT&T educates its customers about their new service. Customers who activate their

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<sup>2</sup> 47 C.F.R. § 64.2401; 47 C.F.R. § 64.2001; 47 C.F.R. § 20.18.

<sup>3</sup> Consumer Protection Act, M.G.L. c. 93A §§ 1-11; 940 CMR 3.00 *et seq.*

service in the AT&T stores, over the phone or via the web receive a personalized Customer Service Summary (CSS) of their calling plan and its features, including an estimated first bill and an estimated ongoing bill. Customers who activate in the AT&T stores receive a printed copy of the CSS at the time of purchase and may also receive a copy via e-mail depending on the customer's preference. Customers who sign up for service over the phone or via the web will receive a copy via e-mail or mail depending on the customer's preference. AT&T uses the CSS to inform and educate its customers about their billing and the terms applicable to their service. Customers that purchase service over the phone, receive the necessary disclosure including the wireless customer agreement prior to the time they call to activate their phone. The CSS is modified from time to time to take into account customer feedback.

Under both the CTIA Code and the AVC, customers have 14 days to try out their service, which gives them an opportunity to try it out at home, at work and on most frequently traveled routes to determine whether the coverage is acceptable. AT&T gives its customers a longer time period of 30 days.

As part of the AVC as well as the CTIA Code, wireless carriers agreed to provide maps depicting where approximate coverage is available for each rate plan. AT&T provides AT&T Coverage Viewer, an interactive coverage mapping tool that allows users to view detailed predicted coverage down to the neighborhood street level, based on address, street intersection, zip code, state or landmark. The tool also estimates the likelihood of coverage in various scenarios, including inside a building or outdoors.<sup>4</sup> The online tool is available and updated monthly at [www.wireless.att.com/coverageviewer](http://www.wireless.att.com/coverageviewer). This is intended as a tool to aid customers.

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<sup>4</sup> Given the nature of wireless engineering, it is impossible to predict with 100% certainty whether customers will have the precise coverage represented by any mapping application.

AT&T's wireless network provides accelerated mobile data speeds and simultaneous voice and data capabilities. AT&T has been able to develop innovative wireless services for its customers. For example, AT&T's customers have the ability to talk and surf the internet at the same time so that a customer could, for example, look up directions to an event while talking on the phone to a family member or co-worker. AT&T also offers a widening array of smartphones and devices, as well as wide-ranging mobile applications.

One of the AT&T's more recent innovations has been an anti-texting-while-driving mobile solution that is part of the company's broader "It Can Wait" campaign aimed at stigmatizing texting while driving. The company also launched an AT&T DriveMode mobile application, which when downloaded and activated, automatically sends a customizable reply to incoming texts notifying the sender that the user is driving and unable to respond. AT&T DriveMode also offers additional safety and convenience features, including the "Allow List" that permits users to select up to five contact numbers, such as roadside assistance and family members, to send and receive calls while the application is running.

The Department should not adopt new billing and termination regulations applicable to wireless services as it will impede carriers' abilities to respond to the competitive marketplace, providing a one-size fits all homogenized offering that ultimately would not be beneficial to the customer. There are already numerous statutory and voluntary consumer safeguards in place to protect and to educate consumers. Adopting state-specific measures to regulate wireless carriers' policies and practices may well have unintended consequences for consumers by increasing carriers' costs and ultimately the prices to consumers. Such laws and regulations have the tendency to restrict carrier innovation and efficiency and to limit the types of services that can be

offered to consumers thereby depriving consumers of the variety of services which they anticipate and expect.<sup>5</sup>

**II. There has been no Demonstration that the Number of Consumer Complaints warrants imposing new billing and termination regulations on wireless carriers in Massachusetts.**

There has been no showing that the number of complaints in Massachusetts warrants adopting billing and termination regulations for wireless carriers. According to the AG, the “sheer volume of billing complaints and disputes” brought to its attention “provides compelling evidence that consumers require protection in the form of billing and termination regulations.”<sup>6</sup>

Yet the numbers supplied by the AG do not support its assertion.

The AG states that for 2011 to date, it had received a total of 593 complaints concerning “cable, satellite television, wireless telephone and landline telephone services.” Of these 593 complaints, according to the OAG, “373 deal with billing disputes and 10 dealt with service termination.”<sup>7</sup> The AG could have broken down the number of complaints by technology/type of service provider, but chose not to do so. Given the size of the population of Massachusetts and the fact that many residents utilize more than one of the services identified, the total number of complaints seems proportionately very small. According to an FCC report referenced in the CTIA’s initial comments, there are approximately 6.3 million wireless customers in Massachusetts. Assuming for purposes of argument that all 593 complaints involved wireless service (which is likely not the case or the AG would not have included the other services and

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<sup>5</sup> The Department nevertheless has other roles to play. The New England Cable and Telecommunications Association pointed out some of these roles in its comments, including the supervision of wholesale tariffs, interconnection agreements and other carrier-to-carrier transactions, adjudicating Eligible Telecommunications Carrier applications to qualify for federal universal service funding and supervising E-911 and other regulatory fee assessments. See Initial Comments of New England Cable and Telecommunications Association, p. 4.

<sup>6</sup> AG Initial Comments, p. 2.

<sup>7</sup> *Id.* It is interesting that although the OAG spends a considerable amount of the discussion in its initial comments on early termination fees, the number of complaints that it received for cable, satellite, wireless and wireline combined was only 10 for 2011 to date and 16 for 2010.

would have singled out wireless), that would mean that .009 per cent of the wireless customers in Massachusetts filed a complaint with the AG. The percentage becomes even smaller if only the 383 complaints that the AG identifies as related to billing disputes and service termination are considered-- .006 percent. The low turnout at the four informational forums held by the Department further suggest that there are no consumer concerns about wireless services that need to be addressed by adopting billing and termination regulations.

The AG has an important role to play in addressing consumer complaints and enforcing the existing Massachusetts consumer protection laws. While all carriers want to satisfy their customers so they can keep their customers from choosing a competitor instead, there may be occasions where a customer seeks redress against a carrier. That being the case, however, the relatively small number of total complaints identified by the AG does not provide a reasonable basis for developing new billing and termination regulations to apply to wireless services. The impact of such unnecessary additional regulations would more likely stifle the development of innovative technology and new service offerings to consumers in Massachusetts.

**III. A regulatory environment that fosters the development of innovative technology promotes investment in Massachusetts.**

In the pro-competitive, regulatory framework that has existed to date in Massachusetts, AT&T has made investments and expanded its offering to consumers. AT&T announced in March, 2011 that it had made several network improvements in Massachusetts in 2011 as part of its planned \$19-billion investment in its wireless and wireline networks and other capital projects in 2011. Some of these improvements in Massachusetts included deploying enhanced backhaul connection to roughly 1,000 cell sites to enable 4G speeds and add capacity to support more mobile traffic; installing roughly 35 new cell sites to improve network coverage; adding spectrum carriers to about 550 cell sites to support more traffic; and deploying Distributed

Antenna System networks in high-traffic areas and facilities, including planned projects at Boston's largest convention center to enhance network coverage during events. From 2008 through 2010, AT&T invested more than \$450 million in its Massachusetts wireless and wireline network.

The continued wireless and wireline investment of AT&T and other companies helps promote a strong economy in Massachusetts.

**IV. Federal law preempts the states from regulating wireless service rates.**

The AG stated in its initial comments that it planned to make "preliminary recommendations" which it would supplement in its reply comments. One of its recommendations is that the Department "... should acknowledge and address as necessary any ambiguity regarding jurisdiction over wireless carriers, including the ambiguity of state authority over early termination fees (ETFs) imposed by wireless carriers"<sup>8</sup> and "[w]here its authority so permits, the Department should regulate the aspects of wireless billing and termination that relate to the terms and conditions of wireless service."<sup>9</sup>

Although Section 332 of the Communications Act permits the state to regulate the terms and conditions of wireless service, the Department should not undertake such an expensive, time consuming investigation to try to identify the boundaries between impermissible regulation of "rates" and the permissible regulation of "terms and conditions." There has been no showing that large numbers of consumers are dissatisfied, that complaints are soaring or that the AG is not adequately protecting the public through the existing consumer protection laws. The Department should not abandon the deregulatory approach supported by both the FCC and its own earlier decisions; it should not engage in promulgating additional regulations that could

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<sup>8</sup> AG Initial Comments, p. 3


<sup>9</sup> AG Initial Comments, p. 5.

stifle investment in Massachusetts and it should not expend resources in an investigation that would likely lead only to further litigation to determine in court whether the Department's rules are preempted by Section 332 (c)(3) of the Communications Act. There has been no showing that there are consumer problems with wireless service that need to be addressed by the Department and thus no need for imposing billing and termination regulations on wireless carriers.

**Conclusion**

For all of the above reasons and for the reasons stated in its Initial Comments, AT&T respectfully requests that the Department continue its current treatment of wireless carriers and reject suggestions that it should develop billing and termination regulations to be applied to wireless services.

Respectfully submitted,

  
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