

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

In Re Verizon Service Quality
in Western Massachusetts

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D.T.C. 09-1

**REPLY BRIEF OF THE
ATTORNEY GENERAL**

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

By:

M. Katherine Eade
Sandra Callahan Merrick
Ronald J. Ritchie
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

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I. INTRODUCTION

Pursuant to the briefing schedule established by the Department of Telecommunications and Cable (the “Department”) in this proceeding, the Attorney General submits her Reply Brief responding to the arguments made by Verizon MA (“Verizon” or “Verizon MA” or “Company”), the International Brotherhood of Electrical Workers Local 2324 (“IBEW”) and the Town of Leverett (“Leverett”) in their Initial Briefs. This brief is not intended to respond to every argument made or position taken by the Company, IBEW or Leverett. Rather, it is intended to respond only to the extent necessary to assist the Department in its deliberations, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence by the Attorney General in regard to any particular argument in another party’s brief should not be interpreted as assent to any claim or assertion by another party.

The Department, for the reasons set forth in the Attorney General’s briefs, should find that the Company’s service in Western Massachusetts is unjust, unreasonable, and inadequate, and order remedies.

II. ARGUMENT

A. **The Sum Total of the Evidence Corroborates That Verizon’s Service Quality in Western Massachusetts Is Unjust, Unreasonable and Inadequate**

1. *Verizon Incorrectly States that the Attorney General’s Recommendations Are Not Supported by Evidence*

Verizon claims in its Initial Brief that the parties have “failed to submit substantial evidence” that Verizon’s service quality across Western Massachusetts is not just, reasonable and adequate. Verizon Brief (“VZ Br.”), p. 34. Verizon’s assertions are

completely without merit. The record provides ample evidence that service quality is inadequate and that remedies are therefore required.

It is not *only* the evidence of customer dissatisfaction and complaints, not *only* the evidence of higher reports per hundred lines (“RPHL”) in Western Massachusetts communities, particularly the small wire centers; it is not *only* the evidence of aging or poorly maintained infrastructure, nor *only* Verizon’s commitment to staff reductions or its reliance on competition as an incentive when competition does not exist in Western Massachusetts to the extent it does elsewhere; but rather it is *all* of these elements combined which show poor service quality. Together, these elements provide overwhelming support for the conclusion that Verizon is not providing adequate service quality in Western Massachusetts. The totality of the evidence in this proceeding shows clearly that, based on several factors (such as consumer complaints and the RPHL), Verizon has not provided adequate and reasonable service quality in Western Massachusetts. Further, it may be seen that Verizon provides better service quality elsewhere in the Commonwealth¹ and that, whether or not it is viewed in comparison with service quality in Eastern Massachusetts, the Company’s service quality in Western Massachusetts has been unjust, unreasonable and inadequate.

¹Regarding Verizon’s timeliness of residential repair, the Attorney General has demonstrated that Verizon’s failure to meet the Department’s standard occurs statewide. As the Attorney General has explained: “Moreover, if service quality is unacceptable in Eastern Massachusetts and service quality as measured by the same metric is comparably unacceptable in Western Massachusetts, that comparability does not render the service adequate.” Attorney General Initial Brief, p. 14.

2. *Consumer Comments Illustrate the Inadequate Service Quality and Its Impact on Consumers*

(a) *Consumer Comments Are Important Evidence*

This proceeding is not only about the Service Quality Index (“SQI”), the RPHL, the percentages of troubles cleared, open or aging plant, competition, and allocation of resources. It is also, most importantly, about the actual Verizon customer who is being harmed by inadequate and unreliable telephone service. The Department heard from 26 customers just in Rowe alone at the public hearing in D.T.C. 07-5 on October 17, 2007, contrary to Verizon’s assertion that only “22 other customers offered similar testimony at the public hearings and evidentiary hearings.” VZ Br., p. 22. The Department also heard from 17 customers in Hancock in D.T.C. 07-2 on September 27, 2007, and received 20 complaints prior to opening this investigation. Twenty-two (22) comments were made at the public hearings in Greenfield, Florence, Pittsfield, and Chester in the summer of 2009, along with nine (9) unsworn comments at public hearings prior to the evidentiary hearings in Northampton this past spring.

In addition, Verizon provided copies of its Customer Care Index (“CCI”) surveys from approximately 136 Western Massachusetts customers over the six-month period December 2008 through May 2009, many of which contain complaints regarding the quality of Verizon’s telephone service. *See* Record Request 17, Attorney General’s Initial Brief (“AG Br.”), pp. 26-28. The record is filled with customer comments — many more than are common in a typical utility adjudication.² As the Attorney General’s expert witness, Ms. Susan Baldwin, noted “what I found very powerful, frankly

² *See e.g. Investigation by the Department of Public Utilities into Massachusetts Electric Company’s and Nantucket Electric Company’s 2006 Service Quality Reports*, D.T.E./D.P.U. 07-22 (2009) (assessing over \$8.0 million in penalties for poor performance with no customers’ comments).

was the real life. There are people there that are really affected” Tr. Vol. 1, p. 165. *See also* IBEW Initial Brief (“IBEW Br.”), p. 18 (“Local 2324 hopes that the Department keeps those customers in mind as it weighs the evidence in this case.”); Tr. Vol. 2, p. 281 (“The fact that people are showing up, the fact that people have been able to collect so many statements about concerns . . . is very compelling evidence that there is a pervasive problem and it’s not just isolated.”).

Verizon urges the Department to believe that customer complaints do “not provide a basis for finding that Verizon MA’s service in Western Massachusetts is inadequate in any way.” VZ Br., p. 23. The Company’s attempt to ignore the evidence in this manner is simply wrong, because the Department and its predecessor agencies give credence to public hearing testimony. *Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.P.U. Nos. 205-218 filed with the Department on April 14, 1989, to become effective May 1, 1989, by Bay State Gas Company*, D.P.U. 89-81, p. 10 (October 31, 1989) (quoting the standard of relevancy observed under the Administrative Procedures Act, G.L. c. 30A, § 11(4), which allows state agencies to admit evidence on which reasonable persons are accustomed to rely); *Housatonic Water Works Company*, D.P.U. 90-284, p. 3 (July 24, 1991) (“The Department has also given extensive consideration to, and placed great weight upon, the comments presented by the parties, limited participants, intervenors and *the general public at the several public hearings held in this matter.*”) (emphasis added); *Petition of the Board of Selectmen of the Town of Middlefield pursuant to C.L. c. 159, § 24, regarding the quality of Verizon Massachusetts’ telephone service (“Middlefield”)*, D.T.C. / D.T.E. 06-6, p. 2 (2009) (remedies ordered by the Department based partly upon

comments made by the Selectmen and numerous Town residents at a public hearing).

The Department made every effort to allow Verizon's customers to be heard and it should not now allow Verizon to discount those comments.

(b) The Record Evidence Clearly Shows that Many Consumers Confronting Poor Service Quality Lack Competitive Alternatives

The Attorney General and Verizon agree that if a market were truly competitive there would be no need for service quality regulation. Mr. Vasington made the following statement on behalf of Verizon, "[b]ecause if it was a competitive market, no regulation would be necessary." Tr. Vol. 4, p. 589. However, the parties have differing opinions on whether the market in Western Massachusetts is sufficiently competitive to reach this result. Notwithstanding the parties' economic theories, it is a fact that Verizon has not petitioned the Department to declare basic telephone service sufficiently competitive so as to eliminate its service quality obligations to its customers.³ This, alone, should eliminate Verizon's contention that competition ensures adequate service quality in Western Massachusetts.

In any event, certainly, compared to Eastern Massachusetts, Verizon's witness, Mr. Vasington, has admitted that competition is less robust in Western Massachusetts:

Q. Would you agree that in Eastern Massachusetts versus Western Massachusetts, there generally are more areas of coverage by wireless companies, and a larger number of wireless companies where there is coverage, than in Western Massachusetts?

³ Mr. Vasington testified as follows regarding Verizon's regulated status, "We are currently regulated for basic telephone service as a regulated service. It has not been classified as sufficiently competitive, nor has the company ever requested that the Department reclassify it as sufficiently competitive." Tr. Vol. 4, p. 590. Verizon witness Mr. Vasington continued, "I happen to believe that the market is competitive. We are not currently classified that way under the Department's rulings. We've never requested classification of basic residential services as sufficiently competitive." Tr. Vol. 5, p. 881.

A. Generally speaking for wireless, yes.

Tr. Vol. 2, p. 372.

Q. So there are significantly more towns in the Western Massachusetts territory that Verizon defines as Western Massachusetts where there are no cable providers, is that correct, than Eastern Massachusetts?

A. Yes.

Id., pp. 372-373.

Yet the Company completely disregards evidence presented by the Attorney General's expert witness that service quality problems are greater in areas where competition is less robust. *See* Evidentiary Exhibit 20 (Confidential) and Evidentiary Exhibit 21 (Confidential). The record evidence in this proceeding conclusively shows that competition in Western Massachusetts is not yet sufficient to ensure that Verizon provides adequate service quality or to eliminate service quality regulation of Verizon.

When questioned by the Department about Verizon's incentives to provide good service quality when customers lack any facilities-based competition, Mr. Vasington replied, "I believe that's such a small portion of the market today that distinguishing that from an operational or incentives perspective has no meaning in the current marketplace." Tr. Vol. 5, p. 871. Yet again, the record is clear that Verizon does indeed distinguish Western Massachusetts from an operational perspective. There is no FiOS deployed in Western Massachusetts.⁴ Technicians were deployed away from Western Massachusetts into Eastern Massachusetts when the Company was rolling out FiOS.⁵

⁴ IBEW witness Mr. Calvey stated the following, "And then when FiOS was rolled out in 2004, the Company was pretty emphatic that there would be no FiOS deployed in Western Massachusetts." Tr. Vol. 1, p. 85.

⁵ IBEW witness Mr. Rowley testified as follows, "I would say it was late 2004, but definitely early in 2005, when they started bringing up, going on FiOS. And we were consistently on the road up until, I would say,

Furthermore, and likely only as a result of this investigation, technicians have recently been deployed from Eastern Massachusetts to close plant in Western Massachusetts,⁶ an occurrence that, as IBEW demonstrated, is a sharp departure from many years of past Company practices (of resources only being shifted eastward and never westward except during the December 2008 storm). Tr. Vol. 1, pp. 77-79.

The Company has not conducted any study or analysis of wireless or cable telephony coverage in Massachusetts. Exh. AG-VZ 10-11; Exh. AG-VZ 10-12; Exh. AG-VZ 10-13; Exh. AG-VZ 10-14; Exh. AG-VZ 10-15. This is unusual as these service providers are Verizon's most significant competitors in the marketplace today. *See* Evidentiary Exhibit 12. Another departure from reasonable expectations is Verizon's inability to provide the price of its competitors' services. *See* Exh. AG-VZ 9-16 (providing a list of CLECs in Massachusetts but not identifying whether they serve Western Massachusetts and not providing any price information); Tr. Vol. 4, pp. 624-627 (Verizon witness John Conroy testified that Verizon is not aware of the stand-alone, unbundled basic service offered by its competitors); Record Request 12 ("Verizon does not track this data."). Price is a critical differentiator in determining the availability of competition.⁷

early to mid-2009, where I would have, it could have been half a dozen technicians or 30 or 40 technicians that were sent out on the road." Tr. Vol. 1, p. 124.

⁶ Verizon witness John Conroy explained, "At this point the plan is to move between 25 and 30 technicians into western Massachusetts ... [t]heir basic responsibility is going to be to work through the closure of the open plant that has been identified in the surveys that Verizon has done in western Massachusetts over the last several months." Tr. Vol. 3, pp. 441-442.

⁷ As the Attorney General's expert witness, Ms. Baldwin, explained, "The vast majority of households . . . in Western Massachusetts rely on Verizon's land line, and customers should not be compelled to buy an expensive Triple Play as the quality of their basic service quality goes down. It is not, in my mind, a real competitive alternative. If my service quality and I am paying \$20 a month for basic dial tone and my competitive alternative is to pay \$90 for a bundle, I don't see that as a competitive alternative." Tr. Vol. 2, p. 291.

A company behaving reasonably with respect to its shareholders and customers and facing a competitive environment in which it alleges it operates unprofitably would logically inform itself about the nature and extent of that competition. Verizon has provided no credible evidence that competition in Western Massachusetts is sufficiently robust to ensure good service quality. To the contrary, the Attorney General has provided evidence that service quality is inadequate in Western Massachusetts, particularly where competition is weak or nonexistent. Attorney General Rebuttal Testimony Exhibits SMB-Reb-C-6(a) and (b) (Confidential); Evidentiary Exhibits 20 and 21 (Confidential); Supplemental Response to Exh. AG-VZ 13-19.

(c) Verizon's Customers' Service Quality Problems Are Real and Longstanding

Verizon states that it “regrets that any of its customers encounter service issues, but this testimony demonstrates only that Verizon MA is not perfect, and that customers experience service issues from time to time.” VZ Br., p. 22. This language is *identical* to Verizon's Pre-filed Direct Testimony submitted on December 31, 2009. Verizon Direct Testimony, p. 20. Over the course of this proceeding, despite additional testimony from the public and six days of evidentiary hearings, direct testimony and cross-examination, Verizon remains complacent and continues to assert that the Western Massachusetts service experience is merely the normal course of business. “The company takes the official position that this is just an individual complaint, an individual customer problem to be handled as such; whereas we [Leverett, Shutesbury and Amherst] see the overall pattern as being a systemwide structural problem.” Greenfield Public Hearing Tr., pp. 8-9. Verizon ignores the evidence that service quality complaints come from all over the region, in smaller communities, such as Hancock, Egremont and Leverett, which are

parties to this proceeding, but also from larger communities such as Springfield, Ludlow and Chicopee. *See* Record Request 17, AG Br., pp. 26-28. Service quality is particularly poor in 57 out of the 101 communities in the region. Attorney General Rebuttal Testimony, Table 1, p. 14.

There is extensive evidence, which Verizon also finds unpersuasive, that service quality problems are long-standing. *See* Direct Testimony of the Towns of Hancock and Egremont; Tr. Vol. 1, p. 56 (“[W]e have had problems with our telephone ever since we have been here, 1995.”). “We’ve been living here full-time for the last 16 years. So this problem has been going on for that long.” Greenfield Public Hearing Tr., p. 17. The Towns of Hancock and Egremont are still waiting for the outcome of this docket to improve their service quality after having their complaints docketed in 2007.

Verizon’s customers are not imagining static on the lines, lack of dial tone or other service quality problems. Customer comments have been remarkably similar throughout the region and over time. The “near uniformity of [the] quality of service complaints” (many emphasizing problems when the weather is damp or rains) has been consistent and is one of the bases for opening this investigation. Order to Open the Investigation, D.T.C. 09-1, p. 13 (June 1, 2009). Those same complaints have been heard throughout this proceeding.⁸ *See also* AG Br., p. 23. Verizon’s panel member Mr. Sordillo testified concisely that if Verizon’s plant is open, it will get wet and get into trouble. Tr. Vol. 4, p. 672. It is reasonable to conclude that a portion of Verizon’s plant in Western Massachusetts has been “open” for extended periods of time or, in the

⁸ “We have lived in our house for 23 years. During that time our phone line every time it rains gets a horrible hum on it” Greenfield Public Hearing Tr., p. 20; “So we have a lot of static on our phone lines. It has been a chronic thing as far back as I can remember Mostly is when it rains or when it is really humid.” Florence Public Hearing Tr., p. 8.

alternative, Verizon has allocated insufficient resources to repair “open” plant for several years.

Finally, Verizon has argued that the customer comments that the Department has heard are a tiny, non-random sample and that only those customers dissatisfied with Verizon’s service quality will be heard from. VZ Br., pp. 23-24. It is equally likely that many of Verizon’s customers have just “given up” and have resigned themselves to poor service quality. “If a certain aspect of service is consistently poor, customers may come to perceive that level of service as the norm, and not voice dissatisfaction. That failure of customers to inform the Company of their dissatisfaction does not necessarily imply that the quality of service . . . is acceptable.” *New England Telephone and Telegraph Co.*, D.P.U. 89-300 (1990), pp. 303-304. In these instances, the trouble report rate would fail to capture the troubles that consumers *actually* experience but do not bother to report to the Company. In consequence, the trouble report rate may be a *minimum* measure of trouble reports and only captures those customers who have actually contacted Verizon.

In any event, in this proceeding, customers did complain and those complaints should not be dismissed as immaterial as Verizon suggests. Also, contrary to Verizon’s claims, dissatisfied customers were not the only customers heard. Non-profit customers who have benefitted from Verizon Foundation’s grants testified at the public hearings in Northampton about the pleasure they derive from working with and being served by Verizon. Tr. Vol. 1, pp. 9-11; Tr. Vol. 2, pp. 252-255.

Evidence in the record shows that customer complaints exist throughout the region, are remarkably similar and point to problems with either aging or open infrastructure, and have existed for extended periods of time. Verizon MA has given

insufficient attention or resources to its Western Massachusetts customers, which has caused them harm.

(d) Verizon is Misguided When It Argues the Number of Customers Affected Are Insignificant

Despite the evidence showing that lack of competition is an issue in Western Massachusetts, and that there, more so than elsewhere in the Commonwealth, people depend to a greater extent on their dial tone service, Verizon argues that the absolute number of people affected is insignificant, and therefore insufficient to find inadequate service quality exists in Western Massachusetts. VZ Br., p. 23. *Only 12%* of access lines are represented by the 23 wire centers where Verizon failed to clear fewer than 50% out-of-service (“OOS”) troubles in 24 hours. *Id.*, p. 12. The Troubles Cleared – Residence metric is concerned “only with the *less-than [sic] 2%*” of residential customers who have a service issue in a given month. *Id.*, p. 13. The “failure of six wire centers, serving *less than 7,000* access lines” to meet the Department’s RPHL standard cannot represent performance across the region. *Id.*, p. 19. This argument misunderstands the Department’s statutory authority and precedent.

The Attorney General does not dispute that the population in Western Massachusetts is less dense than elsewhere in the Commonwealth. However, the fact “[t]hat relatively few people reside in rural communities does not make their level of service quality unimportant.” AG Br., p. 22. Section 16 of General Laws Chapter 159, requires the Department to order remedial action upon a finding that a carrier’s service is “unjust, unreasonable, unsafe, improper or inadequate.” There is no requirement that inadequate service must affect a significant number of consumers before the Department may order relief. In communities served by small wire centers, high RPHL and high

RPHL over an extended period of time impact those communities. The Town of Rowe complained to the Department after residents contacted the Selectboard about “terrible” phone service quality for two and one half years. Rowe Public Hearing Tr., p. 4. “We [the Selectboard] were pushed . . . by repeated vociferous complaints from residents throughout Leverett over a period of many months.” Leverett Brief, p. 1. As the Department has previously stated, it will find service quality inadequate when it “substantially impair[s] the ability of a community to undertake commonly required economic, social and public health and safety functions.” *Middlefield*, p. 5 citing *Town of Athol*, p. 16.

The Department has heard testimony in this proceeding about the negative impacts of unreliable telephone service on various communities in Western Massachusetts as well as testimony from two Chiefs of Police about public safety concerns.

The fact that 101 unique communities, including self-proclaimed “tourism destinations” in the Commonwealth, are impacted by this investigation underscores the importance of the public switched network to Western Massachusetts. Any SQI needs to weigh community impacts rather than merely counting access lines to recognize that a community is “greater than the sum of its lines”. In other words, the approximate 700 lines that serve Worthington affect the welfare and safety of an entire community – households, businesses, town centers, and the local economy. The modifications suggested below seek to reflect the importance and value of the public switched telephone network to the wellbeing and future of the many diverse communities that make up western Massachusetts.

Response to Record Request 5. Based on its precedent and this evidence, the Department should find Verizon’s service quality inadequate.

3. *Verizon Has Allocated Insufficient Resources to Western Massachusetts*

The analysis of the evidence by the IBEW mirrors the concerns of the Attorney General and her expert, Ms. Baldwin. *See* IBEW Br., Section IV.A. However, once again, Verizon asserts that “service quality in Western Massachusetts is good and has improved in the past few years . . . so that Verizon’s force deployment practices have not resulted in inadequate service quality in the region.” VZ Br., p. 33. It is likely that Verizon’s service quality has improved “over the last few years” only in direct response to this investigation. Verizon’s investment in FiOS in eastern Massachusetts has depleted staff and reallocated resources from Western Massachusetts, so that, in addition to overall headcount reductions, staff is not available to do routine maintenance and repairs such as closing open plant.⁹ The Company also does not make adequate financial investment in capital improvements in Western Massachusetts as evidenced by its technicians’ repeated statements to customers about the age and condition of the plant. “I’ve talked to a number of linemen. They claim that they have put in requests to upgrade our equipment here year after year and they have been continually refused.” Rowe Public Hearing Tr., p. 41.¹⁰

The Attorney General provided evidence of aging infrastructure consistent with the comments received from customers and Verizon technicians. Cable in Western Massachusetts is old, dating back to the 1960s in many instances. Attorney General Direct Testimony, p. 5. *See also id.*, Table 9, p. 64 (chart showing the age of selected

⁹ “As the volumes in the traditional business have declined, we have shifted force to growth areas or eliminated positions where possible.” Supplemental Response to AG-VZ 15-42, Verizon Communications, Inc. at Lehman Brothers Conference, May 29, 2008, p. 5.

¹⁰ “It is time for Verizon to spend money on the infrastructure on the small towns. Our whole road has this problem, we have been told by the repair guys. They have been told to repair it and Band-Aid it and not change anything.” Greenfield Public Hearing Tr., p. 21; “We know that is the problem because of the infrastructure. They keep patching it up . . . these workers are frustrated too and they are embarrassed.” *Id.*, p. 17; “But when the guy came out the first time he told us, he said that the lines out here are antiquated.” Hancock Public Hearing Tr., pp. 27-28.

cable in Western Massachusetts). Ms. Baldwin testified: “I sat here this morning . . . and I heard testimony regarding corrosion that occurs. It seems to me that if, when it rains, and outside plant yields static, that corrosion, degradation of plant is entirely plausible given, yes, the age.” Tr. Vol. 1, pp. 197-198. Verizon has offered no evidence that the age of its cable in Western Massachusetts does not contribute to the open plant problems that have negatively affected service quality in the region. Exh. AG-VZ 12-2 (Verizon has not analyzed the age of its cables in Western Massachusetts). Verizon has also not demonstrated that its capital expenditures in Western Massachusetts have been adequate. Exh. AG-VZ 3-1 (capital expenditure data can only be produced at the state level). *See also* Exh. AG-VZ 3-32 (Verizon does not have any business plans concerning service quality, infrastructure and capital expenditures in Massachusetts or at any other level within the corporation).

The record evidence clearly shows that Verizon has made it a practice over the years to transfer technicians out of Western Massachusetts and into Eastern Massachusetts.¹¹ Verizon admitted to moving employees from Western Massachusetts to Eastern Massachusetts to backfill other employees working on FiOS. Tr. Vol. 2, p. 406. Only rarely, such as the December 2008 ice storm, or in response to this investigation, have the technicians traveled in the opposite direction. Furthermore, there is nothing in the record to indicate what takes place with the 25-30 technicians transferred to Western Massachusetts to focus on the repair of open plant now that June 30, 2010 has passed.

The Attorney General and the IBEW both recognize that the steps Verizon has taken to improve service quality in response to this investigation are important. In order

¹¹ Mr. Calvey testified for IBEW as follows, “[f]or example, in 2004, when they rolled out FiOS, they forced a whole bunch of technicians out of Western Massachusetts and into many areas” Tr. Vol. 1, p. 79.

to insure long-term service quality improvements, the Department must exercise its regulatory authority so that, at the conclusion of this investigation, Verizon does not return to business as usual with its human and financial resources focused on Eastern Massachusetts, other lines of business, or elsewhere at the expense of Western Massachusetts.

4. *The Attorney General Provided Evidence that Verizon's Performance to SQI Metrics Is Worse in Western Massachusetts than in Eastern Massachusetts*

Verizon's arguments that service quality is good in Western Massachusetts are consistent: "First and most importantly, the quality of service Verizon MA provides in the region more than satisfies the Department's Service Quality Plan" VZ Br., p. 6. This argument that Verizon meets the current statewide Service Quality Plan and therefore service quality is good in Western Massachusetts is tautological and has been soundly refuted by the Attorney General.

Secondly, Verizon argues that "[e]vidence of RPHL higher than the statewide standard in a few wire centers does not support a finding that service is inadequate across the region." *Id.*, p. 2. As Leverett accurately points out, "a region, by definition, is an area of specific locations." Leverett Brief, p. 2. The Company argues that service quality is adequate in larger wire centers and smaller wire centers are more difficult to serve, thereby hoping to explain and excuse a lower standard of service quality in smaller wire centers. Verizon Direct Testimony, pp. 25-26 (showing the 10 largest wire centers in Western Massachusetts that provide "good, stable service").¹²

¹² Interestingly, the Great Barrington wire center (which serves portions of the Town of Egremont) is one of the ten largest wire centers and shows an RPHL of 3.13, 3.91 and 3.28 in June, July and August of 2009, respectively. Great Barrington also serves Alford, Ashfield, Becket and Lee – communities identified by

Finally, Verizon argues that even if service quality were inadequate in these “pockets” within Western Massachusetts the numbers are so “small” as to not indicate a “major shortcoming” in the Service Quality Plan. Verizon Direct Testimony, pp. 24-25; *see also* VZ Br., p. 23. “Of the 21 wire centers in Massachusetts with under 1,000 lines, 17 are in Western Massachusetts” Verizon Direct Testimony, p. 24, n.12. Only six wire centers in Western Massachusetts have more than 10,000 lines. Exh. AG-VZ 13-4.

The “region” under investigation in this proceeding consists of predominantly small or medium size wire centers. The Attorney General has provided evidence that small and medium size wire centers — and the municipalities they serve — have significantly worse service quality than wire centers and communities in Eastern Massachusetts (with perhaps the exception of the Southeast District which is not the subject of this investigation), demonstrating that service quality in the region is inadequate.

As noted previously, one of the Department’s criteria for determining that service quality is inadequate is if it “substantially impairs” the ability of a community to engage in economic, social, public health, and safety functions. *Middlefield*, p. 5, citing *Town of Athol*, p. 16. Including Middlefield, six of the region’s municipalities have gone so far as to complain to the Department about the quality of their basic telephone service. These communities represent a geographically diverse group of municipalities from the northernmost portion of the region (Rowe) to the southern and westernmost portion (Egremont and Hancock), the easternmost portion (Leverett and Shutesbury) and the central portion of the region (Middlefield). The Attorney General has provided evidence

the Attorney General as ‘Meriting Focused Attention.’ Attorney General Rebuttal Testimony, Table 6, p. 25.

that the majority of the municipalities in the region (57 out of 101) merit close attention and has provided a map designating poor service areas based on 2009 RPHL data.

Attorney General Rebuttal Testimony, pp. 24-25; *Id.*, Exh. SMB-Reb-1.

On behalf of the Attorney General, Ms. Baldwin has done an extensive analysis of the amount of time it takes Verizon to clear out of service (“OOS”) and service affecting (“SA”) troubles in Western Massachusetts. *See id.*, pp. 29-36. This analysis separated the OOS and SA troubles, and the Attorney General has recommended that the Department require Verizon to report them separately.¹³ Ms. Baldwin noted that the data indicated that the number of OOS troubles and the time to repair them decreased from 2008 to 2009. The result was the same for SA troubles, although it was not as dramatic an improvement as with OOS troubles. However, Verizon still does not meet the current troubles-cleared residence metric in Western Massachusetts, nor has it made any commitment to continue its improvement in reducing the volume of troubles (relative to the quantity of lines served). As can be seen, the number of lines are going down so it not enough to simply reduce volume. This failure to meet the Department-established standard for timeliness of repair and absence of a commitment to continue improvement are unacceptable.

¹³ Verizon currently already separates these metrics for internal purposes so there should be minimal, if any, impact for the Company to report them to the Department. Tr. Vol. 4, pp. 614-615.

B. The Department Has Caused Verizon to Improve Service Quality In Western Massachusetts By Opening This Investigation and Must Ensure Verizon Continues to Raise Service Quality to an Adequate Level and Then to Sustain That Level

1. The Department Must Ensure that Verizon Continues to Improve Service Quality

(a) The Department Should Order Verizon to Complete the Work in 32 Wire Centers by October 31, 2010

The simple fact that Verizon is “voluntarily” and, most likely in response to this investigation, surveying and repairing outside plant that serves almost half (32 out of 63) of the wire centers in Western Massachusetts belies its argument that service quality is good. VZ Br., p. 21. It is highly unlikely that this work would have been undertaken without this investigation. In fact, Mr. Conroy admitted “that this investigation by the Department has put a spotlight on the area.” Tr. Vol. 4, p. 674. Notably, Verizon has repeatedly failed to make any commitment as to when this work will be completed. VZ Br., p. 21, *See also* Exh. AG-VZ 14-5(b); Exh. AG-VZ 14-14; Exh. AG-VZ 15-40. Mr. Sordillo stated the following, “[s]o we will return those people at the end of June. We will reassess what is left, if there is anything left, what it requires. And if we can, we’ll see what the next step is at that point in time.” Tr. Vol. 4, p. 668.

Actual progress in completing wire center repairs does not appear to be significant. In the evidentiary hearing on April 12, 2010, Mr. Sordillo testified, “[s]ince, March 16, we have been in Blandford and Williamstown. And I believe it was a week ago today we sent 30 technicians from eastern Massachusetts to western Massachusetts.” Tr. Vol. 4, p. 723. Yet in its Initial Brief, the Company confirmed that more than one month later, on May 14, 2010, the team had closed only 16% of the open plant items. VZ Br., p. 21. Verizon’s Initial Brief of June 18, 2010 further fails to commit to any

completion schedule in Western Massachusetts. “Verizon MA estimates the work will be complete by June 30, 2010, but will assess its progress and how best to proceed as that date approaches.” *Id.*

If Verizon has, in fact, committed to completing repairs in 32 wire centers in Western Massachusetts, it should be willing to provide a date certain for completion of this effort so that its customers may know when to expect an improvement in their service (at least for those customers served by these wire centers). To date, the Company has refused to do so. The Company’s surveys and closing of open plant in 32 wire centers in Western Massachusetts are not being conducted pursuant to a Department order. Absent a Department order, these activities may be discontinued at any time. The Attorney General urges the Department to order Verizon to complete the open plant repairs not later than October 31, 2010 or 60 days after receipt of an Order in this proceeding.

(b) The Department Should Require an Independent Third-Party Audit for Long-Term Improvements

Verizon has estimated that the cost for it to conduct plant surveys to cover the entire Western Massachusetts area is “almost \$500,000.” Exh. AG-VZ 6-5. It is not clear from the record how much of this \$500,000 has been incurred already to survey the majority of the wire centers (32 of 63). In any event, Verizon argues against a third-party audit because “Verizon MA is capable and the most qualified entity to perform that work.” VZ Br., p. 40. The Company also argues against an independent audit because “use of a third-party would be administratively cumbersome and slow.” *Id.*

The Attorney General has recommended an independent, third-party audit to eliminate bias, such as the Company’s focus on cost cutting. AG Br., p. 47. Another

benefit of such an audit would be to “counterbalance the information asymmetry” between the data available to Verizon and the data available to the Department. *Id.*, p. 48. An independent audit could serve as a foundation to put the Department on a more equal footing with the Company in evaluating service quality issues in Western Massachusetts.

Finally, Verizon has made it abundantly clear that its focus is on reducing resources, particularly headcount. *See* Verizon Rebuttal Testimony, p. 36. (“Verizon MA has fewer (and declining) revenues and personnel to maintain its network”); Verizon Supplemental Testimony, p. 17 (“In this environment [race to profitability], resources are not “freed-up;” they are eliminated”).¹⁴ This presents a concern to the Attorney General and causes her to recommend an independent audit. Given the length of time that consumers in Western Massachusetts have experienced problems, and given the Company’s avowed focus on cost cutting, it is more likely than not that Verizon will choose a band-aid repair, rather than a more expensive option such as cable replacement, which may be necessary for long-term improvement. The experience of the Town of Hancock is illustrative. According to the Selectboard Chair and Chief of Police, Sherman Derby, “[the copper line for the 458 exchange] has had difficulty for years, but it got to the point in 2006 where it was unbearable.” Tr. Vol. 1, p. 34. After working with Mr. William Dealecio, “a topnotch troubleshooter,” from Verizon for several months, Chief Derby was told that Mr. Dealecio had done all he could and if Hancock wanted

¹⁴ “The last couple of years we have reduced our Wireline workforce by about 13,000 per year. And I said we would do the same this year. I actually think we have, now, the ability to do more than that this year. You’ll probably read in the press later today that we did reach agreement with our unions and our East Coast unions, the CWA and the IBEW on an enhanced incentive offer last night. And that is going to allow us to take out a significant, significant number of associates. And one of our limitations on our ability to downsize the workforce was we were limited in our ability to lay off in our East Coast contracts.” Record Request 31(d), VZ-Q1 2010 Verizon Earnings Conference Call, April 22, 2010, , p. 12.

better service, the lines would have to be replaced. *Id.*, pp. 35-36. Only an independent audit followed by implementation of the audit's key recommendations will ensure good service quality for Western Massachusetts over the long-term.

(c) The Department Must Ensure that Service Quality Improves and Remains Satisfactory in Western Massachusetts Given Verizon's Focus on Profitability and Staff Reductions

Verizon has relied heavily on its Proactive Cable Maintenance ("PCM") program and its "Predictor process" as the means by which it identifies and repairs open plant. *See Verizon Direct Testimony*, pp. 53-54; *Verizon Rebuttal Testimony*, p. 37; *Verizon Supplemental Testimony*, p. 44; *VZ Br.*, p. 1. "In addition, in 2007, long before the Department opened this proceeding, Verizon MA reinvigorated a number of programs to manage the network more aggressively" *VZ Br.*, p. 10. The investigations into service quality in Hancock and Rowe were opened in 2007, and Verizon previously admitted that the current investigation has had an effect on its behavior in Western Massachusetts. As previously noted, Mr. Conroy admitted that the Company "said in our testimony and in data requests as well, that this investigation by the Department has put a spotlight on the area." *Tr. Vol. 4*, p. 674. *See also*, *Exh. AG-VZ 14-5*. ("Verizon MA would have done some of the surveys it has conducted in Western Massachusetts, but not all of them."). There appears to be a direct connection between this investigation and Verizon's enhanced interest in Western Massachusetts.

In response to a question about when the predictor package process started, Mr. Sordillo stated on behalf of Verizon that "[i]t actually started prior to 2005. When we got to 2005 and 2006 it more or less fell off the track." *Tr. Vol. 4*, p. 689. The Department has heard substantial testimony to the effect that, absent this investigation, Verizon did

not timely repair service problems in Western Massachusetts communities.¹⁵ *See also* Tr. Vol. 2, pp. 293-295 (allowing Verizon to continue “voluntary auditing of communities, and also its work in repairing open plant” may not deal with the larger problem of lack of investment in Western Massachusetts). The Department must establish some method to ensure that Verizon’s new concern for and focus on open plant in Western Massachusetts does not “fall off the track” once this investigation concludes in furtherance of Verizon’s avowed race to profitability.¹⁶

If Verizon’s plant in Western Massachusetts had been well maintained or protected from the elements, Verizon would not find it necessary to survey and repair plant in more than half of the wire centers in the region. Verizon has not had, under the current Service Quality Index, adequate incentives to improve what has obviously been a longstanding failure to properly maintain plant. Elsewhere the Attorney General has discounted competition as an effective incentive. To the contrary, the Attorney General has argued, and Verizon Communications, Inc. has confirmed in its Quarterly Conference Calls with the investment community, that Verizon Communications, Inc. is incented to concentrate resources and capital in areas where competition is more robust and the marketplace is more profitable. *See* Exh. AG-VZ 4-17, Record Request 31, Supplemental Response to Exh. AG-VZ 15-42. The Attorney General is particularly concerned by Verizon Communications, Inc.’s public statements and focus on staff reduction that

¹⁵ Town witness Sherman Derby testified as follows, “I would say that Verizon’s in a state of denial, just like they have been for many years, that they don’t have a problem, and that Hancock doesn’t have a problem. And it will continue until the Department steps in and takes care of it.” Tr. Vol. 1, pp. 41-42.; “I think we are all here today because consumers got fed up and they complained, and municipalities complained. I don’t think we would all be here if there hadn’t been complaints, and if the complaints had been addressed in a timely manner, in a comprehensive manner.” Tr. Vol. 1, p. 168.

¹⁶ “I would believe to my core that once this is over and done with, if there is nothing left, this is some kind of monitoring device, that it would absolutely go back to the way it was before.” Tr. Vol. 1, p. 119 (cross-examination testimony of IBEW witness, John Rowley).

Western Massachusetts will once again be disadvantaged while Verizon deploys resources to more profitable regions and lines of business.¹⁷

The Attorney General has recommended a more granular and focused SQI reporting on Western Massachusetts metrics along with an independent audit of the condition of plant and resources in the region. In the absence of effective competition and an effective SQI, the Department must ensure that Verizon does not return to its former halfhearted efforts to provide adequate basic telephone service quality to its customers in Western Massachusetts.

2. *Remedies Are Not Precluded by Verizon's Statements Regarding its Financial Condition*

(a) *Verizon's Financial Information Cannot Be Relied Upon*

Verizon claims that it “has offered extensive, undisputed evidence demonstrating that it does not have the financial ability to meet the Troubles Cleared – Residence metric or the analogous OOS and SA metrics in the Hypothetical Plan.” VZ Br., p. 45. As it has done in its Rebuttal Testimony and at hearings on May 21, 2010, Verizon again refers to its “significant and sustained losses in Massachusetts and negative return on investment over a multi-year period of time” in its Initial Brief. VZ Br., p. 47. Verizon has provided income statement accounts, which it filed with the FCC entitled, “FCC Report 43-02 ARMIS USOA Report,” with absolutely no visibility into the elements comprising either revenue or expense figures. Verizon Rebuttal Testimony, Exhibit 2 (providing income statements for the years 2004 and 2005). This information has not been subjected to any review and investigation by the Department. Further the income statements do not reflect

¹⁷ “Verizon Massachusetts is under, in my belief and opinion, is under extreme pressure from Verizon corporate to pursue lines of business that are more profitable in this transition period where land lines continue to be important, but the incentive to cut costs is extreme.” Tr. Vol. 2, pp. 312-313 (cross-examination testimony of Attorney General witness, Susan Baldwin).

the FCC's review and investigation, but instead are simply filed for informational purposes by Verizon with the FCC. The information is not accompanied by a cost of service study, information related to affiliate transactions, information concerning the separation of regulated and non-regulated expenses, information concerning the separation of intrastate and interstate costs, or any other information, which would prove the negative net income figures appearing in FC Report 43-02 ARMIS USOA Report. Without adequate and transparent information concerning the Company's financial condition, the Company's financial condition cannot preclude remedies. Tr. Vol. 4, pp. 734-739. Verizon had an opportunity to include in its Panel a member familiar with Verizon's corporate financial accounting and reporting structure. Instead, Verizon MA chose a panel that was unable to answer financial questions directly relevant to the Company's assertions about profitability. *See* Tr. Vol. 6, p. 1015; p. 1037-1038; p. 1045; Tr. Vol. 3, pp. 553-554.

In its brief, Verizon makes the statement that “[s]ince the alleged public safety concern is not sufficient to warrant imposing the Troubles Cleared – Residence requirement . . . on carriers who serve half of the customers in the region, that concern cannot justify imposing penalties on the carrier – Verizon MA – who serves the other half.” VZ Br., p. 16. This statement is erroneous. *See* Evidentiary Exhibit 21, (Confidential). The Department has not yet determined what weight to give public safety concerns, but Verizon mischaracterizes the regulatory landscape in pointing out that customers of cable or wireless providers do not have the protections of service standards or regulatory metrics. Verizon remains the carrier of last resort in the vast majority of Massachusetts. The Department should disregard Verizon's claim in its entirety.

The Department has crafted, in the existing Service Quality Plan, a scheme which includes financial incentives to achieve adequate service quality. Because those financial incentives are insufficient to generate adequate service quality in Western Massachusetts, the Attorney General requests that the Department consider, and, if necessary, modify those incentives so that they are sufficient to motivate Verizon MA to provide adequate service quality in the region. Customers have suffered with inadequate service quality for a very long time, and the evidence in this proceeding shows that *but for this proceeding* and the remedies that the Department directs in this proceeding, they would have received no attention whatsoever. For the reasons provided in detail in the Attorney General's Initial Brief, the Verizon Panel's statements regarding its financial condition should be given no weight.

(b) It Is Verizon's Responsibility To Estimate Costs

Verizon complains that “[n]o party other than Verizon MA has even considered the cost of compliance in proposing or evaluating these remedies. . . .” VZ Br., p. 45. It is not the Attorney General's, the IBEW's or the Towns' burden to produce evidence as to Verizon's costs. Verizon is the only party in possession of its own cost information and cost estimates. Many attempts to elicit this information were unavailing.¹⁸ See Exh. AG-VZ 14-19 (costs associated with carrier of last resort obligations would require a burdensome special study); Record Request 26 (cost to produce the 43-05 report after the FCC eliminates the data filing requirement is not directly quantifiable); Exh.

¹⁸ During the discovery process, Verizon either reserved its right to object or objected to numerous discovery requests. Verizon objected to nine (9) information requests propounded by the Department. In addition, Verizon did not fully answer twenty-nine (29) information requests propounded by the Department. Verizon objected to at least ninety-seven (97) information requests propounded by the Attorney General and objected to seventy-eight (78) information requests put forth by the IBEW. Of the six (6) information requests served on Verizon by the Town of Leverett, Verizon objected to one (1) and responded that it did not have the information requested in the remaining five (5).

AG-VZ 8-26 (objected to as not relevant with a nonresponsive answer to a request for estimated costs to provide reliable service in “pockets” where it is difficult to provide such service); Exh. AG-VZ 8-19 (Verizon does not have the data to identify resources necessary to improve the troubles cleared – residence performance).

Verizon has already voluntarily undertaken approximately \$2.0 million worth of work in its survey and repair of wire centers in Western Massachusetts. In its brief the Company appears to be offering to spend an estimated total of \$500,000 for surveying the entire 413 Area Code rather than have the Department order an independent third-party audit. Thus, the Company’s has *already* demonstrated the financial ability to expend \$2.5 million in Western Massachusetts in an effort to avoid the imposition of additional regulatory requirements.

Verizon is the only party to this proceeding capable of estimating the cost of remedies. Except for its estimate of the cost of a complete survey of Western Massachusetts and “a very rough estimate” of the cost to meet one of the *current* SQI metrics, the Company has chosen not to provide evidence in the record but, instead, to rely on unsubstantiated statements about its profitability or to insist that certain remedies are outside the scope of the proceeding – a determination that is not Verizon’s to make. Verizon Rebuttal Testimony, p. 41. *See id*, p. 53 (the Company fails to provide any estimate of the cost to segregate Western Massachusetts for SQI reporting because it would be a “waste of resources” and is “not within the scope” of the proceeding). Notwithstanding its alleged lack of profitability, the Company has undertaken or appears willing to spend at least \$2.5 million in an effort to improve service quality.

These factors show that the Department may in fact order additional remedies that it finds reasonable and necessary to ensure continued and continuous improvement in the service quality in Western Massachusetts including requiring the Company to meet the existing SQI metric for troubles cleared - residence.

(c) Verizon's Confiscation Argument Is Without Merit

Verizon argues in its brief that the Attorney General's proposed credits and the hypothetical service quality index would be confiscatory if implemented. VZ Br., p. 48. Confiscatory ratemaking does not occur when utilities are entitled to collect reasonable operating costs and are provided an opportunity to earn a just and reasonable return on investment. *Bluefield Water Works v. West Virginia*, 262 U.S. 679, 688 (1923); *see also Boston Edison Co. v. Dep't of Pub. Utils.*, 375 Mass. 1, 10-11, (1978) (finding a 13% rate of return not to be confiscatory); *Boston Consol. Gas Co. v. Dep't of Pub. Utils.*, 329 Mass. 124, 129, (1952) (finding a 1.26% rate of return to be confiscatory). In its orders, the Department's predecessor agency, the Department of Public Utilities ("DPU") often repeats that it is free to select or reject a particular method of regulation as long as it is not confiscatory or otherwise illegal. *American Hoechst Company v. Dep't of Pub. Utils.*, 379 Mass. 408, 413 (1980).

The "general rule is that any question about the constitutionality of ratesetting is raised by rates, not methods," and the utility must be subject to a new rate before it can claim that the rate is confiscatory. *Verizon Communications, Inc. v. F.C.C.*, 535 U.S. 467, 524-25 (2002) (finding that the methodology of defining cost without reference to historical cost is not a taking). If a ratesetting body acts in a manner that is "arbitrary

arbitrarily, opportunistic, or undertaken with a confiscatory purpose” then there may be an argument for confiscation. *Id.* at 527-28.

Verizon’s claim of confiscation does not fall within the takings precedent, because no new rate is being challenged in the instant case. Instead, Verizon is proposing a challenge to the methodology of enforcing quality standards. It is possible to make a takings challenge based only on methodology if the ratemaking body were to make opportunistic (arbitrary decisions to switch back and forth between methodologies) changes in ratesetting methodologies, *just* to minimize return on capital investment in a utility. *See id.* at 526-28, (citing *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989)) (“A State’s decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.”).

The service quality standards existed before this investigation began, as did Verizon’s obligations to meet those standards. Establishing and enforcing service quality standards is not an opportunistic change made by the Department in order to minimize the return on Verizon’s capital investments, but rather an attempt to make Verizon meet its service quality obligations. *See id.* at 526-28. Exercise of the Department’s regulatory authority over service quality is not arbitrary, opportunistic, or done with a confiscatory purpose. *See id.* at 527-28. The Department has the legitimate obligation to ensure that Verizon’s customers are provided with good quality basic telephone service, as measured by the Department’s own existing standards that it has set for service quality metrics; any new standards that the Department may set in this proceeding, based on its

administrative expertise and the evidence in this proceeding; as measured by an independent audit of the Company's network and resources in Western Massachusetts; and as measured by the Department's assessment of consumer complaints.

Verizon has not demonstrated that establishing and enforcing service quality standards will prevent it from earning a reasonable return on the value of its property and has therefore failed to demonstrate that enhancing service quality standards is confiscatory.

See Bluefield Waterworks v. Public Service Commission, 262 U.S. 679, 690 (1923). The United States Supreme Court has held that a utility's "[r]eturn should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, *under efficient and economical management*, to maintain and support its credit and enable it to raise the money necessary for the discharge of its public duties."

Bluefield Waterworks v. Public Service Commission, 262 U.S. 679, 693 (1923) (emphasis added). Moreover, given the substantial evidence showing poor service quality in Western Massachusetts, it must be noted that "there is no such thing as a reasonable rate for service that is deficient." C. PHILIPS, *THE REGULATION OF PUBLIC UTILITIES* at 553 (1993). Furthermore, as noted previously, Verizon has failed to provide adequate financial information in support of its arguments.

3. *Verizon's Arguments Regarding Reporting the Repeat RPHL Metric Are Unpersuasive*

In its brief, Verizon argues that it should not report the percentage of repeat troubles (1) because no other state requires such reporting; (2) because it does not measure them over a 60-day period; and (3) because there is no standard against which to assess them other than its own internal benchmarks--which it claims to meet--thereby making reporting unnecessary. VZ Br., p. 54.

The Attorney General finds Verizon's opposition to the establishment of a repeat trouble report rate metric for Western Massachusetts unpersuasive. First, the absence of such a metric in the current plan for Verizon and in the plans of other states where Verizon is an ILEC does not provide compelling logic that its inclusion as a metric in Western Massachusetts "lacks a basis." *Id.* If the Department were to accept Verizon's logic, the Department would never adopt *any* new regulatory directive.

Furthermore, a repeat trouble report rate is hardly an odd metric for measuring the performance of a company whose customers *repeatedly* experience troubles. Verizon's own witness clearly explained that repeat troubles are customers' primary reason for dissatisfaction with Verizon's repair of basic lines. According to Mr. Sordillo, "[t]he very first one is repeat reports." Tr. Vol. 4, p. 718; Record Request 5. "To me, phone service should work. I understand occasional problems, but five times in one year?" AG Br., p. 27. A reasonable goal of this proceeding is to yield remedies of long duration rather than quick fixes, and therefore a repeat trouble report rate metric would provide the Department with valuable information to achieve that goal.

Verizon also opposes the Department's proposed metric, because it is based on a 60-day period, and then further asserts that it is not "sufficient merely to revise the proposed metric to measure repeat troubles within 30 days." VZ Br., p. 54. Ms. Baldwin explained that her proposed metric concerning repeat troubles would be based on a 30-day period. Tr. Vol. 6, p. 994; *see also* Attorney General Response to Record Request 5, pp. 11-12. In the Attorney General's response to Record Request 5, Ms. Baldwin computed repeat trouble report rates based on Verizon's own reported data, and therefore this implicitly corresponded with a 30-day period. Further, in Attachment A to

the Attorney General's response to Record Request 5, Verizon's own data was reproduced and is therefore again based on a 30-day period. The HSQI reasonably includes a new metric that would measure repeat troubles. As the Attorney General has pointed out, there is an easy fix to the logistical problem that Verizon identifies and that is simply to measure repeat troubles relative to a 30-day period.

Verizon opposes this simple fix of changing the reporting time frame to 30 days, because, in the Company's view, the Department lacks a "benchmark or standard" to assess Verizon's performance. VZ Br., p. 54. Yet Verizon's witness, Mr. Sordillo, clearly testified that Verizon seeks to achieve a range of 12% to 14% repeat trouble reports. "Our goal is between the 12 and 14 percent. Anything under 12 is excellent. Anything over 14 percent is an issue to us." Tr. Vol. 4, p. 762. Clearly, the Company's internal objectives can provide a non-controversial "floor" for the establishment of a metric – that is, the Department reasonably can hold Verizon accountable to the Company's own internal standards. In addition, the Attorney General's response to Record Request 5 provides detailed justification for gradually raising the bar on repeat troubles. *See* Record Request 5, pp. 11-12. There is ample evidence demonstrating the merits of holding Verizon accountable to its repeat trouble rate, and there is also ample evidence demonstrating that Verizon *already* measures and seeks to improve its repeat trouble report rate. Tr. Vol. 4, pp. 760-762.

Verizon also seeks to avoid reporting its repeat trouble rate in Western Massachusetts to the Department, because according to Verizon, its performance falls within its self-designated "acceptable range." VZ Br., p. 54. However, contrary to Verizon's allegation, it is the Department, and not Verizon, that determines the

acceptable range of service quality performance. Also, even if the Department were to concur with Verizon that a range of 12 percent to 14 percent is acceptable for repeat troubles, the Department should not simply assume that the Company will continue to perform within this range. Instead, the Department should establish accountability and incentives for such performance, so that, as the Company adopts cost-cutting measures, the performance does not deteriorate relative to the current level. As noted elsewhere, the Attorney General is concerned that Verizon may implement ephemeral, band-aid remedies in Western Massachusetts.

Verizon fails to rebut the value of establishing a new metric that captures information about the percentage of customers who experience repeat problems. In the Attorney General's view, consumers should be able to expect not only that troubles are infrequent but also that, once they are reported, Verizon will take steps to eliminate them on a more than superficial basis. Verizon has failed to provide any evidence to demonstrate why a network that causes more than one in ten customers (that is, between 12 percent and 14 percent) to experience a repeated trouble within 30 days is adequate service or why reporting this metric is unreasonable.

Consistent with the findings of the Company's surveys and with common sense, consumers are predictably dissatisfied with experiencing troubles more than once on their basic local lines. Yet, the present SQI does not measure nor does it hold Verizon accountable to the percentage of times that customers experience repeat troubles.

Attorney General Direct Testimony, Exhibit 9. In this proceeding, the Department could establish a valuable regulatory tool, namely, at a minimum, a requirement that Verizon submit, for Western Massachusetts, on a monthly basis, repeat trouble report rates both

on a wire center basis and also averaged over the Western Massachusetts (*i.e.*, “Springfield District”) region. The Department also should adopt more comprehensive remedies to enhance Verizon’s accountability on this important metric and consider inclusion of the metric in a regional SQI (and, in the future, in a statewide SQI).

C. Verizon Has Failed to Rebut Concerns About Tension Between Service Quality and Increasing Profits

1. Reducing Troubles Will Free up Resources

The Company has stated that “[i]dentifying and closing open plant in wire centers with consistently higher RPHL has proven to be the most effective and cost-efficient means of reducing trouble report volume and improving overall service quality to customers” VZ Br., pp. 21-22. Yet, “Verizon MA’s ability to clear troubles within a certain timeframe is largely labor-dependent, and Verizon MA no longer has (and no longer can have, for the reasons discussed below) the workforce that in past decades might have allowed it to meet the metrics at issue here.” *Id.*, p. 43. Verizon has also stated that in its current business environment, resources are not “freed up”; they are eliminated. Verizon Rebuttal Testimony, p. 17. Verizon’s Quarterly Conference Calls with the investment community echo that theme and frequently discuss planned staff reductions in the wireline business. *See* Exh. AG-VZ 4-17; Record Request 31; Supplemental Response to Exh. AG-VZ 15-42. Verizon MA has provided no evidence, or even information, on how it intends to deal with these conflicting goals in Western Massachusetts.

If staff is being reduced, then closing plant in larger wire centers in Eastern Massachusetts would be a more “effective and cost-efficient” way to reduce volumes than closing plant in Western Massachusetts. In the aggregate, wire centers in Eastern

Massachusetts tend to be larger than in Western Massachusetts. For example if the Company were to reduce the 1.61 RPHL experienced in the Roxbury/Jamaica wire center in July 2009 to 1.41 (a two tenths of a point reduction), the volume of troubles would be reduced by 47. Conversely, reducing the Housatonic wire center July 2009 RPHL from 3.38 to 1.38 (a two whole-point reduction) results in a volume reduction of only 16. *See* Exh. AG-VZ 13-4. This is a built-in disadvantage to customers in Western Massachusetts and Verizon has offered no evidence on how it intends to overcome this disadvantage. Accordingly, the Department must require the Company to focus on closing plant and reduce the volume of troubles specifically in this region.

Furthermore, the decision to eliminate staff rather than maintain plant is a business decision made by Verizon Communications, Inc. on behalf of its shareholders. It is a decision that Verizon Communications, Inc. openly acknowledges in its briefings to investors.¹⁹ Verizon's Panel has acknowledged that it is the parent organization that makes many of the decisions that affect service quality in Western Massachusetts. "We receive [capital planning and capital itself] from corporate" Tr. Vol. 3, p. 470. One of Verizon Communication Inc.'s "high-focus areas for 2010 is to drive FiOS penetration." Tr. Vol. 2, p. 403. Mr. Sordillo testified that the parent corporation makes decisions that his team executes. Tr. Vol. 4, p. 727. Verizon Communications, Inc. appears to be making business decisions that assume that Verizon operates solely in an unregulated environment and has no ILEC responsibilities and no service quality responsibilities. Other regulatory bodies in other jurisdictions have required Verizon to

¹⁹ "As the volumes in the traditional business have declined, we have shifted force to growth areas or eliminated positions where possible. Within the wireline segment, we've reduced about 12,000 people in the past two years." Supplemental Response to AG-VZ 15-42, Verizon at Lehman Brothers Conference, May 29, 2008, p. 5.

retain or increase staff.²⁰ The Department should do the same on behalf of Western Massachusetts.

2. *Verizon Is Not the Arbiter of an Acceptable Level of Service Quality*

More than seven years ago the Department questioned whether the service quality standards that are still in place today were reasonable in the marketplace that existed at that time, because they were based on data that is now just under twenty years old.²¹ It is not for Verizon to determine the service quality standards that are appropriate today; it is for the Department. Particularly in light of Verizon's repeated statements to investors that the corporate focus is on profitable markets and reducing cost and headcount in the marginal rural wireline business, appropriate service quality standards are now more necessary than ever to pre-empt service quality problems such as have existed in Western Massachusetts for too long.

(a) *The Attorney General Does Not Dispute that Verizon Meets the Current Statewide Service Quality Index*

Verizon asserts that "substantial, uncontroverted evidence demonstrates that Verizon MA's service quality in Western Massachusetts meets the statutory standard." VZ Br., p. 6. Verizon oversteps itself here. First of all, the Attorney General and IBEW have provided significant evidence contradicting Verizon's claims of adequate service quality in Western Massachusetts. Furthermore, it is exactly the purpose of this

²⁰ *In Re Verizon West Virginia*, West Virginia Public Services Commission; Case No. 08-0761-T-G1 (May 10, 2010) (supplementing the installation and maintenance workforce by 49 technicians); *see also* Exh. IBEW-AG 9-4(b) (Verizon to reassign 50 technicians in Maryland to alleviate the Maryland Public Services Commission's concerns).

²¹ "A majority of the existing service quality standards are based on 1992-1993 performance data . . . and, therefore, may be set at a level below that which is reasonable in today's marketplace." *Investigation into the Appropriate Regulatory Plan to success Price Cap Regulation for Verizon*, D.T.E. 01-31-Phase II (2003), p. 100,

proceeding to determine whether Verizon's service quality does in fact meet the *statutory* standard.

As it did throughout this proceeding, Verizon argues that meeting the Service Quality Plan equates to providing adequate service quality in Western Massachusetts. Verizon argues that the quality of its service is good because it "more than satisfies the Department's Service Quality Plan adopted in D.T.E. 94-50 and re-affirmed in D.T.E. 01-31." *Id.* The Attorney General has never disputed and does not now dispute the fact that Verizon is satisfying the current service quality index. The record is clear, though, that despite Verizon's compliance with the existing SQI "score," Verizon fails to meet one of the Department's key metrics, namely the troubles cleared – residence metric.

Furthermore, despite Verizon's compliance with the SQI, consumers are harmed by inadequate service quality. Therefore, the Attorney General has argued that the current plan is no longer adequate to ensure adequate service quality in Western Massachusetts and has provided testimony and evidence to that effect. For example, Verizon's constant characterization of the current service quality plan standards and targets as being "stringent" is self-serving. *Cf. id.*, p. 7 ("Further the regional RPHL over the 12 months ending September 2009, was only 1.57, easily satisfying the Department's stringent statewide RPHL target of 1.90").

Verizon has offered no evidence to demonstrate that the current SQI is suitable to incentivize the Company, in the face of its self-avowed cost cutting measures, to provide and maintain an adequate level of service in Western Massachusetts. Verizon demanded, and was granted, the opportunity to submit additional testimony and have an evidentiary hearing on the Hypothetical Service Quality Index ("HSQI"). In its supplemental

testimony, Verizon provided argument why the HSQI was wrong or not allowable, but *never* provided any evidence why the current SQI is still effective and appropriate. On the other hand, the Attorney General has provided substantial evidence demonstrating why the current SQI is no longer appropriate or effective in maintaining adequate service quality in Western Massachusetts.

(b) There is Overwhelming Evidence that the Current SQI Is Not a Reasonable Barometer of Service Quality in the Region

(1) The SQI does not protect Western MA consumers from inadequate service quality

As noted above, the Attorney General agrees with Verizon that it meets the current SQI. However, based on the overwhelming evidence in this proceeding of inadequate service quality, the only reasonable conclusion that can be reached is that the current SQI is inadequate to compel a good level of service quality in Western Massachusetts. The highest RPHL for any region in 2009 was 1.6 in the Southeast Region. Evidentiary Exhibit 17. Yet, Verizon continues to refer to the “stringent” RPHL standard of 2.25 and presumably even more stringent target of 1.90. VZ Br., pp. 7, 27.

During hearings, the Attorney General’s expert witness, Ms. Susan Baldwin, was questioned by the Department about her testimony that there is a “failure of the existing regulatory framework.” Attorney General Rebuttal Testimony, p. 6. Verizon is able to pass the SQI despite repeatedly failing the residence troubles cleared metric. *See* VZ Br., pp. 6-8. She elaborated on this testimony stating that she doubted that, when the Department established the current SQI, it expected that Verizon would *never* meet the [residential troubles cleared] metric on an annual basis. Tr. Vol. 2, pp. 315-316. She also noted that Western Massachusetts is “getting lost in the shuffle of the Marlboro, eastern

district” as discussed more fully below. *Id.*, p. 316. Ms. Baldwin noted that “many states have much more stringent standards” and identified the “larger issue” as the lack of incentive provided by the current SQI. *Id.*, pp. 315-317.

The current SQI fails to offer any incentive for Verizon to provide adequate service quality, particularly in Western Massachusetts. As stated previously, this is of considerable concern to the Attorney General, because of the Company’s numerous statements that it is focused on cutting costs and reducing staff. Ms. Baldwin testified that language from the Department’s Order in D.T.C. 01-31, Phase 2 that, “competition for some customers may introduce a financial incentive for the regulated entity to reduce cost by reducing service quality to other customers” was “prescient” and more relevant today than ever. *Id.*, p. 312. The evidence in this proceeding bears out the truth of this testimony and shows, absent an adequate incentive to provide adequate service quality, rural areas that are more expensive and difficult to serve will be abandoned in favor of more profitable undertakings. The Attorney General strongly urges the Department to modify the SQI in Western Massachusetts as recommended in her response to Record Request 5 or otherwise as it sees fit.

- (2) Verizon can and is achieving better performance than the current SQI requires and has failed to provide assurances that it will continue to do so

Verizon is routinely achieving better performance than the standards in the SQI metrics on all but the Troubles Cleared – Residence metric. However, Verizon’s repeated characterization of the SQI metrics as “stringent” underscores the fact that, in its race to profitability, it has made no commitment, nor does it have any obligation, to continue to do so. *VZ Br.*, pp. 7, 27. Ms. Baldwin precisely characterized this problem

in her testimony: “[I]f cost-cutting becomes the overarching concern . . . then that could be carried to quite an extreme” Tr. Vol. 2, p. 313. Ms. Baldwin pointed out that with the current RPHL in the Springfield District at 1.4, Verizon could neglect the condition of its plant in Western Massachusetts for “the next couple of years” and would still likely satisfy the current statewide Service Quality Plan target of 1.9. *Id.*

The measure of 1.90 corresponds with the Department’s target for the RPHL, but the permissible standard is 2.25. An increase from the present level of 1.40 in Western Massachusetts to the permissible level of the 2.25 standard would correspond with an increase of 0.85 in the RPHL. Verizon MA serves 257,750 lines in Western Massachusetts. Attorney General Direct Testimony, Exhibit 1; Evidentiary Exhibit 17. An increase of 0.85 RPHL would translate into an additional 2,578 troubles per month. On an annual basis, this level of deterioration would translate into 30,930 additional troubles for consumers in Western Massachusetts. Verizon has not provided any evidence that adequate regulatory safeguards and sufficient competition exist to prevent such deterioration from occurring in Western Massachusetts.

Similarly, Verizon has stated that achieving the 60% troubles cleared – residence SQI on a statewide basis is difficult. Ms. Baldwin’s testimony raises the question, when faced with the interests of cutting costs, and lacking any incentive to actually meet the 60% requirement, which Verizon has historically not met, how low might the Company go? “[B]y their logic why not just meet 50%, 40%, 30%, 20%? They would still satisfy the Service Quality Plan.” *Id.*, pp. 313-314. The lower the percentage cleared within 24 hours, the longer consumers are waiting for reliable connection to the telephone network. In addition, the Attorney General’s analysis of OOS and SA troubles indicates that

Verizon has improved its performance from 2008 to 2009, most likely as a result of this investigation. Attorney General Rebuttal Testimony, p. 30. The fact that Verizon has been unwilling or unable to meet this service quality metric does not mean that it is impossible to meet. Adequate incentives, additional resources and reductions in the total number of troubles can all contribute to an improvement in this area.

The Service Quality Plan metrics should be modified to preclude deterioration in existing service quality levels which, as has been seen in this proceeding, are already inadequate with respect to Western Massachusetts. Verizon Massachusetts has presented no evidence nor has it made any commitments to ensure that service quality is adequate in Western Massachusetts despite its corporate focus on profitability and profitable markets. Statements that Verizon has made when questioned about the competing tension between the two objectives have been vague. Mr. Conroy qualified the Company's commitment to service quality to such an extent as to make it meaningless: "Certainly within the constraints of running our business, we are continuing that commitment to service quality." Tr. Vol. 4, p. 699.

On the other hand, Verizon Communications, Inc. has made repeated statements that its focus is not on core copper plant, but rather is on other platforms, and that one of its main corporate objectives is to reduce cost by eliminating workforce in the wireline business. *See* Exh. AG-VZ 4-17; Record Request 31; Supplemental Response to Exh. AG-VZ 15-42. The Attorney General urges the Department to establish metrics that actually are stringent enough to ensure that service quality in Western Massachusetts first improves to an adequate level and then does not deteriorate.

(3) Individual communities and the Western MA region get lost in the SQI averaging

Verizon once again makes the argument in its brief that municipal and customer complaints are best resolved through individual proceedings. VZ Br., p. 20.

Interestingly, Verizon does acknowledge, as it must, because it has committed to closing open plant in half the wire centers in the region, that “data concerning wire center performance is certainly relevant here.” *Id.* The fact that municipalities have initiated complaints is highly indicative of serious service quality problems, because regulatory matters are time consuming, expensive and outside the usual realm of municipal government: “Suffice it to say that the Select Board has far too much to deal with in the ordinary course of events to voluntarily and without substantial cause get involved with issues of telephone service quality.” Leverett Brief, p. 1. Five municipalities have complained in this proceeding, and Middlefield complained previously.

In *Middlefield*, where Verizon’s service quality was found to be unjust, unreasonable and inadequate, the Department also found that continued problems were indicated by an RPHL of 4.96, 5.08 and 4.37 for June, July, and August 2007, respectively in the Becket wire center. *Middlefield*, D.T.C. 06-6, p. 15. These conditions currently exist in other wire centers in Western Massachusetts, as well as in Becket. Exh. AG-VZ 13-4 (RPHL of 4.99, 4.23, 6.70 in April, May, June 2009 in Otis wire center; RPHL of 5.18, 5.24, 6.36 in May, June, July of 2009 in Huntington wire center; RPHL of 4.41, 5.91, 5.32 in June, July, August of 2009 in Becket wire center). During this same time period the statewide RPHL was 1.38 or 1.39, and the Bay Path SBU (including the Marlboro District) ranged between 1.57 and 1.61. *Id.* The Attorney General has stated previously that Western Massachusetts accounts for only 37 percent of the Bay Path SBU

and is being overshadowed by the Marlboro district in the Company's Quality of Service ("QOS") reports. AG Br., pp. 62-64. As Ms. Baldwin has noted, "whether it's Maryland, West Virginia, Illinois, it's the rural areas that are getting lost in the background noise." Tr. Vol. 2, p. 275.

The statewide RPHL that Verizon reports, as well as the BayPath RPHL that Verizon reports, include the Otis, Huntington and Becket wire centers, among others with high RPHL, but because of their small size, they are completely lost in the QOS report. If it were not for the Department's requirement that Verizon report RPHL by wire center, there would be no visibility whatsoever into the service quality in smaller Western Massachusetts communities. Because of the long-standing nature of inadequate service quality in Western Massachusetts and the complaints of several municipalities, the Attorney General has recommended that the Department require Verizon to report separately on the 413 Area Code as part of its SQI reporting. *See* Record Request 3.

Ms. Baldwin testified that disaggregating maintenance metrics would not impose a burden on the Company. Tr. Vol. 2, p. 335. "[B]ased on my laptop computer, and I suspect I don't have the same data capabilities that Verizon has, I was able to disaggregate west from east." *Id.* p. 337. The Attorney General asks the Department to provide better visibility into the metrics of Area Code 413 by reporting the Springfield District separately.

III. CONCLUSION

As the consumer's advocate in this proceeding, the Attorney General takes very seriously the comments that the Department has received and heard from Verizon's customers. But the Attorney General does not rely on customer comments alone in arriving at her conclusion that service quality in Western Massachusetts is inadequate. Customer comments are one factor, albeit an important one, among many others. The Department has been provided with evidence in the form of SQI data, testimony on the age of infrastructure and the neglected condition of plant, evidence of the financial incentive to "band aid" repairs rather than replace cable.

The Department has conducted this investigation in a thorough, thoughtful, and comprehensive manner and has developed a substantial record upon which to find that Verizon's service quality in Western Massachusetts is unjust, unreasonable, and inadequate. G.L. c. 159, § 16. The Attorney General urges the Department to find

Verizon's service to be unjust, unreasonable and inadequate, to modify Verizon's Service Quality Index as it deems necessary, and to order Verizon to complete repairs to open plant in the 32 identified wire centers by October 31, 2010, to require Verizon to file annual reports to ensure a continued focus on closing open plant, to require an independent audit of Verizon's infrastructure in Western Massachusetts, and to require Verizon to improve the information that it submits to the Department regarding service quality. The Attorney General urges the Department to order these remedies on a timely basis in order to relieve customers in Western Massachusetts.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/

By:

M. Katherine Eade
Sandra Callahan Merrick
Ronald J. Ritchie
Assistant Attorneys General
Office of Ratepayer Advocacy
One Ashburton Place
Boston, MA 02108
(617) 727-2200

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