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September 16, 2011

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Re: ***Notice of Public Informational Forums;***
Billing and Termination Regulations

Dear Ms. Williams:

Enclosed for filing in the above-referenced matter are the Reply Comments of Verizon New England Inc.

Thank you for your attention to this matter.

Very truly yours,

Alexander W. Moore

Enclosure

cc: Jesse Reyes, Assistant Attorney General

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Notice of Public Informational Forums: Billing and Termination Regulations	))))

REPLY COMMENTS OF VERIZON

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") and Cellco Partnership, d/b/a Verizon Wireless, (collectively, "Verizon") hereby respond to the comments of other interested parties in this investigation. *In toto*, the comments of the parties weigh heavily in favor of abandoning the Department's billing and termination rules and against imposing additional rules or extending the existing rules to services not currently subject to them, such as wireless service or small business offerings. The comments submitted by telecommunications service providers demonstrate that the market is robustly competitive and offers consumers many choices of providers, modes of service (*e.g.* traditional landline, VoIP, wireless, satellite) and service plans. The service providers generally agree that competition in the market, coupled with consumer protections afforded by other government agencies, renders industry-specific billing and termination rules unnecessary and inappropriate. The Attorney General's argument to the contrary – that competition is insufficient to protect consumers – is misconceived and unsupported by the information before the Department.

The wireless and small business submarkets in particular are highly competitive, and the Department should continue its longstanding and successful hands-off policies with respect to those submarkets. The parties who would regulate those services and/or adopt more stringent rules for traditional landline voice and CATV services understate the extent and protective effect of competition in these areas, give no consideration to the excessive costs that such regulation imposes on providers, and fail to identify any specific consumer issues or problems that require Department regulation. Consistent with the Department's longstanding policy, it should reduce, not expand, regulation in the face of the fully competitive market for telecommunications services in the Commonwealth.

I. The Comments Received By The Department Demonstrate That The Billing And Termination Rules Are No Longer Necessary Or Appropriate In Light Of Competition In The Market And Should Be Eliminated, Not Expanded.

The service providers who filed comments with the Department all ask that it eliminate or dramatically scale back its billing and termination rules, and that it refrain from extending those rules to currently-unregulated services. *See e.g.* Initial Comments of Verizon New England Inc. ("Verizon Comments") at 2; Initial Comments of New England Cable And Telecommunications Association ("NECTA Comments") at 2-3; Initial Comments of AT&T Corp. ("AT&T Comments") at 4; Initial Comments of CTIA- The Wireless Association ("CTIA Comments") at 6; Comments of XO Communications, PAETEC, TW Telecom and one Communications ("CLEC Comments") at 3 (regarding the small business submarket).

In support of this request, the service providers have submitted substantial data demonstrating that competition in the Massachusetts telecommunications market is fierce and provides "wide availability of competitive alternatives offered to consumers over a variety of platforms." NECTA Comments at 7. Verizon MA offered data showing that in the traditional landline segment alone, CLECs control at least 44% of the access lines in the state. In addition, wireless service is available to more than 99% of Massachusetts residents, and there are almost as many wireless subscribers in Massachusetts as there are people.[1] Likewise, over 97% of all households in Massachusetts have access to voice service provided by CATV providers, and over 99% have access to broadband service, which supports VoIP. *See also* NECTA Comments at 7-8 (listing the many modes of service available to residential, business and video customers in the state); CTIA Comments at 2-3; CLEC Comments at 2-3 (regarding the small business market segment). Intermodal competition also provides moderate and low-income consumers with a broad choice of low-cost, basic voice service plans and providers. Comcast, for example, offers stand-alone voice service with unlimited local calling and a number of features for $24.99 a month.[2] In addition, attached hereto as Exhibit A is a chart showing the many "entry-level" voice service plans available today in Massachusetts, including widely accepted intermodal services.

The service providers, all of whom compete against one another for business, have explained how competition drives them to implement customer-friendly service policies, including billing and termination policies. As NECTA explained:

> 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.

1 Even the Attorney General and the NCLC agree that consumers have widely accepted wireless service as a substitute for traditional landline service. *See* letter from Charlynn R. Hull to Catrice C. Williams dated August 22, 2011 ("AG Comments") at 3 and n. 3; Comments of the National Consumer Law Center ("NCLC Comments") at 3.

2 *See* http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html (last viewed on August 30, 2011).

NECTA Comments at 8. *See also*, Verizon Comments at 5 and 11, 13, 15, 16; AT&T Comments at 4 ("Customers can and do vote with their feet, so carriers take notice"); CLEC Comments at 2-3. AT&T (at 5-8) and CTIA (at 4-6) also provide numerous specific examples of innovative policies providers have implemented to address consumer concerns in the wireless segment and to educate and empower customers. As AT&T stated, "due to increasing competition across the telecommunications and broadband landscape, it makes sense to move all providers toward less regulation." AT&T Comments at 4.

In addition to this market-imposed discipline, telecommunications consumers are protected by comprehensive regulations of other government agencies, rendering industry-specific billing and termination rules unnecessary and inappropriate. *See* Verizon Comments at 6-7, 10 (identifying existing consumer protection laws and regulations that protect voice and video consumer); NECTA Comments at 3 (citing federal and state rules, common video licensing provisions and the primary role of the Attorney General in consumer protection); AT&T Comments at 4; CTIA Comments at 6; CLEC Comments at 4. Also, pursuant to the Attorney General's central role in consumer protection matters,[3] that office and a number of wireless providers, including Verizon Wireless, have negotiated Assurance of Voluntary Compliance arrangements which impose an additional array of consumer protection requirements on those carriers. *See* Reply Comments of CTIA - The Wireless Association.

Moreover, unnecessary government regulations impose substantial costs on providers and reduce the benefits of competition enjoyed by consumers. Providers point out the disproportionate costs of complying with Massachusetts-specific billing and termination rules for

[3] *See e.g.* AG Comments at 1, stating that the Attorney General "works to protect telephone ratepayers and all consumers in the Commonwealth from unfair business practices. ... In addition to investigating and taking legal action against businesses that engage in false and deceptive practices aimed at consumers, the Attorney General works to mediate consumer complaints between consumers and businesses."

telecom services. *See* NECTA Comments at 13-14; AT&T Comments at 5 (state specific rules increase the costs on national carriers, and unnecessary state rules divert resources from providing consumer benefits); CLEC Comments at 3 ("extending consumer protection rules to small business customers would add an unnecessary and costly regulatory burden for the CLECs without any discernable benefit …"). Such rules also chill providers' incentive to innovate and develop options for consumers. *See* Verizon Comments at 5. As AT&T states, "While regulation can have the effect of neutralizing competition by dictating a single proposed solution, a competitive marketplace allows companies to provide several different and dynamic choices and solutions to consumers." AT&T Comments at 5.

The Attorney General's claim that competition is insufficient to protect consumers is unsupported by the facts. The Attorney General argues that the "sheer volume" of complaints it received in 2011 concerning cable, satellite television, wireless and landline telephone services is "compelling evidence" of the need for billing and termination regulations and that complaints might show market imperfections. According to the Attorney General, complaints "highlight consumers' inabilities to truly 'negotiate' with … service providers … and demonstrate that consumers often lack meaningful competitive choice." AG Comments at 2. But the "sheer volume" of complaints is very low. The billing and termination complaints received by the Attorney General (for all modes of service) represent only a tiny fraction of one percent of wireless subscribers alone. *See* CTIA Comments at 3.[4] Further, the volume of those complaints

4 The Department too receives consumer complaints regarding telephone service, but even adding those complaints to the Attorney General's numbers still yields a very low report rate. Further, both the rate of total consumer complaints to the Department and the rate of billing-related consumer complaints declined over the period 2005 through 2008. *See* Competition Status Report at 27, Figures 17 and 18. From 2008 to 2010, the absolute number of wireline consumer complaints to the Department also declined. *See* Massachusetts Department of Telecommunications and Cable Annual Reports for 2008-2010. While this decline might be attributable to a decline in the number of access lines, it leaves no room to conclude that new regulations are necessary to address a rising tide of consumer complaints.

was stable from 2006 through 2010, AG Comments at 2, even though the total number of landlines plus wireless subscriptions in Massachusetts increased by more than 1.5 million over roughly the same time period.[5] Thus, the complaint ***rate*** has ***declined*** in the last five years, and the addition of 1.5 million wireless subscribers has not resulted in any additional complaints on an absolute basis. That is compelling evidence indeed that billing and termination rules are unnecessary.

Moreover, the mere fact that some customers complained to the Attorney General shows nothing about the ability of consumers and providers to resolve billing issues. It shows only that some consumers either did not try or tried but failed to negotiate resolutions with their providers. In the absence of any data showing how many complaints service providers resolved without any interference by the state and comparative data showing similar rates in different industries, the Attorney General's data is of little value. Likewise, the mere existence of complaints does not support a conclusion that consumers have no choice of provider. The ability of customers to leave a service provider and choose a new one means that service providers must implement fair and reasonable policies to win and retain customers; it does not mean that consumers will never lodge complaints against their current or former providers.

The Attorney General also claims that, "High transaction costs (e.g. early termination liabilities, loss of an e-mail address, new equipment, new handset, the need to learn a new provider's technology) deter consumer from migrating among service providers." AG Comments at 2-3. This speculation is entirely free of any factual support, and it could not be more wrong. Voice customers can and do switch providers quickly and easily. Virtually the entire population of Massachusetts has subscribed to wireless voice service in only a few years.

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5 *See* FCC Local Telephone Competition: Status as of June 30, 2005" (rel. April 2006), Tables 10, 11 and 14, showing 4,334,828 access lines and 4,313,846 wireless subscribers in Massachusetts, compared to 3,838,000 access lines and 6,367,000 wireless subscribers as of June 30, 2010. *See* Verizon Comments at 4, n. 8.

From 2005 to 2010 alone, the number of wireless subscribers in Massachusetts grew by over 2 million, almost a 50% increase.[6] And from 2005 to 2008, ILECs lost 642,000 (31%) of their residential voice lines while cable voice providers picked up 403,000 residential lines, a 118% increase.[7] Whether so-called transaction costs are high or not, the fact is that voice customers have demonstrated an exceptional willingness and ability to change carriers. And providers know it. That is how competition constrains carrier conduct and obviates the need for industry-specific government regulation here.

The Attorney General also warns the Department to "view skeptically" the fact that robust competition disciplines service providers' customer service policies. AG Comments at 3. The Attorney General says that despite the popularity of wireless service, "medical alert systems are connected to wireline service; the elderly may not have wireless service; and rural areas may not have wireless service." *Id.* (footnote omitted). This simply makes no sense. No one denies that wireline service remains important to some customers, but that means only that landline remains a viable mode of competing in the market. That a very few customers might not have a choice of provider at all, as the Attorney General seems to suggest, does not lessen the disciplinary effect competition has on providers' practices. Service providers develop reasonable policies in order to win and retain customers in the fiercely competitive market in Massachusetts, where virtually every consumer has the ability to select a voice provider from among multiple competitors. Few if any service providers (Verizon included) have either the interest or the ability to develop specialized marketing or customer service policies in order to exploit the

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[6] *Id.*

[7] Competition Status Report at 14, 16.

handful of customers, if any, who can obtain service from only one provider, and the Attorney General has made no showing otherwise.[8]

II. There Is No Demonstrated Need To Extend The Billing And Termination Rules To New Services Or To Impose More Stringent Rules On The Industry In Order To Protect Consumers.

The Department has consistently held that actual competition is preferable to regulation as a surrogate for competition and has applied the principle that less regulation is necessary where competition is sufficient to discipline the markets. *See* Verizon Comments at 3, 8 and cases cited. Here, the service providers have submitted substantial evidence showing that fierce competition across the telecommunications market in Massachusetts requires providers to implement fair and reasonable customer service policies. Consequently, there is no need or policy reason for retaining the costly, monopoly-era billing and termination rules. Tightening or extending those regulations to historically unregulated services would be a major step backward, towards monopoly-style regulation that has long since been bypassed by the explosion in competition the Department has worked so hard to foster.

Both the small business submarket and the wireless submarket are highly competitive. The wireless sector in particular has thrived under the Department's longstanding "hands-off" regulatory policy, revolutionizing communications, driving innovation of new products and services and providing consumers with an unprecedented choice of providers, services and plans – the ultimate consumer protection. The Department can best encourage competition in the small business and wireless segments by continuing the policies that have allowed them to

8 For the same reason, even customers who have no choice of voice provider themselves are nevertheless protected from unreasonable practices.

flourish in the first place. *See* CLEC Comments; NECTA Comments at 15; AT&T Comments at 3-6; CTIA Comments at 4-7; Verizon Comments at 4-5, 7-9.

The Attorney General, the NCLC and others ask the Department to ignore decades of well-reasoned policy, impose a host of onerous billing and termination rules on service providers and extend those rules to small business and to wireless services, even though the market is indisputably, irreversibly and extremely competitive. These parties, however, have failed to demonstrate any need for more extensive rules. They have offered no evidence of a market failure, a large increase in the volume or rate of customer complaints, or any widespread unfair practices unique to telecommunications that service providers have failed or refused to rectify. To the contrary, at the four open forums the Department conducted in this investigation, not one consumer offered comments or complaints regarding billing or termination issues, strongly suggesting that there is no consumer "problem" here in need of a governmental "solution."[9] The record before the Department offers no basis for imposing additional government regulation on telecommunications providers in this era of rampant competition.[10]

A. The comments to the Department offer no grounds for extending billing and termination regulations to wireless providers or services.

The Attorney General, the NCLC, the AARP and the Cambridge Consumers' Council ("CCC") acknowledge that wireless service is widely available and accepted by consumers as a substitute for wireline service, yet far from acknowledging the disciplinary effect wireless

[9] Two consumers submitted written comments to the Department, complaining of the amount of time that one CATV provider allows customers to pay its bills, its late fee policy, lack of a senior discount and high rates. *See* Comments of Nancy W. Clapp and Comments of John McCorkell. These specific and narrow complaints in no way support the kind of wholesale expansion of the current rules advocated by some of the parties.

[10] The proposals for more stringent regulation also fly in the face of the trend in the states to eliminate or drastically reduce telecommunications-specific regulation and oversight in acknowledgment that competition is more than sufficient to discipline the rates, terms and conditions of service. The following states have recently enacted legislation to such effect: Florida (H.B. 1231), Indiana (H.B. 1279), Michigan (H.B. 4314), Texas (S.B. 980), Virginia (S. 1368) and Wisconsin (A.B. 14/S.B. 13).

competition has on the market, they assert that the popularity of wireless service alone calls for the Department to regulate it:

> for those consumers who have abandoned their wireline service, wireless consumer protection measures ...are more important now than ever.... Accordingly, as consumers increasingly "cut the cord" ... wireless consumer protection becomes essential. Consumers' migration from one form of technology to another form of technology should not result in an erosion of consumer protection measures.

AG Comments at 3; *see also* NCLC Comments at 4, 5 (arguing that "customers using new telecommunications technologies should receive no less protection than that which wireline customers have received..."); AARP Comments at 1-2; CCC Comments at 2. But mere popularity of a service, without more, is no excuse for regulating it. And the argument that consumers should not "lose" protection when they shift from wireline to wireless service ignores the entire history of telephone regulation and the development of the competitive market in Massachusetts.

The billing and termination rules were originally imposed on Verizon MA's predecessor because it was a monopoly, and consumers had no choice but to obtain local exchange service on whatever terms and conditions New England Telephone and Telegraph made available. In contrast, wireless service has not been subject to similar rules because the Department correctly found in 1994 that competition among wireless carriers was sufficient to protect consumers. Today, however, intense competition in both the wireline and wireless telecommunications submarkets is sufficient to protect consumers, and the billing and termination rules no longer serve any purpose. The fact that residential, landline service providers continue to labor under onerous, obsolete rules is no basis for extending those onerous, obsolete rules to other, highly competitive submarkets. Rather, the Department should cease applying those rules to ***any*** segment of the market.[11]

The Attorney General is wrong to assert that the wireless market is "insufficiently competitive." AG Comments at 6. The Attorney General implies that because the FCC had previously found that wireless competition was effective, its failure to make that finding in its two most recent annual reports indicates that competition may no longer be effective. *See id.* The FCC has made clear, however, that its recent reports "make[] no formal finding as to whether there is, or is not, effective competition in the industry."[12] Notwithstanding that, the FCC's *Fifteenth Report* is replete with affirmative findings demonstrating that the wireless submarket is intensely competitive. *See* CTIA Reply Comments, at 8-10. It is also telling that the FCC itself has not seen fit to regulate the terms and conditions of wireless service.

The Attorney General's reliance on a few, selected data points from the *Fifteenth Report*, AG Comments at 6, is misplaced. Not only are those facts taken out of context, but they simply do not support the Attorney General's conclusion. The number of large wireless providers, their market share and fact that the seven largest providers are profitable do not support an inference that providers engage in unfair or unreasonable billing or termination practices, and the FCC made no such inference.[13] The Department cannot and should not impose regulations on

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11 The Attorney General's related argument that the Department should regulate wireless service because it is now the "sole way" some customers make phone calls, AG Comments at 3, is equally misguided. Whether a customer has multiple intermodal means of making a phone call at a given time is immaterial. Even customers who have "cut the cord" can always choose to shift his or her business to a wireline provider, and usually has multiple choices of other wireless providers, wireline, VoIP and satellite providers. It is the power to choose among multiple providers, all vying for the customer's business, that puts the customer in the driver's seat and requires service providers to abide by reasonable billing and termination policies and practices.

12 *In the Matter of 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*, WT Docket No 10-133, (rel. June 27, 2011(("*Fifteenth Report*"), ¶2.

13 A recent analysis of direct measures of competition in the wireless market by three economists found no valid relationship between market concentration and what customers actually pay for wireless service, discrediting the inferences underlying the Attorney General's argument. *See* Gerald R. Faulhaber, Robert W. Hahn and Hal

wireless service providers and abandon its longstanding "hands-off" wireless policy solely on speculation that service providers might possibly, but do not now, engage in improper practices.

In addition, the FCC's annual reports focus on competition within the wireless submarket and at a national level. As demonstrated above, however, wireless providers in Massachusetts compete not only with each other but with landline, VoIP and satellite providers, and both intra- and intermodal competition act to discipline provider policies and practices.[14] Likewise, the FCC's finding of a correlation between deployment of wireless services and median household income above and below $50,000 was national in scope and does not purport to describe deployment specifically in Massachusetts. Indeed, the Department reviewed wireless deployment in its Competition Status Report but did not find a correlation with household income. Rather, the Department found that 90% of state residents have access to five, facilities-based, wireless providers and noted only that "coverage correlates with population density and flatter topography, as wireless signals are blocked by obstacles such as terrain and foliage."[15] The coverage map in the Report confirms both extensive coverage and extensive choice of providers in Massachusetts.[16] Consequently, the Department can and should conclude that competition is sufficient to discipline wireless providers' policies.

This is especially true because neither the Attorney General nor any other party has offered any evidence that wireless providers actually employ unfair or unreasonable billing, termination or other customer service practices or policies. For example, there is no data before the Department showing widespread customer confusion with wireless bills or that providers

J. Singer, "Assessing Competition in the U.S. Wireless Markets: Review of the FCC's Competition Reports," July 11, 2012.

14 For this reason, even if AT&T and T-Mobile are allowed to merge, the loss of a single competitor is unlikely to weaken the competitive constraints on wireless providers in Massachusetts.

15 *See Competition Status Report* at 52 -53.

16 *Id.*, at 52, Figure 37.

generally refuse or fail to assist customers with billing questions. There is no data showing that wireless carriers regularly fail to make reasonable efforts to resolve billing or other customer disputes, or that they customarily terminate service prematurely or without fair notice. No party has provided any facts showing that wireless providers, once aware of a customer service issue of general concern, have failed to rectify the problem.

The only consumer issues that any party has proffered as grounds for extending billing and termination rules to wireless are the use of early termination fees ("ETFs") and so-called wireless "bill shock." *See* MassPIRG Comments at 1-2; Attorney General Comments at 1 (regarding bill shock); CCC Comments at 3. In each case, however, wireless service providers have adopted policies that address these concerns without the need for regulatory intervention. In 2006, for example, Verizon Wireless became the first major wireless provider to pro rate its ETFs, progressively reducing the amount of the fees the longer the customer remains with the company. Other carriers followed suit and pro rata ETFs are now common. As noted in Verizon MA's Comments, at 11, Verizon Wireless customers can also choose plans that do not have early termination fees if that better suits their needs. This too is a common practice among wireless carriers. *See* CTIA Reply Comments, Attachment 1.[17]

Likewise, wireless carriers have established numerous policies to prevent their customers from experiencing bill shock, including upfront disclosure of fees, unlimited service plans and notice of impending overages. Verizon Wireless, for example, proactively sends a text alert to customers who are trending to exceed their monthly domestic voice, messaging or data

[17] *See also Fifteenth Report*, ¶ 252 (finding that providers are increasingly offering non-contract service arrangements with no ETFs).

allowances. In addition, Verizon Wireless customers may control their voice and messaging usage for the lines on their account through Verizon Wireless' Usage Controls. Other providers offer similar alerts, notices and options. *See* AT&T Comments at 6-8; CTIA Comments at 4-5; CTIA Reply Comments at 25 and Attachment 1. Thus, the ETF and bill shock issues do not support expanding government regulation to the wireless sector. To the contrary, they demonstrate that competition drives service providers to address customer concerns with innovative, consumer-friendly policies in order to win and retain their business.

On the record before the Department, it can only conclude that there is no need or basis to regulate any terms or conditions of wireless service, and that doing so is likely to stifle competition, choice and innovation to the ultimate detriment of consumers. State-specific billing and termination rules would impose substantial costs on the wireless industry. Wireless providers' systems are designed to support national, uniform sets of practices and services, and accommodating individual state-imposed regulations would require significant and costly changes to customize providers' systems, training and practices for Massachusetts alone. Wireless voice, text and data services, however, represent one of the few growth areas in a persistently difficult economy. Wireless companies are continuing to invest heavily in new facilities, additional services and expanded coverage. For example:

- Verizon Wireless, AT&T, Sprint, Clearwire, and MetroPCS are all in the process of deploying 4G LTE or WiMAX networks.[18]
- Wireless capital investment exceeded $20 billion in 2009, representing two percent of total capital expenditures in the entire U.S. economy.[19]

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18 *See Fifteenth Report*, Table 11.

19 *See id.*, ¶ 208.

- Mobile industry investments in 4G networks alone could reach $53 billion between 2012 and 2016 and account for up to $151 billion in gross domestic product growth and up to 771,000 new jobs.[20]

In this economic climate, government policy should be geared toward encouraging wireless industry investment in Massachusetts. Imposing needless regulation on this growth industry would do precisely the opposite, however, and the Department should reject any proposal to extend billing and termination regulation to wireless services.

B. The comments to the Department offer no grounds for imposing more stringent billing and termination regulations on the intensely competitive telecommunications market.

A few commenters, notably the NCLC, the CCC and the AARP, propose wave upon wave of new regulations which would govern virtually every aspect of billing, termination and customer service and drown service providers in red tape and red ink. Yet, these parties fail to identify any actual unfair or unreasonable practices of service providers from which consumers need to be protected, and which are not already addressed by other agencies or regulations. For example, the AARP argues generically that the Department should require providers to make "proper disclosures" and "supply accurate and timely information" to consumers, AARP Comments at 2, but provides no evidence that the disclosures that service providers currently make to their customers (and the wealth of information most provides make available on their websites) is inadequate, inaccurate or untimely in any way. In their zeal to protect consumers from perceived potential harms, these parties also fail to account for the market-chilling effect of their proposals or the enormous costs they would impose on service providers and, ultimately, consumers. The Department should reject these entreaties to burden the market with

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[20] *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.

unnecessary regulation. Verizon MA responds below to many, but by no means all, of these proposals.[21]

Advertising and Marketing

The NCLC's position on marketing of bundles illustrates its general failure to demonstrate any need for additional regulations. The NCLC asserts that, "The department should ensure that low-income consumers are protected from aggressive marketing of expensive and bundled packages" and proposes a slew of burdensome regulations. NCLC Comments at 5-6. But the NCLC fails to provide any facts showing that service providers aggressively market bundles to low-income customers, or that low-income customers are duped into subscribing to bundles due to misleading, unfair or inaccurate marketing. The NCLC's claim that some low-income customers "are compelled to forgo participation in [Lifeline] in order to subscribe to bundled services that include internet," *id.* at 5, simply turns the facts on their head. No customer is forced to purchase a bundle, and if some eligible customers forego the Lifeline discount on telephone in order to purchase a bundle with Internet access, it is likely because the bundle offers them a better deal for the set of services they want. The Department should not be in the business of dictating to low-income consumers which products are best for them.[22]

The particular rules proposed by the NCLC, moreover, are completely unworkable and unprecedented. They would apply, says the NCLC, when providers "market bundled packages to low-income customers," *id.* at 6, but marketing is most often directed to the public at large,

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21 The NCLC's extremism is well-illustrated by its proposal, at 14-15, to "proactively promulgate" regulations governing mobile payments, a service that is not even available.

22 For the same reasons, the Department should reject the AARP's proposal to ban service providers from marketing "optional service" when a customer inquires about stand-alone basic service. *See* AARP Comments at 3. The AARP has offered no evidence that service providers unfairly mislead customers into buying services they don't want, and customers should be allowed to decide for themselves what services to order.

which includes low-income customers. Would the rules then apply to all marketing efforts? In addition, the NCLC does not explain how providers would identify potential low-income customers in order to notify them of the existence of lower and "least cost" alternative services, as proposed, and such a requirement is overly intrusive. It would be as if General Motors were required to include in every Cadillac commercial a statement that customers might also want to buy a Chevy Cruze at a fraction of the price. Nor does the NCLC even attempt to justify the enormous costs it would impose on service providers, and ultimately consumers, to develop and offer a stand-alone "basic service option" that meets the NCLC's vague and incomprehensible definition of "basic" service. *See id.* at 7.

For its part, the AARP recommends that telecommunications providers should be subject to statutes governing unfair and deceptive acts and practices and providing other consumer protections, apparently unaware that M.G.L. c. 93A and the other statutes and regulations cited above already apply to all such service providers. *See* AARP Comments at 2.[23]

Billing Format and Practices

As Verizon MA noted in its initial Comments, at 6-7, the FCC's Truth-in-Billing rules at 47 CFR § 64.2401 regulate the form and content of telephone bills and require clear statements of the information consumers need to understand and properly review their bills. Further, competition gives service providers ample motive to ensure that their bills are clear and understandable, in order to avoid customer confusion, questions to customer service representatives and disputes. Verizon MA, for one, has devoted substantial resources in recent

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[23] Likewise, the many privacy concerns expressed by the AARP, Comments at 4, are already addressed by the federal CPNI regulations, 47 C.F.R. § 64.2001 *et seq.*, and the Massachusetts data privacy regulations at 201 CMR 17.00.

years to simplifying its bills. To the extent this makes it easier for customers to do business with Verizon MA, that gives the company a competitive advantage.

The NCLC proposes a raft of new regulations – written confirmation of sales, cancellation periods and notice requirements – in order "[t]o further ensure that low-income consumers understand the rates, terms, and products being purchased in this era of new, bundled services and complex rate plans." *Id.* at 6. But the NCLC makes no showing that low-income customers, or any customers, do not understand their phone or cable bills or the substantial disclosures, product information and service materials that carriers provide today. Likewise, the AARP seeks to require service providers to print all "billing, termination, advertising, marketing collateral and notices" in 10-point font, without any showing that the size of the printing in current carrier materials is too small to read. See AARP Comments at 2. Also, many carriers, including Verizon, allow customers to sign up to receive their bills in large-print format. Again, there is no reason to impose additional billing or disclosure requirements on service providers.

Compulsory Dispute Resolution

Verizon MA explained in its initial Comments that there is no need to retain the Department's compulsory dispute resolution regulations because competition requires service providers to resolve billing disputes fairly and reasonably, upon pain of losing good customers. And many carriers not formally covered by the current rules, such as CATV providers, nevertheless voluntarily work with the Department to resolve customer disputes.

The Attorney General argues that the existence of customer complaints (apparently no matter how few) demonstrates that the Department must have "the requisite tools to ensure that overcharges are corrected, and that consumers have a way to resolve their complaints in an objective manner." Attorney General Comments at 2. As shown above, however, the rate of consumer complaints to the Attorney General is low and declining. In addition, approximately 80 percent of all voice customers in Massachusetts – wireless subscribers, VoIP subscribers and business landline customers – are not covered by the Department's current dispute resolution rules today, yet there has been no showing that service providers are unreasonably refusing to resolve disputes with these customers, leaving an inordinate number of customers to seek redress from the Attorney General, the Department or another forum. That 80% of the telecommunications market is functioning fairly and reasonably even in the absence of compulsory dispute resolution regulations demonstrates that the remaining 20% of the market does not need such regulations either, and the Department should eliminate them.

Treatment of Bundles

The NCLC argues that the Department should require providers to give customers who have purchased a bundle that includes basic voice service: advance notice of impending termination; an opportunity to enter into a payment plan for any arrearage; and the ability to pay for and maintain basic service even if unable to pay for the full bundle. *See* NCLC Comments at 7-8; *see also* CCC Comments at 5. This is essentially what the Department requires today for landline residential service, and it is no longer necessary for the reasons Verizon MA set forth in its initial Comments, at 15. Namely, a customer who orders a service package is purchasing a single product at a single, discounted rate, and if the customer fails to pay for that product, the provider should be free to cease providing it. Also, unlike in the monopoly-era, customers who have cancelled a bundle or had it terminated can obtain entry-level service from any number of other providers, so it is no longer imperative that the original provider continue to furnish local exchange service. *See* Verizon MA Comments at 12 and Exhibit A hereto.

Professor Carolyn Gideon argued at one of the Department's public forums in favor of continuing the Department's current rule prohibiting a service provider from disconnecting basic exchange service where the customer has ordered a service package but has only paid part of the monthly charges, citing an econometric study that she had performed which allegedly showed a correlation between a rule allowing disconnection in those circumstances to a decrease in overall telephone penetration rates in the U.S. and in certain states during the period 2003 to 2005. That study's speculation, however, is flatly contradicted by the experience in the Commonwealth. Massachusetts was one of the states that the study cited as having experienced a particularly large decline in the telephone penetration rate,[24] but the DTC did not at the time (or now) allow disconnection of basic service where a customer made partial payment only on a bundle, so Ms. Gideon's theory provides no explanation for the temporary, two-year decline in the penetration rate in Massachusetts.[25]

The CCC asserts that "many consumers do not comprehend the actual cost of their bundled services after the expiration of any applicable promotional or introductory rates," and the CCC would therefore require service providers to give customers a "sample bill" showing those rates. *See* CCC Comments at 4. But the CCC offers no data showing how many customers do not understand that an initial rate may be for a limited time only, and that such failure is a widespread problem. In any event, Verizon MA fully discloses on its monthly bills to such customers the amount of any promotional discount and the date that discount will expire. To Verizon MA's knowledge, other providers make similar disclosures, in the manner they deem

[24] *See* Carolyn Gideon and David Gabel, *Disconnecting: Universal Service on the Decline*, (2006) at 16.

[25] The telephone penetration rate in Massachusetts has since climbed to 98.1%, and the nationwide rate has now reached an all time high of 96.0%. *See* FCC, *Telephone Subscribership in the United States* (rel. May, 2011), Tables 1 and 2. These increases in penetration rates – at the same time that wireless penetration was increasing dramatically – refutes Ms. Gideon's additional claim, again based on her 2006 study, that "when household wireless penetration increased, there was also an increase in phonelessness" and her argument that the Department must extend its regulations to wireless services.

best and as a matter of good business practice. The CCC does not and cannot claim that its proposed "sample bill" is a better means of disclosing this information than are the various means used by service providers, and the Department should leave providers free to choose how best to provide this information.

Due Date of Bills

The Department should no longer dictate a minimum payment period for telecommunications bills. The imperative to compete for business requires service providers to offer their customers reasonable payment terms, and notwithstanding the complaints of two consumers and one town (Weymouth), the Department has no rational basis on which to determine that the longstanding 5-day payment period for CATV bills under the current rules or Comcast's 14-day period is now suddenly "too short," or that the 21-day-from-mailing period recommended by Undersecretary of Consumer Affairs and Business Regulation Barbara Anthony is the right period. That said, it ***is*** clear that the 30-day period (from receipt, not mailing) that the current rules allow for payment of a landline residential bill is unreasonably long. It is the longest minimum period in any of the states in which Verizon companies are ILECs, and it fails to reflect the speed of modern communications and payment technologies.

Special Rules for Personal Emergencies, Serious Illness and the Elderly

The NCLC and CCC seek to retain and expand these rules but offer no response to the showing by service providers that the rules are no longer necessary or helpful. *See* NCLC Comments at 9-10; CCC Comments at 5.[26] As Verizon MA explained in its initial Comments, in

26 Tellingly, the AARP does not argue in favor of retaining the special rules regarding termination of services to elderly customers. *See* AARP Comments.

this competitive market, it is in carriers' self-interest to accommodate customers who are willing, but temporarily unable, to pay their bills due to emergency or illness. In addition, unlike in 1977, the widespread adoption of cell phones means that most consumers no longer rely exclusively on a landline connection to make emergency phone calls, and more options are on the way, such as texting to 911 PSAPs.

Likewise, the advent of the Lifeline program and the substantial discounts it provides to low-income customers make the broad rules protecting all elderly from termination, regardless of need, unnecessary and counter-productive.[27] *See* Verizon Comments at 14; *see also* NECTA Comments at 20 (explaining how the elderly rules are "grossly over-inclusive"). Indeed, as noted above, low-cost and pre-paid wireless services offer customers of all stripes – elderly or not, Lifeline-qualified or not – more options for economical telephone service than ever before.

The NCLC recommends that the Department adopt the burdensome rules for emergencies, illness and the elderly that the Department of Public Utilities applies to electric and gas companies. NCLC Comments at 10. But the NCLC does not even try to explain why the D.P.U. rules, which never applied to local exchange service even when it was a monopoly, should be applied now. Electricity and gas companies are rate-of-return regulated public utilities operating in a monopoly or near-monopoly environment. Monopoly-style regulations are entirely unnecessary and damaging in today's boisterously competitive telecommunications market.

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[27] For example, Verizon MA's monthly rate for local exchange service with unlimited local calling is $19.64. The Lifeline discount of $12.29 brings this rate down to only $7.35 a month. Verizon MA also offers measured local service for just $12.70 a month. Thus, Lifeline customers can get dial-tone, free incoming calls and the ability to reach first responders for only 41 cents a month, or less than the cost of a postage stamp.

Notice of Termination

The NCLC asserts that the Department should extend its landline, monopoly-era disconnection rules (requiring for example, two written notices of impending discontinuance of service and two phone calls) to wireless service, on the grounds that "Customers have developed expectations based on customary disconnection practices, in effect for many years..." NCLC Comments at 8. This claim is entirely fabricated. The NCLC offers no survey or other data showing that customers expect certain treatment prior to discontinuance of service or that they are even aware of the requirements of the Department's rules. To the contrary, if the 6.3 million wireless subscribers in Massachusetts have developed any expectations at all regarding advance notice of discontinuance of service, they would not be based on the Department's rules, which have never applied to them, but on the practices of their wireless providers. Given that it is in service providers' self-interest not to terminate service (and thus a stream of revenue) without reasonable notice, the legacy termination rules are no longer appropriate, even for the legacy services for which they were designed.

Security Deposits

The AARP proposes a raft of new regulations on security deposits, but does not even attempt to demonstrate that any new rules, or any rules at all, are necessary to address an abusive or unfair practice.. *See* AARP Comments at 3. To the contrary, Verizon MA explained in its initial Comments, at 14, that in a competitive market, overly demanding or restrictive security deposit policies only deprive the carrier of good and willing customers. Given this and the widespread availability of pre-paid wireless services, the Department should conclude that security deposit rules are no longer necessary or appropriate.

Cramming

Cramming is a national issue, and as Verizon MA noted in its initial Comments, at 15-16, the FCC has recently taken action to strengthen its Truth-in-Billing rules to address it. The FCC amendments would require providers to place all third-party, non-carrier charges in a section of the bill separate from all carrier charges (to assist consumers in identifying and reviewing these charges) and clearly notify customers of their option to block third-party charges from their telephone bills.[28] The Attorney General says that the Department should take action on this issue anyway, due to "the FCC's delay" in addressing it. *See*, AG Comments at 2, n. 1. But the FCC is currently further along than the Department, and there is no indication that the FCC intends to delay implementation of its rules in any way. In addition, no party has made a showing that the issue of cramming is so dire in Massachusetts in particular that the state must jump the gun on the pending federal regulations and impose on service providers the added costs of complying with unique, state-specific regulations on this issue of national concern.

Moreover, the anti-cramming regulations sought by a number of parties represent the worst kind of regulatory overkill. MassPIRG seeks to ban third-party billing outright. *See* MassPIRG Comments at 4. The NCLC seeks the same result by imposing notice, training, liability and reporting regulations so burdensome, costly, overbroad and out of proportion to the alleged harm at issue that no rational service provider would continue to offer third-party billing under such conditions. *See* NCLC Comments at 12-14. Third-party billing was initiated as a convenience to consumers, and customers should have the right to decide for themselves whether to accept it or block it. The CCC, though not seeking a ban on third-party billing, would require that telephone bills that include such charges to disclose, "in a clear and conspicuous manner," a

[28] *See In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), Consumer Information and Disclosure, Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116, 09-158 and 98-170, Notice of Proposed Rulemaking (rel. July 12, 2011), Appendix A.

massive amount of detailed information regarding the service at issue and the customer service policies of the third party. *See* OCC Comments at 6. Far from assisting the customer, this level of information would only make bills longer and more difficult to understand, confusing customers and defeating the overarching policy favoring clear, understandable bills.

The Department should refrain from adopting state-specific cramming rules in deference to the federal rules proposed by the FCC.

III. Conclusion

For the reasons stated above, the Department should eliminate the B&T Rules and the Cable B&T Rules.

Respectfully submitted,

VERIZON NEW ENGLAND INC., d/b/a
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Dated: September 16, 2011

Exhibit A – Competitive Entry Level Voice Offerings Available in Massachusetts

Provider	Offering Type	Monthly Rate	Minutes Included	Other Features
AT&T	Individual Wireless Plan	$39.99	450	Unlimited calling in the U.S. No roaming, or long distance charges within the U.S.
AT&T	Pre-paid Wireless	$2/day	Unlimited	Unlimited calling and texting in the U.S. No roaming, or long distance charges within the U.S.
AT&T	Wireless Family Plan (Max. 3 lines)	$59.99	550	Unlimited calling on nights and weekends. No roaming or long distance charges within the U.S. Rollover minutes. Each additional line $9.99
Comcast	Digital Calling	$29.99 (for the first six mo.)	Unlimited	Unlimited local and long-distance calling to U.S., Canada, and Puerto Rico. Low international calling rates
Cox Communications	Calling	$13.50	Unlimited local calling	Long distance not included, unlimited local calling
ECG Long Distance	Pre-paid Calling	2.90¢/min. (in-state)	Pay as You Go	No start-up fees or contract commitments. Low local and international rates
Lingo - World VoIP	Calling	$7.95	250	250 US, Canada, and Puerto Rico calling minutes any time, day or night
Phonepower Home VoIP	Calling	$14.95/mo. (24 mo. Contract)	Unlimited	Unlimited calling to the U.S. and Canada
Pioneer Long Distance	Pre-paid Calling	2.7¢/min.	Pay as You Go	1.9¢/min. Pioneer to Pioneer interstate calls. International calling options
PNG Long Distance	Pre-paid Calling	7.9¢/min.	Pay as You Go	International options available
RCN	Digital Calling	$34.99/mo.	Unlimited	Boston market. Unlimited phone calls nationwide. Includes five free calling features. No per-minute long-distance rates. Call anywhere in the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands and Canada). Low international calling rates
Sprint	Individual Wireless Plans	$29.99	200	Night and weekend calling starting at 9 p.m. Nationwide long distance and no roaming charges
Sprint	Family Wireless Plan	$69.99	700	Night and weekend calling starting at 7 p.m. Nationwide long distance and no roaming charges
T-Mobile	Individual Wireless Plan	$39.99	500	Unlimited weekend, weeknight and T-Mobile to T-Mobile minutes. No nationwide long-distance or roaming charges
T-Mobile	Family Wireless Plan	$59.99	750	Two year agreement, two lines to start and can add more lines if eligible, unlimited T-Mobile to T-Mobile calling, unlimited nights and weekends, free domestic long distance and no digital roaming charges

Exhibit A – Competitive Entry Level Voice Offerings Available in Massachusetts

T-Mobile	Pre-paid Wireless	Buy minutes in bulk. $10, $30, $50, $100.	30, 160, 400, 1000	Data options available
Verizon	Individual Wireless Plan	$39.99	450	Unlimited Calling to Verizon wireless customers, unlimited night & weekend minutes, no domestic long distance charges
Verizon	Family Wireless Plan	$69.99	700	Unlimited calling to Verizon Wireless customers, unlimited night & weekend minutes, no domestic long distance charges
Verizon	Pre-paid Wireless	99¢ daily	Unlimited mobile to mobile, 10¢/min, night and weekends 10¢	Unlimited mobile to mobile. Text message options available
ViaTalk Residenial VoIP	Calling	$10.95	2000	International calling options, voicemail, caller ID, call waiting, equipment
Vonage	VoIP Calling	$9.99 (online only offer)	200	5¢ additional minute. No contract
Vonage	VoIP Calling	$14.99 (for first 3 months then $25.99.mo.)	Unlimited	60 countries included for unlimited international calling, no annual agreement, caller ID, call waiting, 3-way calling