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October 13, 2016

Sara Clark, Secretary  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500

**Re: Verizon New England Inc., D.T.C. 01-31-Phase IV; Initial Comments of the Office of the Attorney General**

Dear Secretary Clark:

On July 14, 2016, Verizon New England Inc. (“Verizon MA” or the “Company”) filed with the Department of Telecommunications and Cable (the “Department”) a Petition to waive certain performance results measured under its retail service quality plan for periods of time in April, May, and June 2016.<sup>1</sup> The Petition claims that Verizon MA’s actual service quality performance in three areas was adversely impacted due to a strike by the Company’s unionized workers from April 13, 2016 until June 1, 2016 (the “Work Stoppage”). Verizon MA contends further that such poor performance associated with the Work Stoppage should be excluded from the rolling twelve-month calculation of achieved performance results as an extraordinary event, beyond the Company’s ability to control, and thus excludable pursuant to Paragraph E of Verizon MA’s Retail Service Quality Plan (the “SQ Plan”) (Petition, pp. 5–6). More specifically, the Company seeks to exclude results during the Work Stoppage in three performance categories:

- (1) Percent of Troubles Cleared Within 24 Hours – Business;
- (2) Customer Service Bureau (CSB) Average Speed of Answer; and
- (3) Business Service Level (measuring speed of answer at Verizon’s Business Sales and Solutions Center).

*Id.*, p. 2. Pursuant to the Department’s procedural schedule in this matter, the Office of the Attorney General (“AGO”) hereby submits these initial comments.

Based on the Company’s petition, the AGO takes no position whether the Department should grant a waiver under the factual circumstances presented in the Petition. However, the AGO recommends that the Department use care in limiting its decision to the facts of this

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<sup>1</sup> See D.T.C. 01-31-Phase IV, *Petition of Verizon New England Inc. to Waive Certain Results Under Its Retail Service Quality Plan for April, May and June 2016* (July 14, 2016) (“Petition”).

proceeding, so as not to arguably create a precedent that would allow all future work stoppages to automatically qualify the Company for a waiver under the SQ Plan.

Verizon MA's retail service quality plan and associated penalty metrics are designed "to ensure that the Company does not act on its incentive to cut costs to the detriment of service quality." D.P.U. 94-50, n. 134; *see also* Verizon Massachusetts Retail Service Quality Plan, p. 1 (May 2003). Thus, the SQ Plan monitors several key indicia of retail service quality, on a rolling 12-month basis, to ensure that Verizon MA stays focused on service quality and is not incented to improperly curtail service quality efforts to reduce expenses and thereby enhance earnings.

Although it is not disputed that the Work Stoppage occurred, this fact alone does not entitle Verizon MA to a waiver. Verizon MA's SQ Plan provides that the Company may seek a waiver if service quality is influenced by "periods of emergency, catastrophe, natural disaster, severe storms, or other events beyond Verizon MA's control." Such language, however, should not be construed to grant the Company a "safe harbor" without a showing that the failure of the relevant metrics was not outside the Company's control or caused by its own omission.<sup>2</sup> Thus, Paragraph E requires the Company to also demonstrate "clearly and convincingly [] why Verizon MA's normal, reasonable preparations for difficult situations proved inadequate ...." If Paragraph E were construed to offer a "safe harbor" from adverse service results every time a work stoppage occurred, Verizon MA would have little incentive to take actions necessary to attain its service quality goals when its unionized workforce strikes.

Verizon MA is mistaken in its attempt to equate the language in Paragraph E of its retail SQ Plan regarding events beyond the Company's control with the language of the Department's Performance Assurance Plan ("PAP") applicable to Verizon MA's wholesale services. *Cf.* Petition, p. 6 (asserting that the Department's waiver under the PAP for a work stoppage in August, 2011 implies that the Department should grant a waiver under the SQ Plan for the Work Stoppage at issue here). Although the PAP expressly includes work stoppages among the events that may qualify Verizon MA for a waiver, the SQ Plan does not include work stoppages among the expressly enumerated events that would qualify for waiver consideration by the Department. The fact that the PAP makes specific reference to work stoppages, but the SQ Plan does not, suggests that different events qualify the Company for waiver consideration under each plan. *See, e.g., Pastore v. Medford Sav. Bank*, 186 B.R. 553, 554 (D. Mass. 1995) (finding use of particular language in one section of a statute and omission of language in another section was intentional).

The history of the PAP and the SQ Plan suggests that different events may qualify for waiver consideration under each plan. The Department approved the PAP in 2000. D.T.E. 99-271 (Sept. 5, 2000). The Department established the SQ Plan in 1995, D.P.U. 94-50 (May 12, 1995), but revised the SQ Plan's penalty provisions in 2003. D.T.E. 01-31 (April 11, 2003). Because the Department specifically addressed revisions to the Plan's penalty provisions in 2003,

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<sup>2</sup> *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England Inc. d/b/a Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, D.T.E. 01-31-Phase I, Paragraph E of the Verizon Massachusetts Retail Service Quality Plan, p. 6 (May 2003).

subsequent to the Department's adoption of the PAP, the Department had an opportunity in 2003 to reconcile the language between the plans related to waiver petitions, but chose not to do so.

Moreover, the PAP and the SQ Plan serve different objectives. The SQ Plan is designed to ensure that Verizon MA does not act on its incentive to enhance earnings by cutting costs to the detriment of service quality to retail customers. D.P.U. 94-50, n. 134. The PAP, by contrast, is designed to prevent serious degradation in the quality of the Company's wholesale service and any ensuing competitive harm to competing carriers of local service as a result. D.T.E. 99-271 (Sept. 5, 2000). Thus, the PAP's focus on ensuring competitive market entry by competing carriers in contrast to the SQ Plan's goal of maintaining retail service quality for residential and business customers indicates that different events could reasonably qualify for waiver consideration under each plan.

As stated herein, the AGO currently takes no position on whether the 2016 Work Stoppage should qualify Verizon MA to waive certain performance results under its SQ Plan. However, if the Department determines that Verizon MA has met its burden to show that this particular Work Stoppage constitutes an extraordinary event beyond the Company's control, the AGO urges the Department not to establish a precedent that would result in all future work stoppages automatically qualifying Verizon MA for a waiver under the SQ Plan. Such a "safe harbor" exception related to a work stoppage would remove incentives for the Company to take all actions necessary to attain its service quality goals if its unionized workforce strikes again.

Respectfully submitted,

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cc: Sean Carroll, Hearing Officer  
Service List

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

Petition of Verizon New England Inc. to Waive  
Certain Results Under its Retail Service Quality Plan

D.T.C. 01-31-Phase IV

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding, dated at Boston, Massachusetts this 13th day of October, 2016.

/s/ Donald W. Boecke  
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