

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**RE: Modernization of Department Billing And Termination
Consumer Protection Regulations; Public Informational Forums
And Comment**

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER

These Comments by the National Consumer Law Center (“NCLC”) are timely submitted as a response to the Notice of Public Informational Forums by the Massachusetts Department of Telecommunications and Cable (“Department” or “DTC”) on June 30, 2011, requesting comments on the modernization of the Department’s billing and termination consumer protection regulations. Pursuant to that request, NCLC submits the following.

BACKGROUND

In the Department’s Notice of Public Information Forums (“June Notice”), the DTC recognized several underlying reasons for gathering information and input on revising its billing and termination regulations: (1) in the 34 years since the enactment of the current Rules and Practices Relating to Telephone Service to Residential Customers (“B&T”), D.P.U. 18448, there have been significant technological changes in the communications industry, including mass marketing and adoption of wireless service as a telecommunications choice; (2) many traditional telephone companies now offer video service and/or broadband service; (3) the types and nature telecommunications services that consumers purchase for use in their homes and daily lives have changed; and (4) the Department now seeks to adapt its rules, so that they reflect and address

market realities and protect consumers effectively. The Department listed several issues for Comment on the “appropriate scope and application of the minimum consumer protection rules” applicable to both voice and video service.” June Notice at 3.

NCLC appreciates the opportunity to submit these Comments to the Department. NCLC agrees with the Department that an investigation into regulatory changes is necessary to help ensure that Massachusetts consumers continue to be protected by the Department’s rules in this changing telecommunications landscape.

COMMENT

A. The Department Has Authority to Promulgate Consumer Protection Regulations And These Protections Should Apply to Wireline and Wireless Service, Cable Television Service, and Bundled Services.

While states are generally preempted by federal law from regulating entry into the market and the rates charged by wireless companies, states may, upon approval by the Federal Communications Commission (“FCC”), exercise authority to regulate rates where market conditions fail to adequately protect consumers from unjust and unreasonable rates or unreasonably discriminatory rates.¹ Additionally, states have authority, under the plain language of the Federal Communications Act, to ensure the universal availability of mobile service at affordable rates.² Reconnection fees and late fees are not rates, and can also be regulated by states.³ The Communications Act also plainly gives the states authority to regulate terms and

¹ 47 U.S.C. § 332(c)(3).

² *Id.* See also Cellular Telecommunications Industry Ass’n v. F.C.C., C.A.D.C.1999, 168 F.3d 1332, 335 U.S.App.D.C. 32 (state universal service plan contribution requirements from mobile telecommunications providers).

³ See Ruwe v. Celco Partnership, N.D.Cal.2009, 613 F.Supp.2d 1191 (reconnection fees are not rates; complaint against company regarding reconnection fees under state law is not preempted); Brown v. Washington/Baltimore

conditions of mobile service.⁴ Issuing new consumer protection regulations that apply to wireline, wireless, cable television and bundled services is permissible within these parameters, and the Department should not hesitate to do so, where consumer protection is sorely lacking under outdated billing and termination rules for the telecommunications industry in Massachusetts.

There continues to be a need for consumer protection regulations regarding telecommunications services from which consumers obtain essential basic voice service. However, the understanding of what constitutes basic telephone service has changed. Consumers, for whom telephone service was once exclusively provided over copper landlines (wireline), can now choose to make and receive calls using wireless and cable technologies. In many instances, telecommunications over wireless and cable technologies have replaced wireline telephone service in consumer households. Twenty percent of the population now relies exclusively on a mobile phone.⁵ Along with the new technologies for making telecommunications service available, the characteristics of experiencing a telephone call have also changed. Calls have become mobile with wireless technology. Additionally, calls are now not only audio in quality, but may include visuals such as video conferencing using cable telephony, or text messaging on a wireless phone may act as a substitute for a quick oral conversation.

Cellular, Inc., D.Md.2000, 109 F.Supp.2d 421(late fees are not “rates” to which federal preemption under the Communications Act applies; they are penalties that fall under “other conditions” which states can regulate).

⁴ Id; National Ass'n Of State Utility Consumer Advocates v. F.C.C., C.A.11 2006, 457 F.3d 1238 (overruling FCC's attempt to preempt state regulation requiring line item billing on wireless company bills), *modified on denial of rehearing* 468 F.3d 1272, *rehearing en banc denied, certiorari denied*, 128 S.Ct. 1119, 552 U.S. 1165, 169 L.Ed.2d 948. *See also* Moriconi v. AT & T Wireless PCS, LLC, E.D.Ark.2003, 280 F.Supp.2d 867 (misleading advertising and billing practices and inadequate disclosure of true fees and service limitations fall within existing state law and protections which are not preempted by federal law).

⁵ *See* In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link Up, FCC 10-72 (Apr.28, 2010), at ¶ 10.

The development of these new options have opened significant communications channels. For example, hearing and speech impaired consumers can choose to communicate in sign language through calls with visual capabilities, perhaps now even more efficiently and effectively. Telecommunications services now can be considered to include wireless service, and especially in the case of universal telecommunications service, video and data as well.⁶ According to the FCC, traditional telecommunications services are migrating from old circuit-switched networks to new and advanced Internet protocol networks,⁷ and the FCC is proposing to apply the federal low-income assistance program (that has traditionally applied to wireline service) to bundled voice and broadband offerings.⁸ These developments underscore the fact that the nature of basic service has changed.

The Department's telecommunications regulations that are based upon older technologies need to be revised. NCLC strongly supports the Department undertaking revisions to its rules and regulations. Customers using new telecommunications technologies should receive no less protection than that which wireline customers have received in maintaining adequate, continuous and reliable telecommunications service for their households.

B. The Department Should Establish Universally Applicable Consumer Protections that Apply to Voice and Cable Services.

⁶ See 47 U.S.C. 245(b) (3) (universal service includes enabling consumer access, in all parts of the country, to both telecommunications *and information services*); 47 U.S.C. 245 (f) ("A state may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service..."). The FCC has recognized video relay service and internet protocol are forms of telecommunications relay service, pursuant to 27 U.S.C. § 225(c), that should be made available to hearing and speech impaired individuals. See Federal Commc'ns Comm'n, Improved TRS Order & Further Notice of Proposed Rulemaking (Mar. 2000); RCC, IP Relay Declaratory Ruling and Further Notice of Proposed Rule Making (Apr. 2002); Federal Commc'ns Comm'n, Telecommunications Relay Servs. And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (June 2004).

⁷ Universal Service: Hearing on Universal Service Before the Senate Comm. on Commerce, Science and Transp., 108th Cong. (2003) (statement of Michael K. Powell, Chairman of the Federal Communications Commission).

⁸ Federal Commc'ns Comm'n, Federal-State Joint Bd. on Universal Serv., In the Matter of Lifeline and Link UP Reform and Modernization, Notice of Proposed Rulemaking, C.C. No. 96-45, FCC 11-32 (Mar. 4, 2011) at ¶ 12.

A single set of regulations that establish a minimum level of consumer protection for reliable and accessible telecommunications service, especially with regard to service quality, should be promulgated and applied to wireline, wireless, and cable. This helps reduce consumer confusion and aids administrative efficiency. However, the Department should allow for flexibility to also address specific protections associated with complaints or needs that may arise that are associated with each particular technology, as may be necessary. Generally, the Department should ensure that it exercises its authority to protect not only customers of traditional wireline telephone service, but also provides equal protection under its regulations to customers using newer, telecommunications technologies such as wireless/mobile phone services.⁹

C. Advertising, Marketing, and Disclosures to Low-Income Consumers.

The Department should ensure that low-income consumers are protected from aggressive marketing of expensive and bundled packages. While customers who are eligible for Lifeline can ill afford more expensive options and bundles, the realities of consumer communication needs and patterns in today's interconnected world means pressure for low-income customers to purchase more expensive bundled options because, along with voice service, they often include internet access, also deemed essential. However, Lifeline benefits currently do not apply to such bundled packages. NCLC is aware of reports by community based organizations that their low-income clients, who are eligible for Lifeline, are compelled to forgo participation in the assistance program in order to subscribe to bundled services that include internet. Therefore,

⁹ See 47 U.S.C. 332 (c)(3). The FCC has acknowledged that both FCC and states can regulate advanced telecommunications services, including broadband internet access, which may mean voice services provided over broadband technologies. See Federal Communications Commission, In the Matter of Preserving the Open Internet Broadband Industry Practices, FCC 10-201, ¶ 117(Dec. 21, 2010) (Through Section 706 of Communications Act of 1996, Congress has directed FCC, with the states, to take actions to help deploy advanced telecommunications capabilities); 47 USC 1302(a) (Section 706 of Communication Act).

special protections should apply when bundled packages are marketed to low-income customers, because the risk of disconnection, due to unaffordable telecommunications bills, is great for low-income consumers in this circumstance.

The Department's revised regulations should require that when telecommunications providers market bundled packages to low-income customers, that they simultaneously notify these customers about the existence of Lifeline assistance and any and all lower rates that are available. Further, DTC should require the state's telecommunications providers to always make available to low-income customers the choice of a "least cost," unbundled, basic service option.

D. Notice, Billing Format, and Billing Practices.

To further ensure that low-income consumers understand the rates, terms, and products being purchased in this era of new, bundled services and often complex rate plans, the Department's revised billing regulations should require written confirmation of sale and reasonable cancellation periods. The Department should apply the FCC's Truth in Billing principles to both voice and cable telecommunications providers.¹⁰ Advance notice of both mandatory changes and confirmation of optional changes in service, rates, and contract terms and conditions should be required. For changes initiated by the Company or required by law, customers should be given at least 90 days notice to provide for an adequate opportunity to investigate terminating their current service contract, if applicable, and to shop around for a competitive service that meets their needs at a lower cost. The Department should also require telecommunications providers to include the DTC's Consumer Division contact information on sales and cancellation materials, as a resource for low-income consumers.

¹⁰ See 47 C.F.R. 64.2400-64.2401. While the Department should view FCC's Truth in Billing as guidance for minimum consumer protections, the Department may apply broader and higher protections to consumers in the state.

E. DTC Protections Should Apply to Consumers Purchasing Bundled Services That Include Basic Service.

At minimum, basic service, as defined here to roughly mean those telecommunications services which must include but may not be limited to voice, and which are generally essential for every individual to effectively communicate in today's economy and daily life, should be protected from premature or improper termination. In the event that a consumer defaults in making payment for a bundled package of services that include both regulated and unregulated services, NCLC submits that the Department must protect basic service from disconnection by providing reasonable notice of the disconnection and an opportunity to dispute the planned termination. Additionally, consumers at risk of termination should be given the opportunity to enter a reasonable payment plan.

The Department should ensure that its revised regulations make it possible for a payment-troubled customer to pay for essential basic service that includes voice, separately from unregulated services in the bundle, in order to maintain basic service. Even if the costs related to the unregulated portion becomes unaffordable, the consumer should have an opportunity to maintain essential basic service for health and safety, and to navigate the demands of daily living. Part of the opportunity to enable a payment-troubled customer maintain basic service is an opportunity to enter a reasonable payment plan.¹¹ Where regulated services are included in a bundled product offering along with unregulated service, partial payments to a telecommunications provider should first be applied to regulated, basic services.

¹¹ See B&T Part 7.

The Department should consider promulgating a definition of basic service that potentially encompasses all current and future voice telecommunication technologies.¹² For low-income customers, seniors, disabled and the seriously ill, such a protection would truly maintain a lifeline to the world.¹³

The Department's billing and termination rules should require telecommunications and cable service providers to separately provide the costs of basic service from unregulated service.¹⁴ Doing so will make it possible for a low-income consumer to pay down an arrearage to keep only basic service, if only basic service is affordable.

F. Adequate Notice of Termination Should Include More Than One Notice Before Service Is Discontinued (B&T Part 5B).

Just as current notice requirements and other protections were enacted to protect landline customers from premature, erroneous, or otherwise imprudent terminations of telephone service, these same protections are needed for wireless customers today. Customers have developed expectations based on customary disconnection practices, in effect for many years. Lowering the customary standard of customer protection would wreak havoc with those expectations and could

¹² For wireless customers, for example, protecting basic service could mean protecting a reasonable threshold amount of minutes per month for use by household for contacting emergency, health and social services. To this end, a more expeditious route may be for the Department to require that before approval of ETC status may be granted to wireless providers petitioning for status as Eligible Telecommunications Carriers ("ETCs") offering the Lifeline discount, those carriers must offer a reasonable minimum number of wireless minutes to low-income customers in a basic, least cost plan. A basic, least cost plan with reasonable minutes should always be an option available to Lifeline customers. Additionally, the Department could specifically require companies seeking Department approval for ETC status to offer adequate service quality to Lifeline customers, which includes knowledgeable customer service about plans offered, enrollment, and billing and terminations issues.

¹³ Additionally, for low-income customers, protection for a minimum reasonable amount of texting capability for could be considered in an up-to-date definition of basic service. *See infra*, note 6, and accompanying text. NCLC is aware that in some areas, utilities are considering communication to customers by texting as a form of customer notice. *See, e.g.,* <http://www.energymississippi.com/myaccountanywhere/how.aspx>. Customers who receive bill payment and other notices from their energy provider by text message on cell phones could potentially be at risk of missing important messages from that utility provider regarding maintenance of electric service if wireless service is completely terminated.

¹⁴ *See National Ass'n of State Utility Consumer Advocates v. F.C.C.*, C.A.11 2006, 457 F.3d 1238 (overruling FCC's attempt to preempt state regulation requiring line item billing on wireless company bills)

have harmful effects if a customer's lifeline to doctors, social workers, employers, family and friends is erroneously or unexpectedly cut off. Multiple notices of an impending termination can be necessary for Lifeline and Linkup customers, particularly if these low-income customers subscribe to wireless phone service. Their unsteady economic circumstance can mean moving through several temporary living situations and they may be unable to timely receive a single termination notice. Additionally, while wireless service has been widely adopted, customers have not abandoned wireline service completely. Protections against termination of service are needed for customers of both older and newer technologies.

G. Protections Against Termination of Service In Cases of Personal Emergency, Serious Illness (B&T Part 5D) and for Households with Adult Residents 65 Years of Age and Older (B&T Part 8) Should Be Continued.

Many elderly are on fixed incomes, and are especially vulnerable to disconnection of their telecommunications service, where fixed incomes fail to keep pace with other rising household costs and expenses. At the same time, medical bills of the elderly can cause expenses to rise significantly, placing even more pressure on limited household funds. It is entirely appropriate and necessary that special protections against the elderly continue to apply when the Department issues revised termination and billing regulations. Similarly, consumer households having a personal emergency or serious illness can also be very vulnerable, and need to be able to continue communicate with medical and social services for health and safety reasons. Until such risks are eliminated, at the very minimum, existing protections against terminations should continue to apply, and should be revised to clearly protect all customers in such circumstances, regardless of whether they choose to use wireless, wireline, or other telecommunications technologies.

Ideally, the Department should harmonize its regulations with the Department of Public Utilities' ("DPU's") regulations and policies regarding disconnection of energy customers. For example, DPU, the predecessor to DTC, requires that electric and gas companies must continue to serve customers in financial hardship who are also seriously ill, and only require recertification quarterly, in contrast to current telephone policies that require certification every 30 days.¹⁵ Additionally, while DPU allows such customers to renew their chronic illness certification indefinitely, the current DTC telephone policy only allows for renewal twice, for a total of a 90 day period. DTC should make its serious illness protection consistent with DPU, such that a seriously or chronically ill customer can continue to have a connection to basic telecommunications service, beyond 90 days.¹⁶ DPU also applies special protection from termination to households with infants and the elderly, and these regulations should be used as a model by the DTC to improve telecommunications customers' protections.¹⁷ The DTC's expanded protections should be made known to all customers, and the DTC should require customer notice of this protection, along with appropriate training of customer service representatives.

H. Consumer Protections Relating to Security Deposits, Guarantees, and Deferred Payments Are Still Needed (B&T Parts 4 and 7).

The Department's regulations require that if a customer and company cannot agree to a deferred payment arrangement, the company must inform the customer of the right to request a

¹⁵ Compare B&T 5.1 (telecommunications service serious illness certification renewal period) with 220 CMR 25.03(4) (gas and electric service serious illness certification renewal period).

¹⁶ See 220 CMR 25.03.

¹⁷ See id.

Department hearing on the matter and service generally may not be discontinued.¹⁸ To ensure that this right is clearly communicated to the customer, NCLC recommends that the Department revise Rules 7.3 and 3.6 to require the communication be explicitly stated in writing, and provide the telephone and fax numbers, email, website, and first class mailing address for the Department's Consumer Division to which the consumer may submit the request.¹⁹

Additionally, the Department's current regulations provide no guidance as to reasonableness or fairness of a payment, and the regulations should be more specific. Adequately designed payment plans should help to decrease disconnection rates and contribute to improving customer bill payments and payment patterns. Payment plans that are reasonable for low-income customers are those that account for the customers' financial situations and special circumstances. The Department's revised regulations should specify that "payment plans must consider household income, ability to pay, payment history, size of the bill, the time and reasons for the arrearage and any special circumstances creating extreme hardships within the household."²⁰

I. All Regulated Service Providers Should Be Subject to a Dispute Resolution Process, Such As That Which Is Currently Mandated for Telephone Wireline Providers (BT Part 6).

¹⁸ See B&T Rule 7.3.

¹⁹ B&T Rule 3.6 requires that the Company provide the Department's business and toll-free telephone numbers. However, additionally allowing consumers to contact the Department through any of the many additional communication methods available today would better ensure that consumers are able to be heard by the Department either through their own efforts or those of an advocate.

²⁰ See 199 IAC 19.4(476) (Section 19.4(10)); 199 IAC 20.4(476) (Section 20.4(11) (reasonableness of payments). See also Code of Maine Rules, CMR 65-407-815 (Section 1.C.2) (consideration of individual circumstances are most likely to result in customer keeping up with bills) and New York requirements, 16 NYCRR § 11.10 (payment plans must be tailored to each low-income customer's financial and special circumstances).

Customers who chose to switch from a wireless provider to a wireless or cable provider for telecommunications service should not be penalized by losing their current ability, under Part 6 of the Department's billing and termination regulations, to receive Department review of a disputed issue with their telecommunications service provider. The Department should maintain due process and dispute resolution procedures, and additionally ensure that customers of all the different telecommunications technologies can equally access the DTC's complaint and resolution procedures.

J. Consumer Protection Regulations Should Address Cramming Practices.

While cramming is one of the most common landline complaints to the FCC, the FCC reports that only a small portion of victims become aware of cramming charges.²¹ The FCC recently announced that in two separate investigations that each included over 17,000 consumers, that the number of consumers who actually used the third party service or dial-around long distance service that they were being charged for amounted to one-tenth of one percent (0.1%).²² This report indicates that cramming is widespread, and is a predatory practice which telecommunications companies have been ineffective in addressing on their own, to date. Additionally, the data show that cramming victims are unlikely to address the problem themselves, likely being unaware that cramming has occurred.

The Department should promulgate a prohibition to deter cramming, as it appears that no DTC regulation specifically addressing cramming exists.²³ The Department should require

²¹ Id.

²² Joel Guerin, Chief, Consumer and Governmental Affairs Bureau, Unauthorized Fees: What's Hiding in Your Phone Bill?, Official FCC Blog, available at <http://www.fcc.gov/blog/unauthorized-fees-whats-hiding-your-phone-bill>. See also Senate Commerce Committee Staff Report, Unauthorized Charges on Telephone Bills, July 12, 2011, available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=d2ba4f0b-6e03-4b23-8046-7dc9ea0d25d2.

²³ While there is a slamming regulation, 220 CMR 13.04(a), there does not appear to be any specific regulation directed to cramming for the DTC to enforce. Notably, the FCC has adopted and released a cramming Notice of Proposed Rulemaking, Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges,

telecommunications providers to offer customers the ability to block third-party charges. It should require regulated companies to make this option clearly available on the companies' websites, and either as a periodic bill message or as text placed next to third party charges on the consumer's bill. Third party charges should be separately formatted on a dedicated section of the consumer's bill, such that they do not become hard to identify within a list of legitimate charges.²⁴ The Department should require telecommunications providers to conduct some initial, reasonable level of investigation into the legitimacy of the business and charges of the third party entities before agreeing with the third party to serve as a biller for its charges. The Department could require that a telecommunications provider must petition for DTC approval of the contract with the third party, and must certify the steps of its investigation to the Department. Additionally, if the customer subsequently disputes the charge on the bill, the telecommunications provider should be obligated to conduct its own investigation into the disputed charge.

The Department could also incorporate ideas from the state's Unfair and Deceptive Acts and Practices ("UDAP") consumer protection statutes into DTC cramming regulations, such that a UDAP violation constitutes a violation of DTC regulations that is actionable against the telecommunications provider that allowed the cramming to take place.²⁵ DTC's Consumer

("Cramming") FCC 11-106 (July 12, 2011). While federal action is just beginning, the Department can act more nimbly to ensure that cramming is addressed in Massachusetts now. California's Public Utility Commission is also dealing with cramming issues in that state. See <http://www.dra.ca.gov/DRA/Telecom/consumers/Cramming.htm>.

²⁴ The FCC's proposed cramming rules that would require providers who offer third-party call blocking services to inform their customers of this option. The proposed rules would also provide that all third party charges must be separated from landline charges, strengthening existing Truth-in-Billing rules. FCC, Press Release of June 16, 2010, FCC to Crammers: No More Mystery Fees, available at <http://www.fcc.gov/document/fcc-crammers-no-more-mystery-fees>.

²⁵ See M.G.L.A. 93A § 2; *Spence v. Boston Edison Co.*, 459 NE2d 80 (Mass. 1983) (finding that an electric utility may be subject to UDAP liability; *Moriconi v. AT & T Wireless PCS, LLC*, E.D.Ark.2003, 280 F.Supp.2d 867 (misleading advertising and billing practices and inadequate disclosure of true fees and service limitations fall within existing state law and protections which are not preempted by federal law). As an analogy, the Massachusetts

Division or the Massachusetts Attorney General's Office should be available and held out a resource for reporting cramming violations of the DTC's revised regulations and UDAP. In regard to cramming on low-income customers bills, the problem will be even more acutely felt among these customers who can least afford it. The contact information for the Department's Consumer Division should be provided on each Lifeline and LinkUp participant's bill.

Additionally, the DTC can help enforce its regulations against cramming by requiring telecommunications company representatives to be trained on how to resolve cramming complaints, requiring each instance of cramming be logged, and requiring that an overall cramming report should be periodically submitted to DTC. These reports to the Department should include a compilation of the companies' data, systematic logging of each cramming complaint, information on whether the victim is a low-income customer, dates and amounts involved, and any other pertinent information. This will enable DTC to monitor the problem in Massachusetts, determine the effect of the problem on those customers who can least afford to be victimized by this predatory practice, and be poised to take enforcement action.

K. The Department's Revised Regulations Should Recognize Potential Issues Related to Mobile Payments.

Mobile payments result when consumers use mobile phones to conduct payment transactions, through text message or applications downloaded to a mobile phone.²⁶ That this is a booming industry in other countries indicates the possibility of mobile payments becoming a widespread practice in the United States, as well. Should mobile payments result in third party

Attorney General's regulations regarding electric marketing practices require substantiation of a material representation regarding the marketing of electricity, 940 CMR 19.06(1)(a). The Department could promulgate regulations similar in nature to address the duty for the telecommunications company to investigate cramming complaints and to ensure that cramming charges are substantiated.

²⁶ See Michelle Jun, Mobile Pay or Mobile Mess: Closing the Gap Between Mobile Payment Systems and Consumer Protections, Consumers Union, June 2011, at p. 1.

charges on the bills that regulated telecommunications providers send to their customers, the Department should be poised to address disputes arising from those charges and transactions as well:

The lack of industry standards and the rapid pace of technological change in mobile payment services also present consumer protection issues. [footnote deleted] In addition, regulators charged with overseeing mobile payment platforms face the challenge of identifying a framework that effectively regulates non-bank entities – ones without the culture or deep experience with security found in other sectors, that are nonetheless offering financial services bordering on those provided by traditional banking institutions.

Elizabeth Eraker, et al., *Mobile Payments: The Challenge of Protecting Consumers and Innovation*, U.S. Law Week BNA Insights, Vol. 79, No. 31, p. 2095 (The Bureau of National Affairs, 2011). Mobile payment systems can put consumer information at risk of leaks of privacy, where the technology is new and there are no universally accepted security standards in place.²⁷

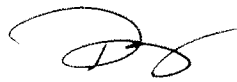
It remains to be seen to what extent Massachusetts' telecommunications companies may become involved in mobile payments. The Department, however, can proactively promulgate reporting requirements now, to be in place when and if mobile payments become an issue for the future. For example, annual reporting requirements should include the number of consumers engaging in mobile payments at each company; logging each consumer complaint along with their resolutions regarding mobile payment transactions; explanation of the nature of the complaint (*i.e.*, bill error, privacy leak, or other issue); and any other relevant information. Reporting to the DTC could ensure that the Department stays abreast of developments in this area and their potential impact on Massachusetts consumers.

²⁷ Elizabeth Eraker, et al., *Mobile Payments: The Challenge of Protecting Consumers and Innovation*, U.S. Law Week BNA Insights, Vol. 79, No. 31, p. 2095, 2098-99 (The Bureau of National Affairs, 2011).

CONCLUSION

NCLC respectfully requests that the Department consider its Comments provided in response to the Department's request for information regarding modernization of its billing and terminations regulations.

Respectfully submitted,



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