

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATION AND CABLE
CABLE DIVISION**

Petition Of Verizon New England Inc.
For Amendment Of The Cable Division's
Form 500 "Cable Operator's Annual
Report of Consumer Complaints"

**PETITION OF VERIZON NEW ENGLAND INC.
FOR AMENDMENT OF THE CABLE DIVISION'S FORM 500
"CABLE OPERATOR'S ANNUAL REPORT OF CONSUMER COMPLAINTS"**

Pursuant to M. G. L. c. 30A, § 4 and 207 C.M.R. §§ 2.01, 2.03, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon MA") respectfully submits this Petition for Amendment of the Cable Division's Form 500 Cable Operator's Annual Report of Consumer Complaints to eliminate the annual reporting of the number of subscribers by individual municipalities.

For the reasons set forth below, the Department of Telecommunications and Cable's (the "Department")¹ requirement that cable operators include municipal-level subscribership data on the Form 500 exceeds the Department's statutory authority, serves no public purpose and harms new providers like Verizon MA. Today, Verizon MA's entry into the cable market has finally subjected the incumbent carrier in many cities and towns to effective competition for the first time.² Given the new competitive landscape

¹ As of April 10, 2007, the Department of Telecommunications and Energy ceased to exist and the Department has assumed the duties and powers previously exercised by the Cable Division under M. G.L. c. 166A.

² See, e.g., *In the Matter of Comcast of California/Massachusetts/Michigan/Utah, Inc.; Comcast of Massachusetts/New Hampshire/Ohio, Inc; Comcast of Massachusetts III, Inc.; Comcast of Massachusetts I, Inc.; Petition for Determination of Effective Competition in*

in Massachusetts, the Department should reexamine and revise the Form 500 because any *de minimis* value associated with the collection of subscribership data is far outweighed by the harmful effect disclosure has on the ability of new entrants to compete with incumbents.

BACKGROUND

Verizon MA provides telephone, data and related services in Massachusetts and is expanding into the cable television business. As part of this effort, Verizon MA is now bringing competitive cable television services to more than 75 cities and towns in Massachusetts and is negotiating franchise agreements with others. Nationwide, Verizon MA and affiliated Verizon entities (collectively, “Verizon”) are constructing, at great expense, a “fiber-to-the-premises” (“FTTP”) network of fiber optic cables that enables Verizon to offer advanced communications and cable services through fiber optic technology deployed directly to customers’ residences. Prior to Verizon MA’s entry into the cable market in Massachusetts in early 2006, the cable-television markets in the vast majority of Massachusetts cities and towns were not subject to effective competition.³ RCN, Comcast’s main competitor, was operating in only 13 Massachusetts communities in 2006.⁴ Effective competition was otherwise limited to the handful of cities and towns

Various Massachusetts Communities, Memorandum and Opinion Order, DA 08-1507 (MB 2008) (finding effective competition existed in 18 Massachusetts towns in 2008).

³ See, e.g., *id.*; see also *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5110 ¶ 19 (2007) (“*Cable Competition Order*”) (noting that most communities in the United States lack cable competition).

⁴ Comments of RCN, Petition of Verizon New England Inc. for Adoption of Competitive License Regulation, Massachusetts Department of Telecommunications and Energy, Cable Television Division, Docket No. CTV-06-1 (July 13, 2006).

with municipal cable providers. By contrast, in the past two years Verizon MA has brought its FiOS TV service to more than 75 communities in the state, introducing meaningful cable television competition to many Massachusetts cities and towns for the first time, and ending the *de facto* monopolies that incumbent cable operators enjoyed for decades. As Verizon MA and the incumbent cable companies battle to attract or retain the same customers, Massachusetts residents directly benefit from the resulting service discounts and promotions, increases in innovation and quality of service, and expanding programming options.⁵

I. The Reporting Requirement Imposed By M. G.L. c. 166A, § 10.

By statute, every Massachusetts cable licensee is required to notify the Department, on an annual basis, of “the complaints of subscribers received” and “the manner in which [the complaints] have been met, including the time required to make any necessary repairs or adjustment.” M. G. L. c. 166A, § 10. The law directs the Department to “prescribe” a form for use by cable licensees to fulfill this reporting requirement, but does not elaborate further on the structure or content of the form. *Id.*

II. The Cable Division’s Form 500.

In 1999, two years after the Massachusetts Legislature amended Section 10 to insert the annual reporting requirements, the Cable Division adopted the Form 500 as the “prescribed form.” *See Order Adopting Revised Form 500*, Department of Telecommunications and Energy Cable Division (June 11, 1999) (the “*Form 500 Order*”). Prior to adopting the Form 500, the Department collected comments on the proposed Form 500 and held a technical conference to discuss software and other

⁵ *See Cable Competition Order* at 5110 ¶ 19.

practical problems raised by the Form. The comment process focused principally on what types of complaints were required to be reported and the implementing software. *See Form 500 Order* at 2-8. Three towns and four incumbent cable operators – Cablevision Systems Corporation, Adelphia Cable Communications, Greater Media Cable, and MediaOne (now Comcast, Inc.) – submitted comments. Verizon MA did not participate in the 1999 comment process that resulted in the adoption of the Form 500 because, at that time, Verizon MA was still years away from offering competitive video service in Massachusetts.

Although the competitive landscape has changed drastically since 1999, the pertinent requirements of Form 500 have remained unchanged. Currently, the Form 500 requires cable licensees to disclose separately, for each city and town that they serve, the number of complaints received (broken down by category of complaint) during the reporting period, the average resolution time for the complaints, and the manner in which the complaints were resolved. In addition, notwithstanding that M. G. L. c. 166A, § 10 neither authorizes nor implies any such requirement, the Form 500 mandates that the licensee disclose the total number of subscribers that it serves in each city and town in which it does business.

III. The Department Rejects Verizon MA's Request For Confidentiality.

In compliance with the annual reporting requirement, Verizon MA filed its first Form 500 Annual Report on January 31, 2007. Because the Form required Verizon MA to disclose highly sensitive and confidential data regarding Verizon MA's subscriber numbers in each city or town where Verizon MA operates, Verizon MA filed a motion with the Department requesting confidential treatment for such information pursuant to the Department's statutory authority under M. G. L. c. 25C, § 5. *See Annual Report of*

Verizon New England Inc. of Complaints Received Regarding FiOS TV Service: MA Form 500 Complaint Report, 2006, Verizon New England Inc.’s Motion for Confidential Treatment, Department of Telecommunications and Energy, Cable Television Division (Feb. 1, 2007) (the “Motion for Confidential Treatment”). Verizon MA sought to protect *only* the subscriber figures by city and town required by the Form 500. Verizon MA explained that this data was not readily known to the public and set forth specific reasons why public disclosure of such information would provide Verizon MA’s competitors with a competitive advantage over Verizon MA’s nascent cable service. RCN, one of Verizon MA’s cable competitors, and NECTA, a regional trade association representing incumbent cable television companies, opposed this request.

On June 8, 2007, the Department denied Verizon MA’s request for confidential treatment. *See Ruling on Motions For Confidential Treatment Filed by Verizon New England, Inc., Department of Telecommunications and Cable (June 8, 2007) (“DTC June 8, 2007 Ruling”).* The Department reasoned that Verizon MA’s subscriber information was generally known to the industry or could easily be acquired and that the information was not competitively sensitive. *Id.* at 9-11. In addition, the Department concluded that, for the Form 500 to be “useful” to consumers, the total number of subscribers should be made publicly available and that maintaining the confidentiality of subscribership totals would undermine the statutory mandate contained in Section 10. *Id.* at 12. The Department determined that Verizon MA had not satisfied its burden to establish that confidential treatment was warranted under M. G. L. c. 25C, § 5 and ruled that “confidential treatment of the information filed with the Department would serve no valid purpose.” *Id.* at 14.

IV. Verizon MA's Subscribership Information.

Because effective cable competition did not exist in the majority of Massachusetts cities and towns prior to Verizon MA's entry, at the time that the Form 500 was adopted in 1999 subscribership information was of little competitive interest to incumbent cable competitors. As Verizon MA brings new services, consumer choice, and effective competition to the cable market in Massachusetts, however, subscriber data becomes extremely valuable to incumbent operators that seek to frustrate Verizon's efforts to gain a foothold in the cable television market. This data paints a detailed picture of Verizon MA's market performance, including market penetration, broken down by municipality and throughout the state. Access to this data provides Verizon MA's competitors with critical insight into Verizon MA's business success within individual cities and towns – free and extremely valuable market research that they otherwise could not obtain without significant expenditure of time and resources.⁶ Such free research provides incumbent cable providers with a powerful tool to more precisely target their competitive responses – including direct mail, door-to-door solicitation, local advertising and promotions and pricing strategies – to the specific communities where Verizon MA's Form 500 reports show Verizon MA making the most inroads on the former monopoly's customer base.

An incumbent can also deploy or upgrade facilities or services in those towns or seek to

⁶ In its June 8, 2007 Ruling, the Department placed considerable reliance on its determination that competitors could obtain the number of Verizon MA customers by municipality from other publicly available sources. *DTC June 8, 2007 Ruling* at 8-11. According to the Department, competitors may be able to learn such information from individual municipalities, by imputation from Verizon MA marketing materials, and by monitoring lost customers of cable companies and direct broadcast satellite providers. *Id.* at 10. Obtaining Verizon MA's subscriber numbers through these indirect sources is expensive and time consuming, however, and the results will be inexact and difficult to monitor. Thus, the Department's requirement that Verizon MA compile the data and effectively turn it over to Verizon MA's competitors harms Verizon MA and provides yet a further competitive advantage to incumbent providers that have an obvious interest in frustrating Verizon MA's efforts at market entry to maintain their overwhelming market shares.

tie customers down with long-term contracts, while simultaneously reducing its marketing, investments and promotions in towns with a comparatively low number of Verizon MA subscribers. The disclosure of subscribership data as currently required by the Form 500 thus gives the dominant providers of cable television service in Massachusetts a competitive edge against Verizon MA. *See* Affidavit of Shawn M. Strickland (attached hereto at Exhibit A).

Indeed, in related contexts, Verizon MA's competitors and the National Cable & Television Association have advocated for the *protection* of similarly detailed subscriber data on the grounds that public disclosure harms competition. *See, e.g.*, Brief of National Cable & Television Association as Amicus Curiae supporting Defendant at 8, *Ctr. for Pub. Integrity v. FCC*, 505 F. Supp. 2d 106 (D.D.C. 2007) (Civ. Action No. 06-1644) ("public disclosure of Form 477 data filed by a cable operator would help its competitors determine which areas the cable operator was targeting and the success of its commercial offerings") (attached hereto at Exhibit B); Emergency Motion For A Stay of National Cable & Television Association at Decl. of Thomas R. Nathan, Comcast Cable Communications, ¶ 32, *United Church of Christ Office of Commc'ns, Inc., et al. v. FCC*, Nos. 08-3245, 08-3369, 08-3370, 08-3450, 08-3452 (6th Cir. 2008) (noting release of subscriber tier information would cause a substantial competitive disadvantage); *id.* at Decl. of Joseph Massa, Cablevision Sys. Corp., ¶¶ 22-23 (same); *id.* at Decl. Robert C. Wilson, Cox Commc'ns, Inc., ¶¶ 31-32 (same) (Declarations attached hereto at Exhibit C).

To Verizon MA's knowledge, the Department is the only regulatory body at the federal or state level that requires cable operators to disclose municipal-level

subscriber data publicly. Though California, New Jersey, New York and Rhode Island require Verizon to report detailed subscriber information at the state level,⁷ in sharp contrast to Massachusetts, those states safeguard the confidentiality of that information. At the federal level, the Federal Communications Commission (“FCC”) has honored Verizon’s request to withhold from publication Form 325 data, which includes municipal-level subscriber information. The FCC has consistently afforded confidential treatment to subscriber data of incumbent cable operators for competitive services such as telephony and internet services.⁸

Moreover, the Department’s requirement that Verizon MA provide this information and its subsequent ruling that the information cannot be accorded confidential treatment result in a distorted perception of Verizon’s competitive efforts nationwide. Competitors and public stock analysts alike use Massachusetts data in an effort to divine inevitably inaccurate conclusions about Verizon’s performance elsewhere. For example, a March 2008 USB analyst report used the Form 500 information submitted by Verizon MA to “gain some insight into the evolving

⁷ See CAL. PUB. UTIL. CODE § 5960; N.J. ADMIN. CODE 14:18-7.1(b); N.Y. COMP. R. & REGS. Tit. 16, §§ 899.80-899.82; and 90-070-012 R.I. CODE R. § 17.

⁸ See 1998 Biennial Regulatory Review – “Annual Report of Cable Television Systems,” Form 325, filed pursuant to Section 76.403 of the Commission’s Rules, Order on Reconsideration, 15 FCC Rcd 9707, 9713 ¶ 14 (2000) (recognizing the Form 325 may require cable operators to submit commercial, financial or technical data information that should be guarded from competitors and allowing cable operators to designate certain information as proprietary); *Request for Confidentiality for Information Submitted on Forms 325 for the Year 2004; Adelpia Communications Corporation; Cable Services, Inc.; Charter Communications; Comcast Cable Communications, Inc.; Time Warner Cable Cox Communications, Inc.*, Order, 21 FCC Rcd 2312 (MB 2006) (protecting from disclosure certain confidential information submitted on the Form 325, including the number of internet and telephony subscribers). See also *In the Matter of a Proceeding to Address Actions Necessary to Respond to the Federal Communications Commission Triennial Review Order Released August 21, 2003*, Protective Order, Public Service Commission of Utah, Docket No. 03-999-04 (Nov. 7, 2003) (protecting documents, data, studies and other materials furnished pursuant to any requests from the Utah PSC in the course of Utah’s Triennial Review proceeding).

competitive dynamics of the video market.” See USB Investment Research, *Data Provides a Few Clues to FiOS Impact* (March 24, 2008) (attached hereto at Exhibit D). Similarly, a February 2008 Bernstein Research analyst report used the information to “provide a window into the broader Verizon FiOS roll-out” and determine that the results “run contrary to expectations about TelCo entry into the TV market” and “belie the consensus expectation that Verizon’s gains will inevitably mean steep losses for cable incumbents.” See Bernstein Research, *Verizon, Comcast: FiOS TV in Massachusetts – VZ Takes Share, CMCSA Holds Subscribers Steady* (Feb. 6, 2008) (attached hereto at Exhibit E). Massachusetts, however, is only one jurisdiction for Verizon, and a regulatory regime that uniquely requires the disclosure of subscribership data encourages distortion of public perceptions of Verizon’s cable offering. This is harmful to both Verizon’s competitive position as a new market entrant and the public’s interest in the promotion of consumer choice. The disclosure of such information and the resulting distortion in perception of Verizon’s performance in the video market could have a detrimental effect on Verizon’s stock price, its ability to raise capital at competitive rates and the company’s business plans and investment decisions. The Department should not collect competitive data and make it publicly available when disclosure of the data may improperly influence shareholder stock value.

ARGUMENT

- I. The Department Is Without Authority To Require Cable Operators To Report Number Of Subscribers By Municipality.**
 - A. The Department Lacks The General Authority To Require Submission Of Municipality-By-Municipality Subscriber Information.**

Because the Department was created by the Legislature, the Department possesses only those powers, duties and obligations expressly conferred upon it by statute and such

powers as are reasonably necessary to carry out the purpose for which it was established. *Saccone v. State Ethics Comm'n*, 395 Mass. 326, 335 (1985) (quoting *Hathaway Bakeries, Inc. v. Labor Relations Comm'n*, 316 Mass. 136, 141 (1944)); see also *Mass. Mun. Wholesale Elec. Co. v. Mass. Energy Facilities Siting Council*, 411 Mass. 183, 194 (1991) (citations omitted) (agency has no authority to promulgate regulations that exceed the authority conferred by statute). The authority granted to the Department by Chapter 166A is specific and for a limited purpose. Compare M. G. L. c. 159 (granting the Department general authority to enforce Chapter 159 and “general supervision and regulation of, and jurisdiction and control over” common carrier services) with M. G. L. c. 166A (granting the Department specific authority, including authority to hear licensee appeals, investigate licensees, and regulate rates). The Department does not have “general authority” under M. G. L. c. 166A to require carriers to provide *any* information solely on the basis that it is of interest to the Department. In other words, though the Department is empowered to collect data that is “necessary to carry out” its limited purpose, *Saccone*, 395 Mass. at 335, it cannot require the disclosure of information – let alone the public disclosure of information – that is entirely collateral to that purpose. As demonstrated below, the number of cable subscribers a carrier may have in a city or town is not relevant to the limited functions and responsibilities assigned to the Department in Chapter 166A.

B. Section 10 Neither Requires The Submission Of Subscription Data Nor Authorizes The Department To Require Such Submission.

In its June 8, 2007 Ruling, the Department found that reporting of subscribership data by municipality is warranted under M. G. L. c. 166A, § 10. See *DTC June 8, 2007 Ruling* at 12-13. The plain language of Section 10, however, confirms that the

Legislature neither authorized nor contemplated the collection of this information (or the resulting public disclosure of the data). As the Supreme Judicial Court has held, the primary source of insight into the Legislature's intent in enacting a law is the language of the statute itself. *Anderson St. Assocs. v. City of Boston*, 442 Mass. 812, 816 (2004) (citation omitted). Section 10 provides:

[t]he issuing authority and the division shall be notified by the licensee on forms to be prescribed by the division not less than annually, of the complaints of subscribers received during the reporting period and the manner in which they have been met, including the time required to make any necessary repairs or adjustments.

The plain and unambiguous language of Section 10 is conclusive as to the Legislature's intent regarding the permissible bounds of the Form 500. *See Commerce Ins. Co. v. Comm'r of Ins.*, 447 Mass. 478, 481 (2006). By specifically setting forth the information required to be submitted, the Legislature precisely defined what information the Department is authorized to collect. Had the Legislature intended to require the submission of municipal-level *subscriber* data, as opposed to *complaint* data, it easily could have done so expressly. *Anderson St. Assocs. v. City of Boston*, 442 Mass. 812, 817 (2004); *Commonwealth v. Russ R.*, 433 Mass. 515, 522 (2001). Because the Legislature did not require the submission of subscriber data, however, the Department has no authority to require such disclosure, particularly when a collateral consequence of the required disclosure is to assist the incumbent cable providers in thwarting the advance of nascent competition in a market long ruled by monopolies.

C. The Reporting Of Subscriber Data Does Not Further The Purpose Of Section 10.

The purpose of Section 10 can be clearly divined from the face of the statute: “[t]he issuing authority and the division shall be notified by the licensee . . . of the

complaints during the reporting period and the manner in which they have been met.” There is no statutory support for the view that the Legislature’s (unexpressed) purpose was to assist the public in comparing the performance of rival cable operators in order to inform purchasing decisions. *See, e.g., DTC June 8, 2007 Ruling* at 12-13 (“[F]or the Form 500 to be useful, the size of the ‘data set,’ *i.e.*, the total number of subscribers, needs to be publicly available. Indeed, keeping the total number of subscribers confidential would undermine the statutory mandate contained in Section 10”). Section 10 says nothing about reporting subscriber information and nothing about disclosing complaint or subscriber information to the public. Indeed, when Section 10 was adopted there was little to no cable competition within the Commonwealth and consumers had no choice of cable providers. The sole purpose of Section 10 was to ensure that the relevant issuing authority and the Department are provided with basic information regarding the complaints logged with cable carriers and the effectiveness of their responses. Thus, the Cable Division’s decision to collect such data was not authorized by statute and was arbitrary and capricious.⁹ *See Salisbury Nursing & Rehab. Ctr., Inc. v. Div. of Admin. Law Appeals*, 448 Mass. 365, 371 (2007) (citing *Beth Israel Hosp. Ass’n v. Rate Setting Comm’n*, 24 Mass. App. Ct. 495, 505 (1987) (standard of review for non-adjudicatory,

⁹ The Cable Division’s error is understandable, given that effective competition was virtually nonexistent in the Massachusetts cable industry when the Cable Division adopted the Form 500 in 1999. At that time, the Division did not address, discuss or consider whether the submission of subscribership data was appropriate, or whether it could cause competitive harm. Indeed, the commenters in the 1999 proceeding – towns and incumbent cable operators that were operating *de facto* cable monopolies – had no economic incentive to consider or object to the provision of municipal-level subscribership data, and they provided no comments on the issue. *See Form 500 Order* at 3-5 (describing in detail the comments submitted to the Division but making no mention of any comments on the subscribership data reporting requirement).

regulatory decisions of an administrative agency is whether such decisions “are illegal, arbitrary or capricious.”). The Department should correct that error now.

II. Even If The Department Has Authority To Require Cable Operators To Report Subscriberhip Data, It Should Refrain From Requiring Such Disclosure On Form 500.

Sound policy considerations counsel restraint in this area and compel the conclusion that the Division should refrain from requiring the disclosure of subscribership information on the Form 500.

First, subscribership data has little policy value on a statewide basis, but its public disclosure harms Verizon MA and impedes competition in the cable market in the Commonwealth. Subscribership data is not essential or even relevant to performance of the Department’s limited duties under Chapter 166A. As explained above, it is not required and does not further the purpose of Section 10 of the statute, and the statute does not give the Department general oversight over carriers’ quality of service.

In contrast, subscribership data is extremely probative and valuable to incumbent cable monopolies, which have a strong incentive to prevent entry by new providers.¹⁰ As explained above, detailed subscribership data broken down by municipality enables the incumbent carriers to target their own competitive responses to Verizon MA – including direct mail, door-to-door solicitation, local advertising and promotions and pricing strategies – to the specific communities where Verizon MA most threatens the incumbents’ dominant position while minimizing its marketing, investments and

¹⁰ *See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9679-80 ¶164 (2002).*

promotions in towns with a comparatively low number of Verizon MA subscribers. *See* Strickland Affidavit.

That *incumbent cable monopolies* have been willing to provide and allow the Department to disclose their subscribership numbers in no way implies that the number of subscribers that a *new entrant* has managed to win in a city or town is not competitively sensitive and commercially valuable. The FCC has recognized that “incumbent and competitive [cable] operators are not on the same footing” and, in many cases, requirements that apply to incumbent providers would be harmful as applied to new entrants.¹¹ Unlike an incumbent facing no competition, “new cable entrants must compete with entrenched cable operators and other video service providers,” facing “‘steep economic challenges’ in an ‘industry characterized by large fixed and sunk costs,’ without the resulting benefits incumbent cable operators enjoyed for years as monopolists in the video services marketplace.”¹² Recognizing the fundamental difference between incumbents and competitors in the video marketplace, the FCC held that “terms and conditions that may have been sensible under th[e] circumstances [of a monopoly provider] can be unreasonable when applied to competitive entrants.”¹³ The reporting of subscribership data is precisely such a requirement – it has a significantly different competitive impact when applied to new entrants. Because cable incumbents have generally completed their network build-out and have a high level of penetration throughout their service areas, publicly reporting their subscribership counts on a

¹¹ *Cable Competition Order* at 5125 ¶ 48.

¹² *Id.* at 5143 & 5163, ¶¶ 88 & 138.

¹³ *Id.* at 5125 ¶ 48.

community-by-community basis reveals little useful information to competitors. Mandating that competitive providers report such data, however, hands the incumbents useful information that they could use in targeting their offerings and investment in order to entrench themselves by taking steps to foreclose or delay competitive entry. Requiring disclosure of Verizon MA's sensitive subscriber information – to consumers and competitors alike – thus significantly impedes Verizon MA's ability to bring the benefits of competition to Massachusetts consumers in the face of opposition by the incumbent cable monopolies.

Second, perhaps because the competitive harm resulting from ready public access to subscribership data vastly outweighs its nominal policy value, no federal or state regulatory body other than the Department requires cable operators to disclose municipal-level subscribership data publicly. The FCC has honored Verizon's request to withhold from publication Form 325 data, which includes municipal-level subscriber information. The few states that collect such detailed information (California, New Jersey, New York, and Rhode Island) do not require Verizon to make it publicly available. The Department can and should bring Massachusetts policy more in line with that of every other federal and state regulatory body that has considered the matter by eliminating the municipal-level subscribership reporting requirement from the Form 500.¹⁴

Third, because Massachusetts is the only state where municipal-level subscriber data is publicly available, competitors and public stock analysts misuse the data Verizon

¹⁴ The elimination of that requirement would also bring the Department's cable reporting policy into line with reporting policies for other competitive utility markets within Massachusetts. For example, in the areas of telecommunications service and competitive power generation, companies are either not required to report detailed subscribership numbers (power generation), or the reported data is maintained by the agency as confidential (*e.g.*, Verizon MA's annual competitive profile of landline telecommunications services).

MA provides on the Form 500 as an indicator for Verizon's cable penetration nationwide. See, e.g., Bernstein Research, *Verizon, Comcast: FiOS TV in Massachusetts – VZ Takes Share, CMCSA Holds Subscribers Steady* (Feb. 6, 2008) (using Form 500 subscribership data as a “window into the broader Verizon FiOS roll-out” and determining that the “results belie the consensus expectation that Verizon’s gains will inevitably mean steep losses for cable incumbents”); USB Investment Research, *Data Provides a Few Clues to FiOS Impact* (March 24, 2008) (using Form 500 subscribership data to “gain some insight into the evolving competitive dynamics of the video market”). Drawing such broad conclusions from Verizon’s nascent Massachusetts market distorts public perception of Verizon’s cable offering and is harmful to Verizon’s business and the public. The distortion of Verizon’s performance in the video market could affect its stock price, its ability to raise capital and its business plans and investment decisions, improperly suppressing shareholder value. The Department can and should put an end to this distortion and resulting harm by eliminating the Form 500 reporting requirement.

CONCLUSION

For the foregoing reasons, Verizon MA respectfully requests that the Department amend its Form 500 “Cable Operator’s Annual Report of Consumer Complaints” to eliminate any requirement for annual reporting of subscribership numbers at the municipal level.

Respectfully submitted,

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