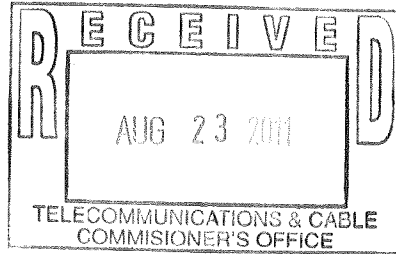




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August 23, 2011

Massachusetts Department of Telecommunications and Cable  
1000 Washington Street  
Suite 820  
Boston, Massachusetts 02118

Re: Notice of Public Informational Forums—Initial Comments of AT&T Corp.

Dear Sir/Madam:

Enclosed are the initial comments of AT&T Corp. in response to the Department of Telecommunications and Cable's Notice of Public Informational Forums dated July 7, 2011 and invitation to provide comments. We were unable to submit comments by the 5 p.m. deadline yesterday due to the difference between time zones and difficulties in getting internal review completed by 5 p.m. EST.

We respectfully request that you accept these late-filed comments.

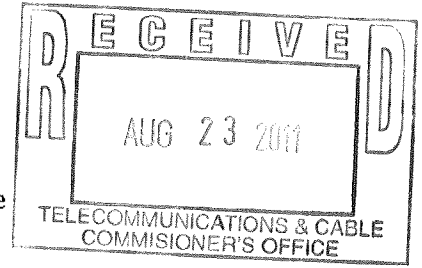
If you have any questions, please feel free to contact me at 312-727-4517.

Sincerely,

Nancy J. Hertel

Enclosure

**Commonwealth of Massachusetts**  
**Department of Telecommunications and Cable**  
**Initial Comments of AT&T Corp.**



AT&T Corp. (“AT&T”), on behalf of itself and certain of its affiliates, submits these comments in response to the Department of Telecommunications and Cable’s (“Department”) Notice of Public Informational Forums (“Notice”) dated July 7, 2011 and invitation to provide comments on the Department’s consideration of the “modernization of its billing and termination consumer protection regulations....” The Department observes in its Notice that the Rules and Practices Relating to Telephone Service to Residential Customers were established 34 years ago, and that since then there have been significant technological changes, including developments in wireless, cable voice service, video services by telephone companies and broadband.<sup>1</sup>

These technological advancements and competitive developments have benefitted Massachusetts consumers. AT&T Corp. respectfully submits that the Department should continue the restraint it has exercised with respect to wireless service providers and should not seek to impose unnecessary regulations. There are numerous industry standards in place and tools that wireless providers make available to wireless services customers that enable customers to manage their services and address any questions or concerns. Unnecessary regulations stifle the development of new technology and innovation not only by wireless service providers, but by other providers as well. AT&T further submits that the Department should focus instead on streamlining and updating the existing Rules and Practices that currently apply to telephone and cable television service providers.

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<sup>1</sup> Notice, pp. 1-2.

**Massachusetts Consumers have Choices of Technologies and Providers.**

Massachusetts consumers — both residential and business — have a dazzling choice of services offered by cable, satellite, cellular and Internet-based providers over platforms untethered from the traditional public-switched telephone network. For the wireless industry, the Federal Communications Commission (“FCC”) found in its 15<sup>th</sup> Annual Report on the state of competition that approximately 99.8 percent of the U.S. population, excluding those on Federal lands, are covered by at least one facilities-based mobile service provider; approximately 97.4 percent are served by three or more mobile voice providers; and 94.7 percent are covered by four or more mobile voice providers.<sup>2</sup>

The Department issued its first “Competitive Status Report” (“Report”) in 2010. The competitive landscape in Massachusetts as of December 2008 is similar to that outlined in the FCC’s 15<sup>th</sup> Annual Report. Approximately 99.8 percent of Massachusetts households can receive a signal from a network-based wireless voice service carrier.<sup>3</sup> As of December 2008, over 5.7 million Massachusetts consumers subscribed to a wireless voice service, representing an increase of 33.2 percent since June 2005.<sup>4</sup>

Not only do consumers in Massachusetts have a wide array of wireless providers to choose from, but they can also obtain voice services from cable providers. According to the DTC Report, 97% of household statewide in Massachusetts have access to service from at least one cable voice provider.<sup>5</sup> The DTC report states that as of December 2008, cable voice providers had approximately 33% of the wireline voice market.<sup>6</sup> As consumers have made

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<sup>2</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, FCC 11-103, ¶45, rel. June 27, 2011.

<sup>3</sup> Report, Executive Summary, p. viii.

<sup>4</sup> *Id.*, p. ix.

<sup>5</sup> *Id.*, p. iv.

<sup>6</sup> *Id.*, p. v. The DTC report analyzes cable voice service as “wireline voice.” It does not discuss the fact that large cable voice providers like Comcast Cable have transitioned from a circuit-switched telephone network platform to

alternative choices, there have been sharp line losses for traditional landline ILECs. The DTC report states that as of December 2008, approximately 11.3 percent of the households in Massachusetts had “cut the cord” to wireline service, which was a number that had tripled since June 2005.<sup>7</sup>

New competitors are entering the market all the time. Recently companies offering unlicensed services, including Wifi and WiMAX, have begun competing against licensed wireless carriers. State regulatory agencies have no authority over these new services. In addition, Mobile Satellite services are in the process of obtaining authority to offer an Ancillary Terrestrial Component to their satellite service, both of which compete with wireless services.

#### **The Department Should Continue to Foster a Deregulated Market for Wireless Services.**

Both at the national and state level, competition in the wireless industry has been allowed to thrive. In 1993, Congress amended the federal Communications Act of 1934 (“Communications Act”) to “dramatically revise the regulation of the wireless telecommunications industry”<sup>8</sup> and thereby establish a “national regulatory policy for CMRS, not a policy that is balkanized state-by-state.”<sup>9</sup> Although Congress permitted the states to regulate the terms and conditions of CMRS service,<sup>10</sup> the overwhelming majority of states have

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an Internet Protocol (“IP”) platform and now offer an interconnected Voice over Internet Protocol (“VoIP”) to existing and new customers. In 2010, the Massachusetts legislature passed statutory changes to provide that “no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service...[as defined in the statute]”

<sup>7</sup> Report, Executive Summary, pp. ix-x.

<sup>8</sup> *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 433 (6<sup>th</sup> Cir. 1998).

<sup>9</sup> *In the Matter of the Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, 10 FCC Rcd. 7025, 7034 ¶14 (FCC rel. May 19, 1995).

<sup>10</sup> “...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services...” 47 U.S.C. §332 (c)(3).

recognized the congressional intent to establish a national competitive, deregulated market for wireless services, and have not exercised jurisdiction. The Department's 1994 decision to deregulate the CMRS industry in Massachusetts is consistent with the national trend to establish and maintain a competitive, deregulated market for wireless services.

Consumer protection laws are usually established in a marketplace that lacks competition and real consumer choice or in which there has been substantial abuse. While wireline service has been largely regulated throughout the years, wireless has enjoyed robust, facilities-based competition provided by the national, deregulatory framework. This national model has enabled the wireless industry to react quickly to address and meet ever-changing consumer demands. Applying historical wireline-type regulation to wireless carriers is unnecessary and ill-founded. In fact, due to increasing competition across the telecommunications and broadband landscape, it makes sense to move all providers toward less regulation. Competitive markets benefit consumers by driving innovation, efficiency and choice at the lowest possible cost to consumers and the fastest rate of deployment. Regulatory intervention in a competitive market may result in unintended consequences in which the consumer ultimately suffers.

The ability to choose among wireless carriers provides a natural and competitive form of consumer protection. Customers can and do vote with their feet, so carriers take notice. Local number portability, which allows consumers to keep their wireless phone numbers when changing carriers, has further empowered the individual's ability to enforce consumer protection. The market-driven nature of the wireless industry, together with existing consumer protection laws that apply to all businesses, effectively negate the need for additional wireless regulation—regulation which only jeopardizes the ability of carriers to react in a competitive manner. In addition to rates and market entry which are preempted from regulation, the terms and conditions

of service should also be driven by market forces rather than by regulation. 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. This, in turn, allows for competition rather than regulation to address the changing needs of consumers.

Most wireless carriers operate a national business with national collateral and advertising, including online services and consumer education. State-specific requirements increase the cost of doing business and provide little true protection to customers. If states create different requirements, national carriers would be required to attempt to reconcile all requirements into one document: an impossible task when there are conflicting requirements. Further, limited carrier resources spent on complying with unnecessary state-specific requirements divert limited resources from providing consumer benefits such as improved wireless coverage and new product and service offerings.

Regulatory certainty is critical in the telecommunications marketplace, especially in these tough economic times. Competitive markets have benefited consumers by driving innovation, efficiency and choice at the lowest possible cost to consumers and the fastest rate of deployment. To the extent, however, that regulation is uncertain and carriers may be forced to expend resources to comply with unforeseen regulatory mandates, it will serve only to impede investment and innovation to the detriment of all consumers.

**Wireless Customers are Educated and Empowered to Make Decisions Regarding Their Services.**

The competitive wireless market enables consumers to select the carrier who meets their needs and provides the variety of services they seek. Cellular phone service providers have crafted popular and innovative offerings, and customers are free to make their own decisions

concerning the acceptability of price and any trade-offs with service quality, billing or other conditions of service. There are many things that the wireless industry also does to educate and protect consumers.

In 2003, AT&T joined forces with the CTIA and others in the wireless industry to declare its support and implementation of the Consumer Code as the voluntary standard for providing consumers with information to help them make informed choices when selecting wireless service. AT&T subscribes to the CTIA Consumer Code for Wireless Service (“CTIA Code”) and the Assurance of Voluntary Compliance (“AVAC”).<sup>11</sup> More recently, CTIA announced updates to the Code, effective January 1, 2011, that were made to keep pace with the innovative and evolving wireless marketplace and continue meeting the needs of wireless consumers, including new provisions to cover messaging and data services for both prepaid and postpaid wireless customers.

AT&T has consistently been innovative in developing consumer-friendly wireless policies. For example, in 2004 AT&T was the first wireless provider to offer a 30-day, no questions asked return policy for service and equipment.

AT&T has implemented many ways to prevent its wireless customers from experiencing so-called “bill shock.” Right from the start of the customer’s relationship, AT&T provides a Customer Service Summary (CSS) that gives new customers easy-to-understand, personalized information about their service plan, including a simulated first bill with estimated charges, details of their plan, an explanation of AT&T’s policies and options to stay on top of their costs. The “Services” section enables customers to check usage related charges on a regular basis.

AT&T also offers its wireless customers a number of service plans and features to help prevent customers from incurring overage charges. For wireless voice services, AT&T offers

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<sup>11</sup> See 47 C.F.R. 64.2400 and 64.2401.

Nation Unlimited voice plans. These include Unlimited Mobile-to-Mobile calling to other AT&T wireless customers while in the United States. AT&T also allows customers to carry over unused minutes for up to twelve months. It provides unlimited calling on nights and weekends for most plans. AT&T also provides an "A-list," which offers unlimited calling to and from five to ten (depending on the plan) of the customer's favorite U.S. phone numbers at no extra charge.

There are other ways that AT&T helps customers prevent incurring overage charges for message and data services.<sup>12</sup> AT&T offers unlimited messaging plans for individuals and families. AT&T's new data plans for Smartphone users offer customers unlimited Wi-Fi usage on AT&T's entire national Wi-Fi network at no additional charge.

AT&T also provides its customers with proactive courtesy alerts and notification. Since June 2008, it notifies customers when the cost of their messaging exceeds the customer's plan. Such overages can occur when a customer exceeds his or her monthly text message allotment or can incur text messaging charges on a pay-per-use basis. The customer is also given alerts before they exceed their monthly allotment of data use. For customers on Smart Phone plans, courtesy alerts are sent when they reach 65%, 90% and 100% of their plan's limits.

Customers are allowed to change plans at any time. If a customer realizes that he or she has or will exceed the allotted minutes or data, the customer can move to a plan that includes more minutes or data. These plan changes become effect at the beginning of the bill cycle in which the change was made so in some cases, this allows the customer to avoid overage charges that otherwise would have been incurred.

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<sup>12</sup> AT&T understands the Department's consideration of consumer protection regulations to be limited to "other terms and conditions" under Section 332 of the federal Telecommunications Act, 47 U.S.C. §332. AT&T reserves the right to address the limits of state jurisdiction over other services offered by wireless or other providers and to update its comments regarding "other terms and conditions" based on orders by the Federal Communications Commission or additional parameters set by the Massachusetts legislature. The examples given in these comments regarding data and messaging are intended to illustrate the way in which AT&T has addressed customer issues as the uses of cellular phones has expanded from usage for voice to use for data and messaging.



For customers who need it, AT&T offers numerous voice and data service options so that customers can avoid unanticipated charges. Some examples include Parental Controls that permit parents to restrict access to mature content that is not appropriate for children and to restrict purchases of downloads such as games, ringtones and graphics. AT&T Smart Limits for Wireless™ is a web-based suite of parental controls that allows parents to establish times of day their child's phone can be used for outbound calls, mobile Web browsing and messaging, filter access to internet content that is inappropriate for children, and define the number of text and instant messages allowed.

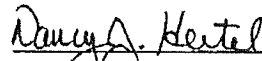
AT&T's customers can view their current voice and data usage at any time. They are able 24 hours a day, seven days a week to check remaining minutes, data usage, account balances from their wireless phone. AT&T also has an online account management system.

In short, AT&T's customers are provided with the tools to make informed decisions about their wireless services. These consumer friendly tools described above have come about in a highly competitive environment where carriers are incented to meet the quickly changing marketplace and meet consumer needs. Regulation, no matter how well intentioned, cannot match this competitive environment or predict the changing marketplace and offerings.

Conclusion

The Department has promoted competition in the Commonwealth for many years. AT&T requests that the Department continue to exercise its historic restraint with respect to the regulation of wireless services so that consumers will continue to benefit from innovation and new technological advances.

Respectfully submitted,



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Dated: August 22, 2011