

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: ESTABLISHING BILLING AND TERMINATION PRACTICES  
FOR TELECOMMUNICATIONS CARRIERS

DTE 06-8

REPLY COMMENTS OF THE NATIONAL CONSUMER LAW CENTER

**I. Introduction**

On April 7, 2006, the Department opened this docket to establish billing and termination regulations for telecommunications carriers. On June 8, 2006, NCLC, with permission from the Department, submitted its Opening Comments in this docket. NCLC respectfully submits these Reply Comments in response to the Opening Comments of the industry.

**II. Strong Billing and Termination Rules Are Vital For a Strong Residential Telephone Service Marketplace**

The predominant wireline carrier Verizon and other parties, especially AT&T Communications of New England,<sup>1</sup> mount a near-frontal assault on the very notion of state regulation of telecommunications companies. AT&T, for instance, speaks of “intermodal competition” having “arrived in force,” offering a “dazzling choice of services,” and warns of “industry-threatening” regulation. In a similar vein, much of Verizon’s argument is premised on the notion that there is no “market failure”<sup>2</sup> and the assertion that only “guidelines,” rather than prescriptive regulations, are necessary to protect consumers.

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<sup>1</sup> AT&T in its comments does not describe the nature of its current or prospective business in Massachusetts, and it is not easy to discern from its comments which sector of the market it is most interested in addressing.

<sup>2</sup> Verizon Comments, Attachment I, p. 3, comment B.3.

AT&T is correct that the current state of the telecommunications market “dazzles” consumers, in the sense of “overpower[ing] or dim[ming] (the vision) by intense light” and “bewilder[ing]. . . [or] confusing”<sup>3</sup> consumers. Indeed, the telecommunications market is characterized by a truly dazzling array of service plans and calling packages that change frequently and that bewilder and confuse consumers. Telephone bills, especially those from wireless carriers, have become 20-plus-page exercises in inscrutability.

As Federal Communications Commissioner Copps noted in the context of the Truth-in-Billing docket, virtually all parties agree in principle that “markets function best when consumers have access to accurate and meaningful information.” But Commissioner Copps then noted how rarely that is the case in telecommunications markets:

It’s baffling how complicated [telephone bills] are. The explosion of new services and the line items and fees accompanying them have made it more difficult than ever for consumers to compare rates and shop around. You need an accountant or a lawyer — preferably both — to root out what you’re being charged for and why.<sup>4</sup>

The industry discussion about the state of competition in the marketplace confuses different definitions of the marketplaces being described. For example, the CMRS discussion is focused on the competitiveness of the wireless marketplace, not the residential local phone service market.<sup>5</sup> A major blind-spot in the industry discussion about competition is that not all consumers can afford or want the newer technologies such as VoIP or bundled services. Strong billing and termination rules are important for all consumers, and are particularly important for low-income, fixed income and low-

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<sup>3</sup> The Random House Dictionary of the English Language (1969).

<sup>4</sup> Separate Statement of Commissioner Michael J. Copps in CC Docket 98-170, *2<sup>nd</sup> Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking* FCC 05-55 (rel. March 18, 2005) (approving in part, dissenting in part). Commissioner Copps’ comments bring to mind the Don Henley lyric, from “Gimme What You Got,” that if you “cross a lawyer with the godfather, [he will] make you an offer that you can’t understand.”

<sup>5</sup> Comments of CMRS Providers at 3.

volume telephone service consumers. The National Regulatory Research Institute reports on an FCC analysis showing that states that had established strong do-not-disconnect policies to protect access to local phone service had higher telephone penetration rates than states without do-not-disconnect protections.<sup>6</sup>

A partially competitive telecommunications market is not an excuse for state regulators to repeal existing regulations. If anything, the current wireline market may be the worst of both worlds from the consumer's perspective. Verizon effectively dominates the local residential market almost as if it were still a government-franchised monopoly, yet because Verizon perceives itself as facing competitive pressures, it seeks to cut back on policies that benefit vulnerable low-income and elderly customers. Despite Verizon's reference to "the surge of local . . . competition in the residential . . . market,"<sup>7</sup> Verizon offers no statistics about the actual percentage of the residential market that it still controls. The Attorney General has offered uncontradicted testimony that Verizon in fact still controls approximately 80% of the market. Moreover, even its competitors are themselves major corporations who generally offer adhesion contracts.<sup>8</sup>

Moreover, the premise of Verizon's comments that a regulatory agency should find "market failure" before deciding to regulate a particular consumer market is belied by the entire history of consumer regulation in the United States. Surely, an industry that in Massachusetts is represented by such mammoth wireline and wireless corporations as Verizon, Verizon Wireless, Cingular, and Sprint-Nextel should not be allowed to escape regulation simply because the industry is no longer a pure monopoly.

Some of the most long-standing and detailed regulatory regimes apply to

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<sup>6</sup> Rosenberg, Edwin, Ph.D, Lilia Perez-Chavolla, Ph.D, Jing Liu, M.A, *Commissioner Primer: Universal Service* published by the National Regulatory Research Institute (May 2006) pp.24-25 available at <http://www.nrri.ohio-state.edu/Telecom/universal-service-primer/>.

<sup>7</sup> Verizon Comments, p. 2.

<sup>8</sup> "Adhesion contract. A standard-form contract prepared by one party, to be signed by the party in a weaker position, usu. a consumer, who has little choice about the terms." Black's Law Dictionary, 7<sup>th</sup> Ed. (1999).

industries which have hundreds if not thousands of market entrants, including some fairly small economic players who, unlike most telecommunications carriers, have little ability to exert market power. For example, the Real Estate Settlement Procedures Act (RESPA”), 12 U.S.C. §§ 2601 *et seq.*, has been on the books for over thirty years and is intended to “insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process” as well as to guard against “unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country.” (12 U.S.C. § 2601(a).) RESPA was adopted and remains on the books despite the fact that there are likely thousands of lenders, mortgage brokers and mortgage servicing companies who compete furiously with each other for the business of individual consumers.<sup>9</sup> Many of these lenders and brokers are very small economic players yet they still must comply with detailed regulatory requirements. Similarly, the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* was adopted not because there are only a handful of debt collectors in the United States, but because Congress found that “there is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.”<sup>10</sup> There are likely thousands of debt collectors in the United States, yet their collection practices are strictly regulated, not because they are few in number or monopolistic, but because the potential for consumer harm is great.<sup>11</sup>

Billing and termination regulations are required to foster important societal policies such as protecting seriously ill customers from loss of service, even if regulated companies are not engaging in unfair practices. Furthermore, as the examples below illustrate, there is certainly reason to be concerned that the very small handful of wireline

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<sup>9</sup> For example, a consumer can go any number of websites and quickly receive multiple offers from lenders, usually on an apples-to-apples basis, and specific to the state in which the consumer lives. Telecommunications consumers have an exceedingly hard time making any similar comparisons, despite the relatively small number of carriers.

<sup>10</sup> 15 U.S.C. § 1692(a).

<sup>11</sup> Other major consumer protection laws that regulate markets with very large numbers of economic actors include, *inter alia*, the Truth In Lending Act, 15 U.S.C. §§ 1601 *et seq.* and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*

and wireless carriers that dominate the market in Massachusetts engage in practices that harm consumers, and that individual consumers need the protections of formally-promulgated regulations to protect them from harm.

Just within the past month, an appellate court in California upheld the imposition of multi-million dollar fines on Pacific Bell Wireless (d/b/a Cingular) for unfair imposition of early termination fees and failure to disclose network problems with Cingular's network coverage and service, among other unjust and unfair practices.<sup>12</sup> *Pacific Bell Wireless LLC v. Pub. Util. Comm'n of California*, 44 Cal. Rptr. 3d 733 (Cal. App. 4<sup>th</sup> Dist. June 20, 2006).

In a major consumer action brought against AT&T regarding its "Consumer Services Agreement" ("CSA"), the document that purported to govern, *inter alia*, the resolution by arbitration of disputes between AT&T and any dissatisfied customers, a federal district court found that AT&T:

was actually rewriting substantially the legal landscape on which its consumers must contend. Aware that the vast majority of service related disputes would be resolved informally, AT&T sought to shield itself from liability in the remaining disputes by imposing Legal Remedies Provisions [in the CSA] that eliminate class actions, sharply curtail damages in cases of misrepresentation, fraud and other intentional torts, cloak the arbitration process with secrecy and place significant hurdles in the path of a potential litigant. It is not just that AT&T wants to litigate in the forum of its choice – arbitration; **it is that AT&T wants to make it very difficult for anyone to effectively vindicate her rights**, even in that forum.<sup>13</sup>

In its factual findings, the court noted that AT&T had "conducted market research" to design its notices regarding the CSA so that, at some point, "most [consumers] would stop reading and discard the letter" explaining the provisions of the new CSA, so that customers would not become "concerned" about its provisions. As one "high ranking member" of AT&T's team that designed the notices stated, he did not want customers "to

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<sup>12</sup> *Pacific Bell Wireless LLC v. Pub. Util. Comm'n of California*, 44 Cal. Rptr. 3d 733 (Cal. App. 4<sup>th</sup> Dist. June 20, 2006).

<sup>13</sup> *Ting v. AT&T*, 182 F. Supp. 2d 902, 938-939 (N.D. Cal. 2002) (emphasis added); *aff'd in part, rev'd in part*, 319 F. 3d 1129 (2003), *cert. den'd sub nom. AT&T Corp. v. Ting*, 540 U.S. 811 (2003).

pay attention to the details” of this all-important CSA.<sup>14</sup> Ultimately, the federal court found that the CSA was “illegal and unconscionable and must be enjoined.”<sup>15</sup>

NCLC discusses these cases<sup>16</sup> to contrast the reality of what consumers actually experience against the rosy picture the carriers paint of a highly-competitive industry that poses so little risk of harm to consumers that it should be unregulated. In fact, the carriers in this and many other states consistently make a set of arguments that are so insidious and inherently inimical to the interests of consumers that they should be outright rejected by the Department. First, they seek to expand the scope of federal pre-emption to the maximum extent possible to deter states from engaging in any regulation.<sup>17</sup> But before the FCC, carriers trumpet the broad jurisdiction of states over unfair practices as an excuse for the FCC not regulating various practices.<sup>18</sup>

Turning to some of the more specific recommendations Verizon and other carriers make about the continued need for rules such as those currently embodied in DPU 18448, there should be little doubt that Verizon and other carriers urge the Department to adopt nothing more than “Guidelines” because they have every expectation that “Guidelines” will be mostly unenforced in practice, if not literally unenforceable as a matter of law. Even now, very few consumers or consumer advocates in Massachusetts are aware of the provisions of DPU 18448, in part because it is so much harder for a non-expert to know of the existence of this 30-year old order than of formally promulgated regulations that

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<sup>14</sup> *Ting v. AT&T*, 182 F. Supp. 2d at 911-912.

<sup>15</sup> *Id.* at 939.

<sup>16</sup> The AG in his comments, pp. 5-6, also notes cases that have been brought in Massachusetts against various carriers.

<sup>17</sup> E.g., Verizon Comments, pp. 9-10, regarding jurisdiction over VoIP and wireless.

<sup>18</sup> See, e.g., Separate Statement of Commissioner Michael J. Copps in CC Docket 98-170, *2<sup>nd</sup> Report and Order, Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, FCC 05-55 (rel. March 18, 2005) (approving in part, dissenting in part), in which Commissioner Copps notes that state laws of general applicability to all consumer transactions are probably not sufficient to protect telecommunications consumers. Commissioner Copps also notes that FCC enforcement of various consumer rules could best be described as toothless, so that consumers have no effective redress by complaining to the FCC.

appear in the Code of Massachusetts Regulations and that are therefore widely available. As NCLC noted in its initial comments (pp. 6-9, 13-15), it is often harder for consumers to get information about rules and guidelines governing telecommunications carriers than other regulated companies (such as electric and gas), and there appears to be less compliance by Verizon with the letter and spirit of Lifeline compared to the compliance of electric and gas companies with the relevant discount rate laws. This is not an environment in which a lighter regulatory hand is likely to benefit consumers. To the contrary, it should be clear to the Department that the very few and very large companies that dominate the market are more likely to leave consumers confused and disgruntled if existing rules, already hard to find, are turned into mere guidelines.

NCLC's positions on the Department's numerous items for discussion are set forth in our comments. We focus our remaining reply to comment on a few particularly troublesome industry comments to the DTE questions on billing and termination practices.

### **III. NCLC's Reply to Various Industry Comments**

#### **Customer Notice About Rates, Terms and Conditions**

**DTE Item C.1** NCLC disagrees with Verizon's proposition that carriers should be free to decide when and how information regarding rates and terms and conditions should be provided to consumers or as a fallback, carriers should only be required to provide one notice (either written or electronic). As discussed in detail in NCLC's opening comments on C.1, if the Department hopes to foster a more competitive telecommunications marketplace, customers must have access to clear, complete and accurate information about prices, terms and conditions. Prospective customers need this information to be able to shop around for service and make educated decisions and current customers need this information when they are looking around for another carrier. Information on the lowest-priced service as is required in the current Rule 2.1, is particularly important to low-income consumers. NCLC, in its comments on DTE Item F.2, noted the importance of paper notice given the problems with electronic notice for low-income consumers. Thus, it is imperative that consumers, not the carrier, decide on the format of the notices.

NCLC's opening comments on DTE Item C.1 also discussed the current lack of awareness about the rules regarding payment options. Notice of payment options and protections should be provided at the time of signing up for service and at periodic intervals and when termination notices are sent.

**DTE Item C.2** NCLC notes that Verizon does agree that carriers should provide advance notice of rate increases and changes in terms and conditions. NCLC's discussion of the format and the timing of these notices is in section C.2 of our opening comments. NCLC disagrees with Verizon's position that consumers do not need any advance notice of a change in ownership or control. Consumers have the right to know with whom they are dealing.

**DTE Item C.3** Verizon opposes the requirement that carriers post their tariffs on their own website, but does not explain why they would be fine with if the information was posted on the Department's website instead. NCLC notes that residential consumers relying on the Internet to research telephone service plans would likely visit the phone company websites and we suspect few, if any, would venture to search a tariff website on the Department's website. While not all consumers, especially low-income consumers will have ready access to the Internet, it is still a powerful tool. If the goal is to foster a competitive marketplace, consumers need access to complete and accurate information about the rates, terms and conditions of the carrier's plans in order to make informed choices. This information must be provided in clear, plain terms. The FCC noted the importance of public disclosure of rates, terms and conditions for long-distance service and noted that "There is abundant evidence that making information available to consumers is beneficial to competitive markets."<sup>19</sup> The unavailability of this information leads to a marketplace where carrier representatives wield the power to herd consumers toward more expensive plans with features that the consumers do not necessarily want or need.

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<sup>19</sup> FCC 99-47, CC Docket No. 96-61, *Second Order on Reconsideration and Erratum*, (Rel. March 31, 1999) ¶ 15 (In this order the FCC reinstates the public disclosure requirements for IXCs regarding rates, terms and conditions and those IXCs with websites are required to post this information on their website).

## **Billing**

**DTE Item D.2:** AT&T is inaccurate in its assertion that the Department lacks the jurisdiction over the state's ability to regulate wireless carriers. The plain language of the Federal Communications Act shows that Congress expressly reserves state authority over "other terms and conditions" of wireless service in 47 U.S.C. § 332(c)(3)(A). The legislative history supports this conclusion:

It is the intent of the Committee that the states still would be able to regulate the terms and conditions of the [commercial mobile and private land mobile] services. By 'terms and conditions,' **the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters . . . or such other matters as fall within a states lawful authority.** This list is intended to be illustrative only and not meant to preclude other matters generally understood to fall under terms and conditions.<sup>20</sup> (Emphasis added.)

In addition, the general savings clause of the Federal Communications Act provides that "nothing in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." (47 U.S.C. § 414.) The 6<sup>th</sup> Circuit found that "on its face, the preemptive reach of Section 332 is limited" in *GTE Mobilnet of Ohio v. Johnson*.<sup>21</sup> The 7<sup>th</sup> Circuit has found that billing practices regulations were not preempted by 47 U.S.C. § 332(c)(3)(A).<sup>22</sup> A recent California Court of Appeals decision also held that while the commission is preempted from regulating rates or the entry of a wireless provider into the market, it is not preempted from regulating other terms and conditions of wireless telephone service.<sup>23</sup>

We also note that standard labels do not run afoul of the First Amendment free

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<sup>20</sup> See *H.R. Rep. No. 103-111*, at 253, 261 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 588.

<sup>21</sup> 111 F.3d 469, 477 (6<sup>th</sup> Cir. 1997). See also *Cedar Rapids Telephone Co. v. Miller*, 280 F.3d 874 (8<sup>th</sup> Cir. 2002).

<sup>22</sup> *Fedor v. Cingular Wireless Corp.*, 355 F.3d 1069, 1074 (7<sup>th</sup> Cir. 2004); See also, *Esquivel v. S.W. Bell Mobile Systems, Inc.*, 920 F.Supp. 713 (S.D. Tex. 1996); *State of Iowa v. U.S. Cellular Corp.*, 2000 WL 33915909 (S.D. Iowa Aug. 7, 2000).

<sup>23</sup> *Pacific Bell Wireless LLC v. Pub. Util. Comm'n of California*, 44 Cal. Rptr. 3d 733 (Cal. App. 4<sup>th</sup> Dist. June 20, 2006).

speech. The Supreme Court has noted many times that commercial speech is entitled to less protection than non-commercial speech.<sup>24</sup> The case law makes a distinction between regulating content and conduct. Labeling in the interest of clarity is not an impermissible restraint on free speech.<sup>25</sup>

AT&T's sweeping assertion of preemption disregards the principles of federalism, the statutory language and intent and judicial precedent regarding state jurisdiction over wireless carriers.

NCLC also notes that recent activity by the FCC provides an avenue for state jurisdiction over VoIP. In the recent FCC decision regarding wireless and VoIP contributions to the Universal Service Fund, the FCC discussed the scope of preemption of VoIP in its *Vonage Order*.<sup>26</sup> The FCC states:

Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries.[footnote omitted]. . . Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. [footnote omitted] Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected

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<sup>24</sup> See *Bolger v. Youngs Drug Product Corp.*, 463 U.S. 60, 64-65 (1983) (commercial speech is entitled to less protection than other constitutionally safeguarded forms of expression); *Friedman v. Rogers*, 440 U.S. 1 (1979); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 772, n.24 (1976)(government may require a commercial message to appear in such a form or include such additional information, warnings or disclaimers as are necessary to prevent its being deceptive).

<sup>25</sup> The FCC has also previously noted that, "[c]ommerical speech that is misleading is not protected speech and may be prohibited." See *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking* (1999 TIB Order), FCC 99-72 (rel. May 11, 1999) at ¶ 60, Citing *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-64 (1980).

<sup>26</sup> *In the Matter of Universal Service Contribution Methodology etc.*, FCC 06-94, *Report and Order and Notice of Proposed Rulemaking* (Rel. June 27, 2006).

VoIP provider.<sup>27</sup>

Thus, AT&T's assertions about the limitations of state jurisdiction are overstated for both wireless and VoIP.

**DTE Item D.3.** AT&T proposes that as long as monthly billing is offered as an option for customers, carriers should be allowed to provide alternatives to the customers who want them. While NCLC is not opposed to the option of alternative billing periods for customers who want them, the assumption should be that telephone bills will be sent on a monthly cycle unless the consumer expressly consents to an alternative format. For consumers trying to make ends meet on tight budgets, especially low-income and fixed-income consumers, it is easier to budget for monthly utility bills, than less frequent and larger cumulative bills.

**DTE Item D.4.** Carriers have urged the Department to allow the promotion of electronic notices and billing. NCLC urges the Department to keep the very real Digital Divide issues in mind. Paper billing is still necessary for many low-income consumers who are less likely to have Internet access at home. In addition, consumers who have Internet access at the time of signing up for telecom service may opt later to drop their Internet service. As discussed in our opening comments, from the consumer's perspective, electronic billing is not equivalent to paper billing. For these reasons, NCLC urges the Department to require paper billing as the standard format for billing, unless the consumer expressly consents to electronic billing.

**DTE Item D.7** Verizon's proposal to limit the option to pro-rate installation and restoration charges to Lifeline customers would exclude many consumers experiencing financial hardship. The state legislature has recognized that households up to 200% of poverty are experiencing financial hardship meriting eligibility for energy assistance and arrearage forgiveness.<sup>28</sup> This pool of households is far larger than the number of

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<sup>27</sup> Id at ¶ 56.

<sup>28</sup> Mass. Gen. Laws ch.164, §1F and HEAT Act, ch. 140 §17.

households in the state receiving Lifeline assistance. In Massachusetts, the percentage of eligible households receiving Lifeline is around 23 percent.<sup>29</sup> We also note, as discussed in our opening comments (pages 6-7), Verizon resisted efforts to include telecommunications companies in the Department's DTE-01-106 orders regarding the electronic matching of eligible households into utility discount programs. NCLC urges the Department to formally adopt as a regulation the current Rule 3.5 which places the choice to prorate with the consumers. This ensures that the maximum number of consumers who need this flexibility can use it, thus promoting access to essential telephone service.

**DTE Item D. 8** NCLC strongly opposes Verizon's proposal to relegate requirements about the form and content of notices to guidelines. The protections in Rule 3.6 provide important consumer protection information. In particular, given the high percentage of Massachusetts residents that do not speak English at home, 19.5%, the in-language protections should be strengthened per NCLC's proposals in our opening comments (pages 21-22) and be formally adopted as a regulation.

**DTE Item D.9:** NCLC's opposes Verizon's proposal that the Department merely adopt guiding principles and defer consumer billing protections to the FCC. NCLC is concerned about the confusion and fraud that can occur if non-telecommunication charges are allowed on already confusing phone bills. NCLC's proposal would not preclude the ability of a single bill for multiple telecommunication services. Instead, it leaves the Department in control over which "non-telecommunication" charges can appear on the phone bill. Furthermore, promoting and preserving access to basic local service is critical towards achieving universal service. Failure to pay non-telecommunication charges should not lead to denial, interruption or disconnection of local phone service, and partial payments should first be applied to the local phone bill charges.

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<sup>29</sup> NCLC estimates that around 578,000 Massachusetts households are income-eligible for Lifeline and LIHEAP (i.e., 200% of poverty based on 2000 Census data), yet data from the FCC's 2005 Monitoring Report Table 2.6 show that in 2004, only 132,619 Massachusetts households had subscribed to Lifeline (and we note the highpoint for enrollment was 167,699 back in 1999).

## **Credit Requirements, Deposits and Late Payments**

**DTE Item E.1.** NCLC strongly opposes Verizon's proposal to relegate all credit, deposit and late payment rules to mere guidelines.

NCLC also strongly opposes Verizon's proposal that carriers be allowed to require advance payment or Direct Debit Payment Option in addition to the option to require a deposit. Requiring a deposit is adequate to protect the company from the risk of customer non-payment and the other two options should not be allowed as a condition of service. Requiring a consumer to prepay for service is analogous to the dangerous use of pre-payment meters for electric service. With pre-paid electric service, consumers lose their traditional regulatory protections which includes preserving service during disputes and providing protections from disconnections for certain vulnerable populations and during certain periods of time where the utility is unavailable to reconnect, and providing vital notice of pending disconnection and an opportunity to appeal. Consumers also run the risk of more frequent disconnections should their usage increase. Prepaid phone service is inferior to the traditional phone service and unnecessary as a tool to protect against an unpaid bill.

Direct debit payment is also not feasible for low-income and fixed-income households who are already juggling and sacrificing necessities to make ends meet.<sup>30</sup> A substantial number of low-income and non-white households do not have bank accounts.<sup>31</sup> For those that do, there often simply isn't the financial cushion for this option.

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<sup>30</sup> National Energy Assistance Directors Association, *National Energy Assistance Survey, Table 39* (April 2004) (To pay their energy bills, 22% of LIHEAP recipients went without food, 38% went without medical or dental care, 30% did not fill or took less than the full dose of a prescribed medicine) available at [www.neada.org](http://www.neada.org).

<sup>31</sup> See George Samuels, Federal Reserve Bank of Boston, *Banking Unbanked Immigrants through Remittances*, (general data on the unbanked from the 2001 Federal Reserve Survey of Consumer Finances show 9% of all families are unbanked, but 31% of families in the lowest income quintile are unbanked and 22% of nonwhites and Hispanics are unbanked versus 5% of non-Hispanic whites) available at <http://www.bos.frb.org/commdev/c&b/2003/fall/unbanked.pdf>.

NCLC is also concerned that draconian proposals like Verizon's regarding credit requirements, deposits and late payments, will have a discriminatory effect on minorities and the poor. Reliance on credit scores is likely to have a detrimental and disparate effect on vulnerable consumers. Studies have shown that African Americans and Latinos are substantially more likely than whites to have a credit score below 620.<sup>32</sup> One study found that 22 percent of Hispanics did not have enough of a credit history to generate a credit score<sup>33</sup> and another study found that, for the general population, one in ten consumer credit files did not have enough information to generate a score.<sup>34</sup> AARP's survey of credit scoring and mortgage lending found that the very poor, less educated and those living in urban areas may be underrepresented in credit bureau files and that minorities may be underrepresented in credit bureau files.<sup>35</sup>

It is likely that the households who will be most effected by these proposals will be low-income households. There is a strong correlation between income and late payments and disconnections of phone service. Households in the lowest income quintile are more than 7 times as likely to have their phone service disconnected as upper income households.<sup>36</sup> Households in the lowest income quintiles are also roughly 7 times as likely to have failed to pay their fuel oil, gas or telephone bill in full, compared to households in the highest quintile.<sup>37</sup>

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<sup>32</sup> See Roberto G. Quercia, Michael A. Stegman, Walter R. Davis & Eric Stein, *Performance of Community Reinvestment Loans: Implications for Secondary Market Purchases, in Low Income Homeownership: Examining the Unexamined Goal* 363, tble. 12-7 (Nicolas P. Retsinas and Eric S. Belsky, eds. 2002); Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families*, Sept. 1996 at 27 (African Americans are three-times likelier than whites to have a FICO score below 620; Hispanics are twice as likely as whites to have a FICO score below 620).

<sup>33</sup> See Michael Stegman, et al., *Automated Underwriting: Getting to Yes for More Low-Income Applicants*, presentation to the Research Institute for Housing America Conference (Apr.2001).

<sup>34</sup> Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers* 38 (Dec. 17, 2002), available at [www.consumerfed.org/121702CFA\\_NCRA\\_Credit\\_Score\\_Report\\_final.pdf](http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_final.pdf).

<sup>35</sup> Neal Walters, Sharon Hermanson, *Credit Scores and Mortgage Lending*, AARP Public Policy Institute at 4 (Aug. 2001).

<sup>36</sup> U.S. Census Bureau, Survey of Income and Program Participation, 1996 Panel. Wave 8 (rel. May 2003).

<sup>37</sup> *Id.*

**DTE Items E.6 & E.7** As commented on in our opening comments to E.6 and E.7 and our comments in the recent DTE 06-26 proceeding, NCLC strongly opposes Verizon's proposal that carriers can assess fees or interest on late payments, to collect unconstrained late fees, recover collection costs and assess a finance charge on deferred payment plans.

### **Termination of Service**

**DTE Item F.1.** NCLC strongly opposes Verizon and Comcast's proposal regarding the ability to disconnect all services in a bundle for failure to pay. Massachusetts has a track record of being a national leader in developing state policies that assist low-income households in preserving access to electric, gas and phone services. Indeed, this past winter, the legislature passed the HEAT legislation, Ch. 140 of the Acts of 2005 which directed electric and gas companies to propose arrearage management programs under which the companies will write off a portion of the arrears owed if the customer stays current with an agreed-upon payment plan. The Department promptly approved those utility proposals, with minor modifications in some instances.<sup>38</sup> The proposal to disconnect all services for failure to pay runs counter to that proud tradition of promoting and preserving access to vital utility services. NCLC's proposal regarding bundled service in our opening comments to B.1 and B.2 sets forth how to protect access to local service where there is a failure to pay.

**DTE Item F.2** NCLC strongly opposes Verizon's notion that a company need only send one termination notice. Reasonable, adequate notice regulations are necessary so that consumers have adequate time to respond to preserve utility service. One serious danger in requiring only one termination notice is that the consumer never sees it. It is not unusual for mail to be misdirected, misplaced or lost. The Department should not water down this essential consumer protection and instead should formally adopt the current notice rules into regulations.

**DTE Item F.3** NCLC strongly disagrees with Verizon's proposal to eliminate

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<sup>38</sup> DTE 05-86.

disconnection protections for seniors. Again, Verizon, places too much reliance on the enrollment into the Lifeline program as the proxy for determining which households are low-income households. As discussed in our response to industry comments on DTE Item D.7, the Lifeline participation rate in the state is incredibly low, around 23%. In addition to the extremely limited participation in the current Lifeline program, there are unique public policy reasons for special elderly account protections. The vast majority of older people prefer to live in their own homes as they age.<sup>39</sup> Basic utility services, including phone service, are essential for elders who wish to live independently. The phone is a particularly important necessity as elderly households, as opposed to the general population, have an increased need for access to emergency and medical services as health declines; seniors with limited mobility rely on telephone services for access to family, community, support services and the medical services, etc. Thus, the protections provided in the current rules should not be eliminated, rather they should be adopted into formal regulations.

#### **IV. Millar Isar’s Request Bear’s a Tenuous Relationship to This Proceeding And Should Be Addressed In Some Other Forum**

Millar Isar, Inc., a self-described “regulatory consulting firm,” filed comments on behalf of a group of anonymous “non-facilities-based interexchange resale clients.” Millar Isar does not explain why its clients chose anonymity, Millar Isar Comments, p. 1, n. 2, and NCLC questions whether the Department should expend resources responding to the requests of Millar Isar’s undisclosed principals. Millar-Isar makes somewhat vague claims that one or more unspecified local exchange carriers (“LECs”) violate their obligations to “inform subscribers who initiate primary carrier changes” that those subscribers may have “existing financial obligations to the former provider,” without specifying the nature or extent of those obligations or why it is a LEC’s obligation to

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<sup>39</sup> See the speech by William Novelli, AARP CEO, *Universal Village: Livable Communities in the 21<sup>st</sup> Century* (June 15, 2005) (90 percent of older people surveyed by AARP state that they prefer to live in their homes as they age) available at [http://www.aarp.org/research/housing-mobility/indliving/a2005-06-15-novelli\\_remarks.html](http://www.aarp.org/research/housing-mobility/indliving/a2005-06-15-novelli_remarks.html); Laurel Beedon, Lisa Southworth, John Gist, *The State of 50+ America 2006*, AARP Public Policy Institute at 43 (January 2006) available at [http://www.aarp.org/research/housing-mobility/indliving/fifty\\_plus\\_2006.html](http://www.aarp.org/research/housing-mobility/indliving/fifty_plus_2006.html).

explain terms or conditions imposed by some other carrier on the switching customer.  
Comments, p. 1.

The exact nature of the apparent dispute between Millar Isar's unknown clients and the unnamed LECs is hard to discern from the comments filed. Moreover, Millar Isar's proposed remedy is also somewhat opaque.<sup>40</sup> It appears to call upon a LEC to learn about the switching customers obligations to a third party, and to "confirm whether such obligations" have been met. The issues which Millar Isar raises bear only a tenuous relationship to the present proceeding and would best be addressed in some other forum.

Respectfully Submitted,

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<sup>40</sup> Millar-Isar and its clients "urge the Department to institute a new requirement that LECs affirmatively notify end users who initiate account transfers of potential remaining contractual obligations and urge them to confirm whether such obligations remain before transferring accounts."