COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Investigation by the Department of Telecommunications and Cable on its own motion concerning the modernization of its billing and termination consumer protection regulations	)

REPLY COMMENTS OF THE ATTORNEY GENERAL

I. INTRODUCTION

The Attorney General has reviewed the initial comments filed regarding the proposed modernization of billing and termination consumer protection regulations.[1] In the initial comments, specific, detailed proposals are raised that merit the consideration of the Department of Telecommunications and Cable ("Department" or "DTC"). The Attorney General does not repeat all of these recommendations but rather states at the outset of these reply comments that she supports, for example, the specific and various proposals set forth in the comments of AARP and National Consumer Law Center. Several themes surface in the initial comments, which the Attorney General addresses in the following section of her reply comments. The third section of these comments addresses some of the specific questions that the Department raises.

[1] Initial comments were filed by AARP; AT&T Corp. ("AT&T"); City of Cambridge Consumers' Council ("CCC"); MASSPIRG; CTIA-The Wireless Association ("CTIA"); National Consumer Law Center ("NCLC"); New England Cable and Telecommunications Association ("NECTA"); Town of Weymouth ("Weymouth"); Verizon New England Inc. ("Verizon"); XO Communications, PAETEC Communications, Inc., tw telecom data services llc, Choice One Communications of Massachusetts, Inc., Conversent Communications of Massachusetts, Inc., CTC Communications Corp. and Lightship Telecom, LLC (collectively, "CLECs"); Director of Cable Services, City of Worcester ("Worcester Cable Services"); John McCorkell; and Nancy W. Clapp.

II. GENERAL THEMES

Overview

An overarching theme in the initial comments filed by industry members is that competition renders billing and termination regulations unnecessary. Industry members' reliance on effective competition, which they assert exists, pervades their comments and provides the foundation for their opposition to billing and termination regulation. Because the Attorney General disagrees with the view that there is sufficient competition to protect consumers, the Attorney General disagrees with many industry members' views as to the specifics of proposed billing and termination rules. Of course *if markets were sufficiently competitive to discipline providers' practices*, billing and termination regulations would likely be superfluous. However, various factors suggest that markets are *not* functioning properly including: (1) the numerous consumer complaints that are lodged with the Attorney General, (2) the incentives for cramming that the national billion-dollar third-party billing industry creates, (3) analysis of competition statistics, and (4) the minimal recourse that individual consumers possess when "negotiating" with service providers. Therefore, as the Attorney General and others have amply demonstrated, consumers need protection with adequate billing and termination regulations.

The Department possesses the authority to issue consumer protection regulations, and should do so in order to protect consumers.

The Attorney General concurs with the National Consumer Law Center ("NCLC") that the Department possesses the requisite authority to establish consumer protection regulations, including those that pertain to the regulation of the terms and conditions of mobile service. NCLC Initial Comments, at 2-3. As NCLC explains, the Federal Communications Act gives states authority to ensure the universal availability of mobile service at affordable rates. *Id.*, at 2, citing 47 USC Section 332 (c) (3). The Attorney General also concurs that customers of new telecommunications technologies merit at least the same level of consumer protection as "that which wireline customers have received in maintaining adequate, continuous and reliable telecommunications service for their households." *Id.* at 4.

The Department should not rely on the existing level of competition to protect consumers.

The Attorney General fully supports the Department's long-standing policy of opening telecommunications markets to local competition and facilitating the transition from a market supplied by a monopoly provider to diverse geographic and product markets, which, in some cases, are supplied by multiple providers. Effective competition benefits consumers through lower prices, better service quality, expanded service offerings, and innovation. AARP Initial Comments at 1. However, in those markets where effective competition does not yet exist, regulatory oversight is essential to protect consumers.

As the Attorney General had anticipated, industry members rely on purported "robust" competition to yield adequate protection for consumers, and based on their view that markets are competitive, they oppose billing and termination regulations. *See, e.g.,* AT&T Initial Comments at 2; Verizon Initial Comments at 2; NECTA Initial Comments at 14. Industry comments include numerous references to competition. *See e.g.*, Verizon Initial Comments at 1 (references to "a vibrant, highly competitive market"); *Id.*at 2 ("fiercely competitive" market); CTIA Initial Comments at 1 ("a vibrant and competitive market"). However, as the Attorney General demonstrated in her initial comments, competition is insufficient to protect consumers, particularly those with the fewest competitive alternatives. Attorney General Initial Comments at 3.

Verizon points to the 29.7% of households nationwide that now rely solely on wireless service. Verizon Initial Comments at 4-5. The increasing residential dependence on wireless service simply underscores the need to ensure that such consumers are adequately protected. Furthermore, in considering the national cord-cutting statistic, it is also important to recognize and to make public policy allowances for the fact that the percentage of cord-cutters varies among diverse demographic groups. *See* Attorney General Initial Comments at 3 and n.2 (discussing the fact that elderly rely less on wireless than do other age groups); *see also* CCC Initial Comments at 3. Older adults are less likely to "cut the cord" although the percentage of older adults cutting the cord has grown in recent years. Less than 8% of adults aged 65 years and over lived in households that relied solely on wireless telephones in the final six months of 2010. Few elderly consumers view wireless service as an economic substitute for wireline service (they may own wireless service, but they use wireless service in addition, to rather than instead of, wireline service).[2] Migrating among providers also entails effort. For these various reasons, elderly in Massachusetts are unlikely to switch providers in search of more reasonable billing and termination practices. Therefore the Department should dismiss industry's argument that competition provides adequate competition for wireline consumers.

Despite Verizon's contention that there are lots of competitors in the market (*see* Verizon Initial Comments at 2-4), there is no effective competition for *stand-alone* basic local exchange service. Cable companies' voice over Internet protocol ("VoIP") service provides the major alternative to the basic local exchange service of the incumbent local exchange carrier

---

[2] Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health 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 at 8.

("ILEC").[3] However, when purchased on a stand-alone basis, the price greatly exceeds that of the ILEC's basic local service. In Massachusetts, Verizon's residential basic local exchange telephone service is $12.70 per month.[4] By contrast, Comcast's stand-alone voice service ranges from $39.95 to $44.95 per month[5] and Time Warner offers phone service for $39.95 per month (for the first 12 months).[6] VoIP cannot be considered an economic substitute for stand-alone basic local service.

---

[3] Estimate as of June 2010 from *In the Matter of The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, *Notice of Proposed Rulemaking*, rel. May 13, 2011, at para 2.

[4] Verizon New England Inc., Tariff DTE MA No. 10, Rates and Charges, Part M Section 1, Page 14 (Effective December 1, 2009). This rate is the dial tone line exchange rate. Local message rates apply.

[5] Comcast does offer promotional rates that increase after an initial time period. For example, in September 2011 Comcast was offering $19.99 per month voice service for six months. The offer includes the following fine print:

> Offers end 9/21/11. Limited to new residential customers satisfying applicable eligibility criteria. Not available in all areas or to customers with unpaid account balances. Starter XF Triple Play offer requires minimum 2-year contract and early termination fee applies. To qualify for Starter XF Triple Play offer, service must be ordered via www.comcast.com. Offer limited to (1) Comcast Unlimited® service; or (2) Digital Starter TV, Performance Internet and Comcast Unlimited® service. After 3 months, monthly service charge for SHOWTIME® goes to $10 for months 4 -12. After promotional period, or if any service is cancelled or downgraded, regular charges apply. *Comcast's current monthly service charge for Comcast Unlimited® ranges from $39.95 to $44.95*, for SHOWTIME® ranges from $10.95 to $23.95, depending on your area and other Comcast services (if any) received, and for Starter XF Triple Play is $129.99. Digital TV and High-Speed Internet service limited to a single outlet. Equipment, installation, taxes, franchise fees, the Regulatory Recovery Fee and other applicable charges extra (e.g., per-call or international charges) extra. May not be combined with other offers. TV: Basic service subscription required to receive other levels of service. On Demand selections subject to charge indicated at time of purchase. Not all programming available in all areas. Internet: Actual speeds vary and are not guaranteed. Not all features compatible with Macintosh systems. Voice: Carefree Minutes pricing applies to direct-dialed calls from home to locations included in the plan (except mobile numbers, operator services and directory assistance). Unused minutes do not roll over to the following month. Service (including 911/emergency services) may not function after an extended power outage. Call clarity claim based on August 2010 analysis by Tektronix. Visa® Prepaid Card offers require activation of Comcast services within 30 days from order date and maintenance of account in good standing for 90 days. Card mailed within 16 weeks from completed installation. Cards are issued by Citibank, N.A. pursuant to a license from Visa U.S.A. Inc. and managed by Citi Prepaid Services. Cards will not have cash access and can be used everywhere Visa debit cards are accepted. Not available to Comcast employees or their family members. Call for restrictions and complete details."

XFINITY Voice from Comcast, Frequently Asked Questions, http://www.comcast.com/Corporate/Learn/DigitalVoice/digitalvoice.html?lid=3LearnCDV&pos=Nav (last visited September 8, 2011) (emphasis added).

[6] Time Warner offers digital home phone service for the first 12 months of service at a rate of $39.95 per month. http://www.timewarnercable.com/northeast/learn/bundles/new.html (last visited September 8, 2011).

VoIP is viewed by some consumers as an economic substitute for basic telephone service *when it is included as part of a broadband bundle*. Indeed, in 84 percent of instances, VoIP is purchased as part of a bundle with broadband Internet access.[7]

Wireless is not yet an economic substitute for many consumers. AARP Initial Comments at 1. Despite the growing number of cord-cutters, the vast majority of households continue to rely on wireline connections to the public switched telephone network ("PSTN"). In the final six months of 2010, 29.7% of U.S. households had only wireless telephones.[8] Even accounting for phoneless households, this means that almost 70% of all households still had a wireline phone.

For the customers who seek "triple plays" (voice, Internet access and video), competitive "choice" consists of an entrenched duopoly: the ILEC and the incumbent cable company. The oft-espoused ILEC view that customers who are dissatisfied with the price or quality of an ILEC's basic local exchange service can "vote with their feet" rings hollow.

Industry fails to provide empirical evidence to demonstrate that consumers switch "quickly and easily" and, furthermore, the vast majority of CLEC-provided lines are provided through bundled offerings.

Verizon asserts that consumers switch among carriers "quickly and easily." Verizon Initial Comments at 2. Verizon did not, however, provide any data on "churn" (*i.e.*, migration among carriers) to substantiate its general assertion. The Department should accord this assertion no weight, because there is no evidence to demonstrate that basic service customers have a high churn rate, nor did Verizon even provide data regarding churn rate among customers

---

[7] Federal Telecommunications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2010*, rel. March 2011 ("FCC Local Competition Report"), at Fig. 5. There were 28,895,000 total interconnected VoIP subscribers as of June 30, 2010. Of those, 4,663,000 (or 16%) were standalone VoIP. *Id.* Among non-nomadic VoIP subscriptions, only 7% of the VoIP subscriptions are on a stand-alone basis. *Id.*

[8] *See* Stephen J. Blumberg, Ph.D. & Julian V. Luke, Division of Health Interview Statistics, National Center for Health 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.

of bundled offerings. As the Attorney General explained in her Initial Comments at 2-3, bundled customers have some inertia because to change providers they may need to change e-mail address; purchase or lease new equipment; pay for installation; or learn to use new technology. In any event, the Attorney General would be surprised to see data that shows a high churn among the elderly or among customers of basic local service.

Verizon also cites FCC statistics showing that competitive local exchange carriers ("CLEC") controlled 44% of access lines in Massachusetts as of June 2010. Verizon Initial Comments at 3-4, *citing* FCC Local Competition Report at 19 (Table 8). Examining the data for residential end-user switched access lines (FCC Local Competition Report, Table 9, at 20) provides context. Forty-four percent of the residential switched access lines in Massachusetts were provided by "non-ILEC" providers (which includes both traditional wireline CLECs and cable companies). However, the vast majority of the non-ILEC lines were VoIP service bundled with Internet access. Indeed, of the 952,000 lines provided to residential consumers by non-ILECs in Massachusetts, 80% of those lines were VoIP voice lines purchased in conjunction with Internet access service (*i.e.* a cable company bundle).[9] Therefore CLECs' provision of lines does not provide evidence of effective competition for basic local service. Furthermore, as these reply comments demonstrate below, there is inadequate competition for bundled customers. Accordingly, customers of bundled offerings require protection through billing and termination regulations.

A duopoly does not represent effective competition.

Verizon describes the growing reach of broadband. Verizon Initial Comments at 5. However, the broadband competition that purportedly "runs deep" (Verizon Initial Comments at

[9] FCC Local Competition Report at 20 (Table 9).

5) typically consists of a duopoly controlled by the ILEC (Verizon) and the incumbent cable television company (*e.g.*, Comcast or Cablevision) in relevant geographic markets. As of June 30, 2010 (the latest available data from the FCC), there were 152.9 million total fixed Internet access connections (with speeds over 200 kbps in at least one direction) in service in the United States.[10] Of those, 54% were cable modem and 39% were DSL or other wireline Internet access. A duopoly does not provide effective competition. Further, many towns in Western Massachusetts are unserved or underserved by broadband service. MassBroadband 123 Service Area and Network Economic and Broadband Service Status, Massachusetts Broadband Institute (May 2011), *available at* http://www.massbroadband.org/Availability/gallery.html. (last visited September 15, 2011). Close to 60 municipalities in Western Massachusetts are unserved or underserved by broadband service. *Id.* The overwhelming majority of the state has only mobile wireless broadband technologies available. Wireless Broadband Availability in Massachusetts, DRAFT, Massachusetts Broadband Institute, December 21, 2010 *available at* http://www.massbroadband.org/Availability/gallery.html (last visited September 15, 2011).

Billing and termination regulations should address market failures, particularly those that create potential harm for the state's most vulnerable consumers.

The Attorney General fully supports the Department's efforts to facilitate the development of competitive markets in Massachusetts. Verizon Initial Comments at 3. The challenge, however, for the Department during the transition to effective competition, is to

[10] Federal Communications Commission, *Internet Access Services: Status as of June 30, 2010*, rel. March 2011 ("FCC Internet Access Report") at Table 6. The remaining 8% of connections were one of the following technologies: FTTP, satellite, fixed wireless, power line or "other". *Id.* Corresponding data is not available for Massachusetts because the FCC withholds data regarding the number of ADSL, fiber and satellite connections are in service to "maintain firm confidentiality." FCC Internet Access Report at Table 18. From the data that is available, one can calculate that cable modem represents 64% of the fixed Internet access lines in service and the combined group of DSL, FTTP, satellite, fixed wireless, power line or "other" represent 36% of those lines. *Id. See, also*, Concurring Statement of Commissioner Michael J. Copps Re: *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, rel. December 23, 2010.

identify market failures and to implement remedies. Initial comments identify specific remedies entailing such measures as: measures to prevent cramming; consumer disclosure requirements; clearer billing; prohibition on marketing optional services when consumers call to inquire about stand-alone basic service; clearly communicated disclosures on procedures for complaints; baseline consumer protection regarding security deposits and deferred payments; 28-day (or at most 21-day) billing cycles; privacy; preventing aggressive marketing of expensive and bundled packages to low-income consumers; preventing the termination of essential services even when part of a bundled package; adequate notice; continuation of protections for personal emergency, serious illness, and the elderly as well as expansion to persons with disabilities; and consumer education. AARP Initial Comments at 2-5;[11] CCC Initial Comments at 2-6; Town of Weymouth Initial Comments at 1-2; MASSPIRG Initial Comments at 2-4; NCLC Initial Comments at 5-15.

Complete information makes markets work more efficiently than those in which consumers lack comprehensive information.

As stated earlier, the Attorney General welcomes the development of competition. However, where market power persists, the Department's intervention is essential to protect consumers. Consumers lack adequate information. Particularly because of the growth in the variety of technologies and the variety of offerings, consumers require clear and complete information in order to make efficient purchasing decisions. Markets work more efficiently (that is, consumers make more efficient purchasing decisions) when information is easily and readily available. Therefore, the Attorney General concurs, for example, with AARP's recommendations for enhancing the readability of billing (such as the use of at least 10-point

[11] AARP also discusses carrier of last resort obligations. The Attorney General supports AARP's recommendation that the Department "establish a regulation that ensures that all consumers, whether or not they receive service from a carrier of last resort, have a right to access to basic local exchange service as long as basic local exchange service charges are paid, regardless of whether any charges for non-basic local exchange service are paid." AARP Initial Comments at 2.

font, and "complete, clear, and truthful descriptions of all charges"), MASSPIRG's recommendation that wireless bills be clearly organized with government-mandated charges identified in a separate section of the bill; NCLC's recommendation that the Department require written confirmation of sale; and CCC's recommendation for disclosure regarding early termination fees. AARP Initial Comments at 2; MASSPIRG Initial Comments at 2; NCLC Initial Comments at 6; CCC Initial Comments at 3.

Properly designed regulation need not stifle innovation nor need it be unduly burdensome.

Industry expresses concern that regulation would impede innovation. *See, e.g.,* Verizon Initial Comments at 5-6; AT&T Initial Comments at 1, 5. The Attorney General welcomes innovation and is confident that the establishment of minimum regulatory protection will enable industry to innovate beyond the minimum. Industry does not describe how minimum regulatory protections for consumers will stifle innovation.

The Department should reject recommendations that would cause the burden to shift from industry to regulators and to consumers.

Verizon asserts that the consumer protection laws that exist "are more than adequate to protect consumers of telecommunications services." Verizon Initial Comments at 6, *citing* M.G.L. c. 93A, and various state regulations that have been promulgated as well as the FCC's Truth-in-Billing rules. There are several flaws with Verizon's reasoning. First, it is far preferable to prevent unlawful activity than to address the adverse consequences that follow anti-consumer practices. Furthermore, it is likely that only a small fraction of consumers who are harmed will take the time and effort to pursue remedies. Effective regulations will prevent such problems as premature disconnection of service, confusing bills, third-party billing, excessively short billing windows, and other matters and therefore avoid the substantial administrative burden that is associated with enforcement. Also, the FCC's Truth-in-Billing rules have proven to be inadequate to prevent consumer harm as is evidenced by the substantial volumes of cramming that continues (see later discussion in these reply comments).

Despite the overall purview of M.G.L. c. 93A, the Department was specifically created under the office of consumer affairs and business regulation to protect telecommunications and cable consumers. M.G.L. c. 25C, § 1 (2007); *see also* M.G.L. c. 159, § 10. Chapter 25C enables the Department, among other things, to promulgate regulations and make assessments against cable, telephone, and telegraph companies. *Id.*, §§ 5, 7. Presumably then, the legislature determined it necessary to codify these additional safeguards to Massachusetts consumers in addition to the protections afforded under M.G.L. 93A. The additional safeguards that the Department's enabling legislation provides are necessary to protect consumers from the proliferation of technological advances in the telecommunications and cable industries, and balance the potential economic vagaries associated with the same. Finally after-the-fact, or reactive, enforcement of the laws is less of a deterrent than proactive regulation, which is presumably the public policy behind all similar legislation.

III. SPECIFIC DEPARTMENT QUESTIONS

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

The Attorney General disagrees with AT&T that "[t]he 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." AT&T Initial Comments at 4. Verizon observes that 42.8% of adults in poverty live in wireless-only households. Verizon Initial Comments, at 8, citing CDC report. This statistic underscores the importance of ensuring that these households are protected through adequate billing and termination regulations. The Attorney General certainly welcomes the various industry-initiated measures to provide consumers with tools for monitoring their usage (CTIA Initial Comments, at 5) and the establishment of the "CTIA Consumer Code" in 2007, which includes guidelines for informing consumers about wireless terms and conditions (Id., at 4), however, consumers merit additional Department protection in the form of baseline requirements. Consumers should not be required to rely solely on *voluntary* industry practices. Simply monitoring the market as CTIA suggests, is not an adequate substitute for establishing baseline billing and termination regulations. *Id.* at 6-7.

The proliferation of wireless devices and the fact that the vast majority of Massachusetts consumers use wireless service simply underscores the growing significance of wireless service. *Id.*, at 2. Once viewed as a luxury service, wireless service has become integral to everyday life, which elevates its significance as well as the importance of adequate Department oversight. CTIA asserts that the Department, in 1994, "concluded that market forces were adequate to protect wireless consumers from unreasonable terms and conditions." *Id.*, at 8, *citing* Investigation by the Department of Public Utilities upon its own motion on Regulation of Commercial Radio Services, D.P.U. 94-73 (August 5, 1994) at 14. Similarly, AT&T refers to the Department's 1994 decision to deregulate the commercial mobile radio service ("CMRS") industry in 1994 as consistent "with the national trend to establish and maintain a competitive, deregulated market for wireless services." AT&T Initial Comments, at 4. Verizon also points to purported wireless competition. Verizon Initial Comments, at 9. AT&T asserts that Massachusetts consumers "have a wide array of wireless providers to choose from." AT&T Initial Comments, at 2. However, as the Attorney General demonstrated in her initial comments, the wireless industry cannot be considered competitive. Attorney General Initial Comments, at 5-6.

Moreover, since 1994, there has been substantial concentration in wireless markets, resulting from numerous mergers, which has led to *less* competition. In the intervening years, substantial problems have arisen (such as bill shock[12]), which suggest that the Department's 1994 optimism in the market may have been misplaced. The Department should revisit its earlier reliance on market forces and now establish baseline consumer protection regulations for wireless customers.

As noted in the Attorney General's initial comments, the proposed merger of AT&T and T-Mobile will only intensify market concentration. Indeed, the Department-filed reply comments in the FCC's review of the proposed merger of AT&T and T-Mobile detailed its market concentration analysis in Massachusetts concluding that the presence of "significant market level concentrations" merit further merger analysis.[13] Furthermore, the United States Department of Justice just filed a complaint to enjoin the proposed merger, stating among other things:

[12] See In the Matter of Empowering Consumers to Avoid Bill Shock, CG Docket No. 10-207; Consumer Information and Disclosure, CG Docket No. 09-158, *Notice of Proposed Rulemaking* ("NPRM"), October 14, 2010. The Attorney General has been actively involved in the FCC's proceeding. See, In the Matter of Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure, CG Docket Nos. 10-207; 09-158, Comments of the Massachusetts Office of the Attorney General, January 10, 2011; Reply Comments of the Massachusetts Office of the Attorney General, February 8, 2011. See also, Comments and Reply Comments of the Attorney General and the Massachusetts Department of Telecommunications and Cable filed on July 6, 2010 and July 19, 2010, respectively, in response to FCC Public Notice: "Comment Sought on Measures Designed to Assist U.S. Wireless Consumer to Avoid 'Bill Shock'," CG Docket No. 09-158, DA 10-803 (rel. May 11, 2010).

[13] In the Matter of Application of AT&T Inc, and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations Held by T-Mobile USA, Inc. and Its Subsidiaries, FCC WT Docket No. 11-65; DA No. 11-799, Reply Comments of the Massachusetts Department of Telecommunications and Cable, June 20, 2011 at 8. *See, also*, id., at 3.

- "AT&T and T-Mobile are two of only four mobile wireless providers with nationwide networks and a variety of competitive attributes associated with that national scale and presence." (Department of Justice Complaint ("DOJ Complaint"), at para. 2).[14]
- "Collectively, the "Big Four" – AT&T, T-Mobile, Verizon, and Sprint – provide more than 90 percent of service connections to U.S. mobile wireless devices." (id.).
- The DOJ estimates that in 96 of the largest 100 CMAs, the post-transaction HHI exceeds 2,500 (i.e. "highly concentrated).[15]

The Attorney General welcomes AT&T's various ways of assisting its wireless customers from experiencing bill shock, but she is not persuaded that these tools resulted from competitive pressure. AT&T Initial Comments, at 6-9. Instead, legislative and regulatory concern focused on the wireless industry at the federal level could well have provided the requisite incentives for AT&T to offer its customers plans and features to prevent overage charges.

NECTA states that "the AG has primary jurisdiction in this area and there is no evidence that the AG is not performing its role in making sure that Massachusetts market participants meet applicable consumer protection standards." NECTA Initial Comments, at 15. As the Attorney General discusses earlier in these comments, it is far preferable to *prevent* anticonsumer behavior than to rely on after-the-fact enforcement. The Attorney General, therefore, urges the Department to reject those recommendations that would shift the burden from the industry to government agencies.

B. What particular consumer protections should apply to the provision of voice and cable services to address advertising and marketing; disclosures; written confirmation of sale and cancellation period; billing format and practices; advance notice of changes in service, rates, or other contract terms and conditions;

[14] United States of America, Department of Justice v. AT&T Inc., T-Mobile USA, Inc. and Deutchse Telekom AG, 1:11-cv-01560 at *2 (D.C. August 31, 2011).
[15] See, DOJ Complaint, at Appendix B, which shows that in the Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH CMA, the Hefindahl-Hirshman Index ("HHI") would increase by 731, which is an extremely large increase in concentration. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed to be likely to enhance market power. Id., at Appendix A, citing the Horizontal Merger Guidelines.

> customer service and dispute resolution procedures; discontinuance or termination of service; and privacy issues.

Verizon asserts that industry-specific regulations would be duplicative. Verizon Initial Comments, at 10. Verizon specifically relies on the Attorney's General's Consumer Protection regulations (at 940 CMR § 3) that apply to marketing, advertising, and disclosure practices, to the Attorney General's regulations at 940 CMR § 6 that concern retail advertising, to the FCC's Truth-in-Billing rules that concern clarity and content of consumer telephone bills, and to the FCC's customer proprietary network information regulations as well as the regulations of the Massachusetts Office of Consumer Affairs and Business Regulation at 201 CMR § 17.00 protect consumers' personal information. *Id.*, see also NECTA, at 16.

As outlined above, the Department's authority to regulate the telecommunication, cable, and telegraph industry is codified through M.G.L. c. 25C. Fundamentally, Verizon's assertions that industry-specific regulations duplicates protections already afforded to consumers under M.G.L. 93A vitiates the sole purpose and authority of state agencies to regulate and execute the laws of this Commonwealth. Instead, it is axiomatic that the legislature created the DTC to protect consumers from the ever-evolving nature of the telecommunications and cable industry. The blanket consumer protections of M.G.L. 93A and the Attorney General's regulations – although exceptional in their own right – were not codified with an eye toward the telecommunications industry whose advancements just within the past 10 years are extraordinary. For example, M.G.L. c. 93A prohibits unfair and deceptive trade practices in their totality within the Commonwealth; however, individual state agencies charged by the Legislature to oversee and regulate discrete business areas have greater expertise and are better equipped to properly regulate and protect consumers. It is a resounding principle of law that governments enact specific legislation to make enforcement of the laws and governing more effective, and that checks and balances between state agencies and government officials facilitate that ultimate goal. Minimum standards need not become "one-size-fits-all" solutions for practices, but instead can serve as a foundation upon which providers can innovate. Verizon Initial Comments, at 11. The Attorney General concurs with NCLC that the Department should ensure that "low-income consumers are protected from aggressive marketing of expensive and bundled packages." NCLC Initial Comments, at 5.

C. Whether a single set of consumer protection regulations should apply to wireline, wireless, and cable television or whether there should be specific tailored protections.

Relying on the purportedly "fiercely competitive market," Verizon contends that the Department should eliminate the billing and termination rules and the cable billing and termination rules, and instead rely on Massachusetts' general consumer protection laws to protect consumers. Verizon Initial Comments, at 11-12. As the Attorney General demonstrates in her initial comments and in these reply comments, relevant markets are not yet "fiercely competitive," and therefore, the Department should reject Verizon's recommendation to terminate rules for the telecommunications and cable industries. Instead, regulations should be strengthened.

Attorney General supports CCC's recommendation that the Department modify 207 CMR 10.05(1) to allow consumers at least 28 days for payment following the mailing date of a cable bill. CCC, at 4. Other comments echo this concern and suggest that window of time that consumers are given to pay their cable bill is a frequent complaint. See Worcester Cable Services, John McCorkell, and Nancy W. Clapp. At a minimum, the Department should adopt the recommendation of the Town of Weymouth that cable companies be required to provide at least a 21-day window for customers to pay their bills. Weymouth, at 1-3. According to

Weymouth, Comcast gives customers a maximum of only 14 days from the billing date until payment is due. Weymouth, at 1.

Fourteen days is an extremely short period of time, particularly when contrasted with the practice for other utilities. Customers of gas and electric companies have 45 days from receipt. Regulations state in pertinent part:

> 25.02: Billing and Termination Procedure for Residential Customers
>
> (1) Billing and Payment. All bills shall be payable upon receipt. However, no bill shall be considered "due" under applicable law or 220 CMR 25.00 in less than 45 days from receipt or in the case of gas and electric companies in less time than has elapsed between receipt of such bill and receipt of the most recent previous bill for the company's services, whichever period is greater.
>
> The initial bill after commencement of service shall not be "due" in less than 45 days from receipt, or in less time than has elapsed between receipt of such bill and the day upon which service was initially extended, whichever is greater. No disputed portion of a bill which relates to the proper application of approved rates and charges, or the company's compliance with 220 CMR 25.00, shall be considered "due" during the pendency of any complaint, investigation, hearing or appeal under 220 CMR 25.00.

Various factors support a longer payment window. Challenging economic times make it difficult for households to juggle bills. Telecommunications and cable television bills are often complex and require more attention to detail by consumers than do electric, gas, and water bills. Accordingly, the Attorney General supports a requirement that all providers, whether wireline, wireless, or cable television, provide 28 days for payment, and urges the Department to establish at least a 21-day payment window. More importantly, under the Department's present regulations for telephone billing, companies must allow each customer at least thirty days from the date of receipt of the bill for payment in full. D.P.U. 18448, Rules and Practices Relating to Telephone Service to Residential Customers, Part 3, Rule 3.2 (1976). By extending the payment window for cable bills, the Department would harmonize regulations between the cable and telecommunications industry.

D. How should modernized consumer protection rules distinguish within a bundle those services that are regulated by the DTC from those not regulated by the DTC and how should the services be handled in the event of a default payment for the bundled package of services as a whole?

For various reasons, Verizon contends that the Department should not distinguish within a bundle those services that are DTC-regulated from those that are not DTC-regulated: Verizon states, in support of its position, that a customer is receiving a discount off the bundle and so the provider should be allowed to discontinue the entire product for non-payment and that customers can obtain service from other providers. Verizon Initial Comments, at 12.

Similarly, NECTA contends that Department-regulated services (such as local exchange service and cable television service) should not be regulated when they are bundled with other services. NECTA Initial Comments, at 17. The Attorney General disagrees. The mere act of bundling a regulated service with an unregulated service does not alter the fact that a key element of the bundle remains a regulated service. As consumers increasingly add to their basic service, such decisions should not erode protection of their basic service. Furthermore, if NECTA's logic was adopted, industry would confront a strong economic incentive to market bundles aggressively so as to avoid regulatory oversight.

The Attorney General concurs with NCLC that if a consumer defaults in payment for bundled services, the Department should protect the basic service component of the bundle from disconnection by requiring reasonable notice of the disconnection as well as an opportunity to dispute the planned termination. NCLC Initial Comments, at 7. Furthermore, the Department should consider defining basic service so as to encompass wireless service. *Id.*, at 8. As all households increasingly migrate to a wireless-only connection, it is particularly important to ensure that consumer protection for a basic link to the public switched telephone network is not eroded.

E. How should cost of continued regulated/unregulated service be calculated in the event of termination of bundled packages.

NECTA and Verizon recommend that in the event that a customer's bundle is terminated that each individual service that the customer retains should be charged at the applicable stand-alone rates. NECTA Initial Comments, at 18-19; Verizon Initial Comments, at 12-13. The Attorney General concurs, but Department regulations should require providers to ensure that consumers are aware that they can purchase services on an "a la carte" basis.

F. Length of notice of discontinuance and how many notices should be given to consumers.

Verizon relies on the "highly competitive" market to protect consumers and therefore opposes the continuation of the requirements set forth in B&T Part 5B. Verizon Initial Comments, at 13. See also, NECTA Initial Comments, at 19. As the Attorney General demonstrates earlier in these comments, there is insufficient competition in relevant markets to protect consumers. Accordingly, the Attorney General concurs with NCLC that, not only should these protections continue, but moreover, they should apply to wireless customers. NCLC Initial Comments, at 8-9. Some low-income consumers may change residences frequently and therefore rely on wireless service. *Id.*, at 9. Protections against service termination are needed for wireline and wireless service to protect all consumers, and particularly the Commonwealth's most vulnerable citizens.

G. Are the current provisions (B&T Part 5 C) regarding removal of account still needed.

The Attorney General is not persuaded by Verizon's reasoning that in the purportedly highly competitive market, carriers have sufficient incentive "to implement fair and reasonable policies governing removal of accounts." Verizon Initial Comments, at 13. As the Attorney General discusses earlier in these comments, customers of basic, stand-alone local service lack alternatives for service at comparable prices. Accordingly, the provisions in B&T Part C should continue.

H. Should there be changes in the current protections for consumers with personal emergencies or serious illness and for adults 65 years of age and older.

Verizon contends that B&T rules (Part 5D and Part 8) are no longer necessary because most consumers have cell phones they can use to make emergency calls and because the Lifeline program, by providing a discount, makes it less likely that customers (including low-income elderly customers) will be disconnected. Verizon Initial Comments, at 14. Verizon's logic, however, does not address the elderly on fixed incomes who are not Lifeline-eligible, and indeed the B&T protections should be extended to protect all consumers, regardless of the technology they choose to use. NCLC Initial Comments, at 9. Furthermore, the Department should consider extending the applicability of regulations that protect against termination of service in cases of personal emergency and serious illness to households with infants. *Id.*, at 10.

The Attorney General also disagrees with NECTA that competition makes these regulations unnecessary. NECTA Initial Comments, at 20.

Moreover, the Attorney General supports NCLC's recommendation that the Department "harmonize" its regulations with those of the Department of Public Utilities ("DPU"). NCLC Initial Comments, at 10. Electric and gas companies in the Commonwealth must continue to serve customers in financial hardship who are also seriously ill and require recertification quarterly as opposed to the 30-day recertification requirement for telecommunications companies. *Id.*, citing B&T 5.1 and 220 CMR 25.03(4). DPU allows electric and gas customers to renew their chronic illness certification indefinitely but the Department allows for renewal only twice, for a total of a 90-day period. *Id.*, citing 220 CMR 25.03. Telecommunications consumers merit the same level of protection as do gas and electric consumers. Telecommunications is an essential service that connects households to emergency and other important social services. Competition will not protect the Commonwealth's most vulnerable consumers.

I. Are rules related to security deposits, guarantees, and deferred payments still relevant.

Verizon opposes the continuation of B&T Parts 4 and 7, which set forth regulations regarding security deposits, guarantees and deferred payments, because they "deprive a carrier of good and willing customers" and because, according to Verizon, carriers have an incentive to retain current customers through reasonable deferred payment terms. Verizon Initial Comments, at 15. See also, NECTA Initial Comments, at 20-21. The Attorney General believes instead that vulnerable customers lack the ability to negotiate reasonable deferred payment terms, and, therefore, continuing government oversight is essential. Furthermore, the Attorney General supports NCLC's recommendation that consumers' right to request a hearing (if the consumer and the company cannot agree to a deferred payment arrangement) should be communicated clearly to customers, including all relevant contact information for the Department's Consumer Division. NCLC Initial Comments, at 10-11.

J. Are rules for cable companies related to security deposits, late charges, termination notices and return check charges still relevant.

Relying on a purportedly competitive market, Verizon and NECTA oppose rules regarding deposits, late charges, termination notice and return check charges. Verizon Initial Comments, at 15; NECTA Initial Comments, at 20-21. As is explained earlier, existing levels of competition do not protect consumers adequately. AARP proposes several recommendations regarding security deposits that merit the Department's consideration. AARP Initial Comments, at 1.

K. Should the compulsory dispute resolution process currently required for wireline providers encompass all regulated service providers.

The Attorney General disagrees with Verizon and NECTA that competition is sufficient to render the Department's dispute resolution process unnecessary. Verizon Initial Comments, at 16; NECTA Initial Comments, at 21. The level of competition that exists is not sufficient to protect consumers, and therefore consumers should have the opportunity to seek Department review of disputed matters. NCLC Initial Comments, at 11-12. NECTA raises the concern that the Department's dispute resolution process is "onerous" but fails to identify ways in which the process could be streamlined, while still balancing appropriately the interests of industry and consumers. NECTA Initial Comments, at 21.

L. Should consumer protection regulations address cramming practices and if so, how.

NECTA observes that 47 CFR 64.2401 prohibits cramming, cramming activities are subject to "significant Chapter 93A sanctions form the Attorney General or individual complainants, and the FCC is investigating cramming. NECTA Initial Comments, at 21. See also, Verizon at 16-17. Clearly, however, existing federal rules are inadequate to protect consumers or the FCC would not have needed to open a rulemaking on cramming. Moreover, sanctions provide after-the-fact relief and are therefore not as preferable as rules that prevent illegal activities in the first place.

NCLC cites the number of complaints that consumers have expressed with respect to cramming. NCLC Initial Comments, at 12. See, also, Attorney General Initial Comments, at 2. The Attorney General agrees with NCLC that the number of complaints does not reflect adequately the actual number of instances of cramming, because many instances go undetected. NCLC Initial Comments, at 12.

Furthermore, so long as it is profitable for industry members to collect on behalf of other entities, they lack an economic incentive to thwart cramming. A recent Senate Report observes:

> Telephone companies profit from cramming. Over the past decade, telephone companies have generated over $1 billion dollars in revenue by placing third-party charges on their customers' telephone bills. Since 2006, AT&T, Qwest, and Verizon have earned more than $650 million through third-party billing. Verizon explained that it ―receives a flat fee between $1 and $2 per charge for placing third-party charges‖ on its customers' bills. Because telephone companies generate revenue by placing third-party charges on their customers' bills, telephone companies profit from cramming. Documents reviewed by the Committee staff show that some telephone company employees feel financial pressure to approve third-party vendors even though the companies appear to be crammers.[16]

Contrary to Verizon's recommendation, the Department should not await the FCC's promulgation of cramming rules. Verizon Initial Comments, at 16-17. The Department instead should take the lead rather than await rules that may be a long time in coming. Attorney General, at fn. 1. Massachusetts consumers should not be held hostage to the slow process of the FCC but the Department should submit comments in the FCC's proceeding. *Id.* Furthermore,

[16]United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations Majority Staff, *Unauthorized Charges on Telephone Bills,* Staff Report for Chairman Rockefeller, July 12, 2011, at iii.

many complex proceedings await the FCC's resolution (e.g., special access rates, intercarrier compensation, universal service, etc.), and, therefore, cramming may not be resolved in the near future.

The Attorney General supports NCLC's recommendation that the Department promulgate cramming rules that require telecommunications providers to: offer third-party charge blocking capabilities to consumers; clearly delineate and separate third-party charges on consumers bills; and engage in some minimal amount of due diligence with respect to ascertaining the third party legitimacy before providing billing services. NCLC Initial Comments, at 13. Furthermore, the Department should consider NCLC's recommendation to enact rules that hold telecommunications providers that allow third-party cramming to occur accountable and make such violations "actionable." *Id.*

The Attorney General also concurs with NCLC that the Department's regulations should also anticipate and protect against fraudulent third-party payments on mobile bills, which, apparently has surfaced as a serious issue in other countries and could easily occur in the Unitied States. NCLC Initial Comments, at 14-15.

The Attorney General takes cramming complaints seriously and agrees with NCLC that contact information for the Department's Consumer Division should be including on Lifeline and LinkUp consumers' bills. NCLC Initial Comments, at 14. Indeed, the Consumer Division's contact information would be useful on all consumers' bills. The Attorney General supports NCLC's proposals that telecommunications providers be required to train representatives on cramming; log all complaints; and report cramming statistics to the Department periodically. *Id.*

Massachusetts has a long-standing precedent of taking the lead in shaping telecommunications policy. By way of example, in 1988, Massachusetts regulators implemented a policy to protect consumers from the market failure of the then pervasive alternative operator service ("AOS") industry (rendered irrelevant ultimately by the development of the wireless industry).[17] However, the FCC did not address the AOS market distortions until *after* the Department implemented its AOS consumer protection policy.[18]

In the same vein, Massachusetts regulators opened local markets to competition more than ten years before Congress enacted the Telecommunications Act of 1996[19] and the Department facilitated CLECs' collocation options in 1991,[20] several years before the FCC.[21] By opening the doors to local competition well in advance of national efforts, the Department brought the benefits of competition to consumers much sooner than had the Department awaited federal action.

---

[17] The Department determined that dominant carrier regulation was necessary where a company provided a service to "captive" customers, and, in so doing sought to protect consumers from exorbitant alternative operator services charges. DPU 87-72/88-72, *International Telecharge, Inc.* (1988). Although the AOS market has long-since vanished, the emergence of the cramming industry over the past decade underscores the fact that market imperfections still continue, and that consumers are often vulnerable to these types of "niche" businesses that evolve outside of regulatory oversight.

[18] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35: Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rcd 4736, 56 FR 40,793 (1991).

[19] DPU 1731, *IntraLATA Competition* (1985).

[20] On July 31, 1991, the Department approved a stipulation between NET and Teleport Communications-Boston that established physical collocation of third-party transmission equipment within eight NET central offices. That stipulation also provided that collocation arrangements would be governed by NET tariffs M.D.P.U. Nos. 10 and 15 (exchange and access tariffs), which provided guidelines for the general regulations and procedures associated with collocation. See, NET Collocation , D.P.U. 90-206/91-66 (1991) .

[21] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11FCC Rcd 15499 (rel. August 8, 1996), para. 551. Local Competition First Report and Order", aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part, and remanded sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) (Iowa Utilities Board). On its website, the FCC states: "On August 8, 1996, the Commission adopted the first collocation rules designed to implement section 251(c)(6) of the Communications Act of 1934, as amended, ("the Act"), 47 U.S.C. § 251(c)(6). Section 251(c)(6) of the Act obligates incumbent local exchange carriers (LECs) to provide, ``on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements." *See* http://www.fcc.gov/encyclopedia/collocation-requirements.

It would certainly disserve consumers in Massachusetts to wait for the FCC to finish its cramming proceeding. If and when state and federal regulations become duplicative, at such time, the Department could revisit its billing rules that prevent cramming.

M. Should consumer protection measure protect small businesses in addition to residential consumers and, if so, how should small businesses be defined.

The CLECs state that "[a]s a rule, the CLECs do not serve residential customers" and for this reason they do not express a position regarding the application of billing and termination rules as they relate to residential service. CLECs Initial Comments at 1. They do, however, oppose the application of billing and termination rules to small business customers. *Id.* at 2. CLECs contend that there is no evidence of a problem faced by small business customers and that businesses in general "are generally more capable of and sophisticated in addressing commercial and legal matters involving their suppliers, including suppliers of telecommunications services" and therefore, do not need the consumer protection afforded to residential consumers. *Id.* Verizon and NECTA also oppose regulations to protect small businesses because, among other reasons, the "business market is extremely competitive" (Verizon Initial Comments at 17), "small businesses are sophisticated consumers" (NECTA Initial Comments, at 22; see also Verizon Initial Comments at 17), and because regulations would have little benefit yet impose higher costs (NECTA Initial Comments at 22).

The Attorney General is not persuaded that small businesses are "sophisticated" customers, nor is the Attorney General persuaded that competitive forces protect small businesses. Furthermore, there is no rational basis for treating small commercial and industrial customers differently from residential customers. Therefore, there is no need to define "small business" for the purpose of billing and termination rules. All customers should be protected by billing and termination rules: A violation of M.G.L. c. 93A is still a violation no matter the category of customer to whom the unfair and deceptive trade practices are directed. Similarly, Chapter 159, Section 12 does not distinguish between customers who are entitled to protection under Department regulation. If the Department creates additional billing and termination consumer protections, they should apply to all customers. Applying billing and termination rules only to residential customers would be arbitrary and capricious.

IV. CONCLUSION

The Attorney General urges the Department to take the necessary steps to implement "modern" billing and termination regulations in a timely manner. As the Attorney General demonstrates in her initial comments and in these reply comments, the level of competition that now exists in Massachusetts markets is not sufficient to protect consumers against the adverse impacts of market failures. The Attorney General welcomes the evolution of new technology and of diverse suppliers, but customers' migration to new technology should not result in an erosion of basic consumer protection. The Department, working within its existing level of authority, can take steps to ensure just, reasonable, and fair terms and conditions for billing and termination practices by "traditional" telecommunications companies, wireless providers, and cable companies.

The Attorney General appreciates the opportunity to offer these reply comments.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

By: Sandra C. Merrick
Charlynn R. Hull

/s/ Sandra Callahan Merrrick
Assistant Attorney General
Massachusetts Attorney General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: September 16, 2011