

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

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In re Verizon Service Quality  
in Western Massachusetts

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D.T.C. 09-1

**REPLY BRIEF OF**  
**VERIZON NEW ENGLAND INC.**

**July 9, 2010**

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## **I. INTRODUCTION**

In its Initial Brief filed on June 18, 2010 (“VZ Brief”), Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) demonstrated that the only possible finding in this proceeding consistent with the evidence is that the Company provides just, reasonable and adequate telephone service quality across Western Massachusetts. Verizon MA’s service quality in the region meets and surpasses the criteria in the Service Quality Plan of the Department of Telecommunications and Cable (“Department”) and is comparable to service quality in the rest of the state. The record does not contain substantial evidence of inadequate service quality in the region, so there is no basis for any of the region-wide regulations that have been proposed in this proceeding, and those remedies are inappropriate and/or unlawful on a number of grounds.

Nothing in the briefs submitted by the Attorney General (“the AG”) and the International Brotherhood of Electrical Workers, Local 2324 (“IBEW”) refutes Verizon MA’s position or demonstrates the existence of substantial evidence of inadequate service quality in the region. At most, the Intervenor<sup>1</sup> have shown only that the RPHL in a few wire centers is high, but Verizon MA is already addressing that situation by closing open plant in the field. Neither that evidence nor any other supports a finding of inadequate service here. The AG’s and the IBEW’s arguments are meritless and are based solely on speculation, exaggeration and broad generalizations unsupported by the evidence. In addition, the standards the Intervenor ask the Department to apply to assess Verizon MA’s service quality are unreasonable and are inconsistent with one another and with Department precedent, and at odds with the statutory standard set forth in M.G.L. c. 159, § 16. The Intervenor’s briefs also fail to shore up the many

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<sup>1</sup> The intervenor Town of Leverett also filed a brief, but it makes no attempt to marshal any evidence and substantially relies on facts that are not in evidence.

infirmities in their proposed “remedies,” as described in Verizon MA’s testimony and Initial Brief.

**II. THE INTERVENORS’ ARGUMENTS THAT SERVICE QUALITY IN WESTERN MASSACHUSETTS IS INADEQUATE ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND HAVE NO MERIT.**

The AG’s and the IBEW’s claims that service quality in Western Massachusetts is inadequate suffer from two fundamental failings. First, they do not offer the Department a coherent standard of review on which to assess Verizon MA’s service quality. Contrary to years of Department precedent under the Service Quality Plan, the Intervenor’s refuse to assess service quality as a whole but insist instead on donning blinders and pointing to only those individual metrics that serve their purpose. And for each metric, they adopt whichever theory of assessment will allow them to claim that Verizon MA’s performance is inadequate. For example, with respect to the Troubles Cleared - Residence metric, the AG argues that Verizon MA’s performance is inadequate because it fails to meet the absolute 60% standard in the Department’s Service Quality Plan, and the AG expressly warns the Department against comparing that performance to the Company’s performance in the rest of the state (because they are roughly the same). But when it comes to Verizon MA’s network report rate in Western Massachusetts, which is very low and easily surpasses the Department’s absolute standard level and target, the Intervenor’s suddenly switch to a different standard, arguing that Verizon MA’s performance is nevertheless poor because the report rate in other areas of the state is even lower.

The intervenor’s use of a regional comparison standard is not consistent with the absolute standards that the Department has applied to RPHL for decades, and it is not consistent with the Intervenor’s own treatment of the Troubles Cleared - Residence metric. Under this selective, comparative approach, the Intervenor’s in effect argue that service quality is inadequate if it falls

short in any way of the best service that Verizon MA is able to provide anywhere else and under optimum conditions, or the best service that the Intervenor's project that Verizon MA might be able to provide in the future. Such result driven standards simply cannot be credited. They are patently unreasonable, unattainable and inconsistent with unbroken Department precedent and the statutory standard of just, reasonable and adequate service.

The second major failing of the Intervenor's case is that it is not supported by evidence of poor service quality at the regional level. Both the AG and the IBEW cite the Department's statement in *Town of Athol*, D.T.C. 99-77, at 16, that it will find telephone service inadequate, "where the current services ... substantially impair the ability of a community to undertake commonly required economic, social and public health and safety functions." See AG Brief at 4; IBEW Brief at 46. The evidence before the Department, however, does not even come close to meeting this standard with respect to Western Massachusetts. The only arguable evidence of service quality problems is very narrow and limited -- a relatively few customers in a few towns have testified to service troubles, the RPHL in a few wire centers is relatively high and the Company does not often meet one of the 12 metrics in the Plan. The Intervenor's attempt to extrapolate from the evidence an indictment of service quality across the entire Western Massachusetts region, but there simply is no evidence of inadequate overall service quality at the regional level or in the great majority of individual wire centers in the region. To the contrary, the uncontested regional data shows that Verizon MA meets the requirements of the Service Quality Plan and provides good service across the region.

A. **Verizon MA's service quality is just, reasonable and adequate at the regional level as measured by the metrics in the Service Quality Plan.**

1. Verizon MA's RPHL in Western Massachusetts is lower than the Department's standard and target levels and is evidence of very good service.

The AG asserts generally that service quality in Western Massachusetts is poor “as measured against service quality metrics.” AG Brief at 7. Yet the AG completely ignores the data demonstrating that Verizon MA's service quality in Western Massachusetts meets the standards of the Department's Plan, meets the individual standards for 11 of the 12 metrics in the Plan and even surpasses the stringent “target” levels for 6 of the 7 metrics that apply on a regional level. *See* VZ Brief at 6-7. Specifically, the AG avoids measuring Verizon MA's network report rate against the standards in the Plan (which shows that the Western Massachusetts RPHL of 1.4 is very good). Rather, the AG argues that the RPHL is “high” because it is higher than that of some other regions in the state. *See* AG Brief at 9-10. The Department has never required that service quality be exactly the same across all regions of the state, as the AG acknowledges. *See* AG Brief at 9 (stating that, “[t]he level of service quality need not be identical throughout the state, but should be reasonably comparable.”). Nor has the Department ever found that a level of service quality *that meets the Department's standards* is nevertheless inadequate because Verizon MA provides even better service elsewhere.<sup>2</sup> Further, as Verizon MA explained in its Initial Brief at 26, the differences in RPHL performance across

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<sup>2</sup> For the same reasons, the IBEW's reliance on findings in the Department's Competition Status Report regarding the “Berkshire” region, *see* IBEW Brief at 23, is misplaced. The Department may have found it useful for purposes of its Report to compare regional report rates, but the appropriate measure in this case is the standard in the Plan, and the RPHL in the Berkshire area (which is a subset of Western Massachusetts) as shown in the Report, at 30, was lower than the 2.25 monthly standard in the Plan (which would be 27% annually) for each year shown. Moreover, on a monthly basis, the average RPHL for the Berkshire region was only about a quarter percentage point higher than the Central region's RPHL in 2008, rendering their results comparable. Finally, the Report also shows that the RPHL for the Pioneer Valley, which appears to represent much of the remainder of Western Massachusetts, was also lower than the Department's standard and was on par with the RPHL in the Cape and Islands, Central and Southeast regions of the state.

the regions cited by the AG are *de minimis*. The AG argues that an RPHL of 1.4 in Western Massachusetts is not “comparable” to an RPHL of 1.2 in the Marlborough and Northeast districts and a 1.1 RPHL in MetroNorth, but the Department has never found that differences in the RPHL of two-, three- or even five-tenths of one percent are meaningful or render performances incomparable or inadequate in any way. The AG’s comparison of RPHL in Western Massachusetts to that of Boston is additionally unfair and inappropriate because the conditions under which service is provided are vastly different, as discussed in greater detail in Verizon MA’s Initial Brief at 27-28.

The AG and the IBEW also claim, as evidence of poor service quality, that some wire centers in Western Massachusetts exceed 3.0 and 4.0 RPHL more often than wire centers in other regions of the state. *See* AG Brief at 11; IBEW Brief at 19. As Verizon has explained, however, Western Massachusetts has proportionally more small wire centers, where performance metrics such as RPHL are far more volatile, and it has more wire centers that are subject to extreme weather, than other areas of the Commonwealth, causing more variation on RPHL than might appear in those other areas. *See* Verizon Direct at 24, VZ Brief at 17-18. In addition, the fact that *some* wire centers in Western Massachusetts exceed a given RPHL threshold says nothing about the performance of the *other* wire centers in the region, and Verizon MA has demonstrated that the majority of its customers in the region are served by wire centers that rarely exceed the Department’s 1.90 RPHL target. *See* VZ Brief at 17.

The AG asserts that Verizon MA is wrong to conclude that its 1.4 RPHL in Western Massachusetts is good because it meets the Department’s standard, on the grounds that Verizon MA is able to improve its RPHL and that “both the standard and the target [for RPHL] greatly exceed the levels of service quality that Verizon MA has clearly demonstrated that it is able to

deliver.” AG Brief at 11-12. More generally, the AG claims that the fact that Verizon MA’s service quality meets the overall requirements of the Plan does not demonstrate that it is reasonable and adequate -- even though the Department adopted the Plan and has maintained it for 15 years in order to ensure that the Company provides adequate service. This is so, argues the AG, because:

Service quality could decline substantially relative to today’s service quality without causing Verizon MA to fail the SQI test. For example, the RPHL metric could increase from its present value of 1.40 to 2.25, that is, deteriorate by 60 percent, and still satisfy the Department’s standard

AG Brief at 20; *see also id.* at 21 (the RPHL standard and target levels “are clearly too lenient when compared with Verizon MA’s actual performance”). But the fact that Verizon MA surpasses the Department’s standards is not evidence of poor service or that the Plan is too weak; rather, it demonstrates that service quality is good. Second, the AG is saying that the current SQI and Plan are “too lenient” *because Verizon MA meets them*. Under that reasoning, any plan or standard that Verizon MA can meet is by definition too lenient and must be tightened, and the only plan that is not too lenient is one that Verizon MA can’t meet. Under the AG’s standard, a carrier could never provide good service under a good plan. If it misses the plan, then service is poor. If it meets the plan, then the plan is too lenient. The AG’s position is indefensible because it ignores the statutory service quality standard. M.G.L. c. 159, § 16, requires only just, reasonable and adequate service quality. It does not require perfect service or the best possible service, and it does not support establishing standards that, by definition, cannot be met.

2. Verizon MA’s performance with respect to the Troubles Cleared - Residence metric does not support a finding of inadequate service quality

In contrast to the AG’s comparative approach in assessing RPHL, when it comes to the Troubles Cleared - Residence metric, the AG switches gears and asserts that Verizon MA’s

performance is inadequate because it fails to meet the absolute 60% standard in the Department's Plan. *See* AG Brief at 13. The AG then recommends *against* assessing Verizon MA's performance on this particular metric by candling it to the Company's performance in Eastern Massachusetts:

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.

AG Brief at 14. Verizon MA has not argued that its performance on the Troubles Cleared - Residence metric is adequate because it is on par with its performance in Eastern Massachusetts (even though it is on par - *see* Verizon Direct at 15). But under the AG's reasoning, it follows that where service quality is good everywhere, it cannot be found to be inadequate in Western Massachusetts merely because it is even better in Eastern Massachusetts. In other words, there is no basis for assessing Verizon MA's performance on RPHL -- or service quality in general -- in Western Massachusetts by comparing it to Eastern Massachusetts, and the only proper standard by which to make that assessment is whether service quality meets the requirements the Department has established and long maintained in the Service Quality Plan.

The AG asserts that, "Verizon is required to meet service quality metrics on a regional and statewide basis." AG Brief at 13. If the AG intends this to mean that Verizon MA is required to meet each of the 12 metrics the Service Quality Plan across the state and in every Strategic Business Unit ("SBU") every month, this is not true. The structure of the SQI acknowledges that allowing Verizon MA some flexibility on this score is reasonable and just. Moreover, in arguing that failure to meet the Troubles Cleared - Residence metric alone shows inadequate service quality, the AG all but ignores the arguments and substantial evidence submitted by Verizon MA that: (1) its service quality performance must be assessed based on its

performance on all twelve of the Plan's metrics, not just one; (2) Verizon MA's excellent RPHL performance in particular compensates for its performance on the Troubles Cleared - Residence metric; (3) the Troubles Cleared metric is less important now than in the past, as the near-ubiquitous use of wireless service reduces customers' reliance on landline phones. *See* VZ Brief at 12-16. The AG claims only that the requirement to assess service quality on the whole, and not just as to a single metric, "does not erase the fact that Verizon is not meeting the metric...." AG Brief at 13. This misses the point entirely. Verizon MA does not ask the Department to ignore its inability to meet this metric, but in light of the fact that it consistently meets and surpasses the 11 other metrics in the plan and that this metric is not as important as it once was, that failure alone is not sufficient grounds for finding that service quality on the whole is inadequate. The AG also cites to the alleged "significant impact" that an outage can have on customers, "including health and safety concerns." *Id.*; *see also id.* at 15 ("...the inability to get dial tone means that a consumer cannot reach emergency services.") While there is no dispute that access to emergency services is important, the AG overstates the concern. The regional RPHL is very low, so only a very small percentage of the customer-base even experiences a loss of service. Secondly, the vast majority of customers have access to alternative access to emergency services through their cell phones. Third, as Verizon MA noted in its Initial Brief, at 16, fully half of the households in the region are served by carriers that have no government-imposed service restoration requirement, with no apparent ill effects.

Finally, the AG's claim that the Department's 60% standard is "not particularly stringent" and is "lenient" because Connecticut uses a higher standard for its OOS metric, AG Brief at 14, is exactly the kind of superficial comparison the Department should avoid in this proceeding due to lack of complete understanding of all terms of the relevant state's service

quality plan and the conditions such a plan was intended to address at a particular point in time. *See* VZ Brief at 38. For example, the AG provided a partial summary of OOS metrics in other states, *see* Baldwin Rebuttal at 76, which she claims are more stringent than the Department's troubles cleared standards, but since most of those metrics provide exclusions for weekends, holidays and customer requested or accepted appointment delays that do not apply to the Department's metric, the Massachusetts metric is in fact more stringent. *See* Tr. (Vasington) at 949-950.

3. There is no credible evidence that Verizon MA is slow to install new service in Western Massachusetts, and Verizon MA's customers are more concerned about appointments being met.

The AG argues that installation of new service is slow in Western Massachusetts, showing poor service quality. *See* AG Brief at 16. But installation interval is not even a metric in the Service Quality Plan, and customers care more about Verizon MA meeting the appointments it makes with them. *See* Verizon Direct at 38. That is why Missed Appointments is a metric in the Plan and why Verizon MA performs very well on this metric, meeting over 98% of its installation appointments in Western Massachusetts. *Id.* at 39. The AG claims that Verizon MA's average installation interval exceeded three days in many wire centers for a time, but a more direct approach shows that a substantial majority of customer orders in the region during that time period were completed in less than three days. *Id.* at 40. Further, the Attorney General has offered no basis on which to conclude that three days (or any other time period) is "slow" and is not an appropriate, reasonable interval for installation of new service. The AG also asserts, based on an ARMIS data, that the average installation interval for the state as a whole rose sharply to 6.5 days in 2009 and that "it is reasonable to assume that this pattern is indicative of that experienced by consumers in Western Massachusetts." *See* AG Brief at 17.

But the AG's assumption is demonstrably wrong. Data specific to Western Massachusetts shows that the average installation interval for consumers in that region was 2.68 days in 2007, 2.54 days in 2008 and only 2.55 days in 2009. *See* Response to Information Request AG-VZ 8-18.

4. That the RPHL is high in six wire centers does not imply that it is high throughout Western Massachusetts, and the evidence shows that it is not.

The AG's claim that service quality "is particularly poor" in 27 wire centers serving parts of 57 communities in Western Massachusetts, AG Brief at 19, is unsupported by evidence, applies the wrong standard for assessing service quality at the wire center level, and does not support a finding of inadequate service on a regional basis, or even in those wire centers. First, the AG's witness, Ms. Baldwin, considers service quality to be "particularly poor" if the RPHL of a wire center exceeds *the statewide target of 1.90*. *See* Baldwin Rebuttal at 15. But it is patently unreasonable to apply a statewide benchmark, and the more stringent "target" benchmark no less, to individual wire centers, for the reasons spelled out in Verizon MA's Initial Brief at 19, 59-60. The only metric standard the Department has ever applied on a wire center basis is the prior "hot spot" measure, pursuant to which Verizon MA reported the wire centers that exceeded an RPHL of 4.5 (later 4.0) for three consecutive months. *Id.* Only six wire centers in Western Massachusetts, serving a total of less than 7,000 lines, would have exceeded that standard in 2009. VZ Brief at 19. That is not evidence of poor service quality across the Western Massachusetts region, composed of 63 wire centers serving 257,000 lines.

The AG claims that "localized problems" can "aggregate to make up a whole region," AG Brief at 7, but that is not true where, as here, the evidence shows that service quality in the majority of wire centers that comprise the region is reasonable and adequate. The aggregate report rate for Western Massachusetts is only 1.4. Verizon Rebuttal at 6. In 2009 the RPHL in

57 of the 63 wire centers in Western Massachusetts, serving about 250,000 of Verizon MA's 257,000 access lines in the region, was lower than the only standard the Department has ever applied at the wire center level. Even if the Department's statewide 2.25 RPHL standard were applied (improperly) at the wire center level, 45 of the 63 wire centers in the region would have met it. VZ Brief at 39. Thus, there is substantial, affirmative evidence that service quality in the vast majority of wire centers serving the vast majority of customers is very good.<sup>3</sup> The only performance that "aggregates to make up a whole region" is Verizon MA's good performance.

The IBEW makes similarly mistaken arguments. Mr. Rowley's comparison of the RPHL in five wire centers in Western Massachusetts to the statewide average and to the RPHL in downtown Boston fails to show inadequate service quality in the region for the same reasons. Like Ms. Baldwin, he has selected unreasonable and unfair benchmarks that, while serving his purpose, are inconsistent with the Department's precedent and practice in assessing service quality on a wire center basis. In addition, the RPHL in one of Mr. Rowley's five wire centers, Pittsfield, was only 1.06 in 2009, lower than the statewide average RPHL of 1.35 for a similar period. *See* Baldwin Rebuttal at 16; Verizon Direct at 15. And the IBEW claims that the RPHL in the Williamstown wire center is "much higher than the statewide average," but the Williamstown RPHL was 1.45 on average in 2009, only marginally different than the statewide average. *Id.* In the end, even if the statewide average RPHL were a proper benchmark to assess RPHL in individual wire centers, which it is not, Mr. Rowley's analysis shows only that a small number of wire centers failed to meet it.<sup>4</sup> That says nothing about service quality in the rest of

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<sup>3</sup> The AG's witness also included on her list one wire center, Lenox, solely on the grounds that Verizon MA had said it is particularly susceptible to weather. *See* Baldwin Rebuttal at 23. As Lenox's average report rate of 1.41 attests, however, Verizon MA has met the challenge posed by the weather, and Lenox enjoys good service quality.

<sup>4</sup> Mr. Rowley is not an expert in regulatory policy, and the Department should give his analysis of service quality metrics no weight.

the region and in no way supports any of the broad, region-wide remedies that the Intervenor seek, such as a third-party audit of all of Verizon MA's outside plant across the entire region.

Astoundingly, the AG nevertheless argues in favor of a third-party audit of the entire region on the basis that, although the RPHL in Western Massachusetts and in many wire centers may not be high now, "if Verizon MA fails to maintain outside plant within the next few years, the RPHL could increase." AG Brief at 19. The "pre-cogs" in the science-fiction film "Minority Report" identify people to arrest before they commit a crime,<sup>5</sup> but in the real world the AG's speculation that the RPHL might rise in the future does not constitute substantial evidence in support of imposing what could be massive financial obligations on Verizon MA now. The AG claims that "Verizon MA should demonstrate that it is routinely and adequately inspecting plant to prevent rather than react to troubles..." AG Brief at 20, but as noted above, Verizon MA has already submitted detailed evidence explaining its Proactive Cable Maintenance programs. Given that the RPHL in Western Massachusetts has been below the Department's statewide standard for years (see Verizon Direct at 10) and that maintaining a low RPHL is in Verizon MA's self-interest, the AG's speculation is unwarranted and affords no basis for the audit the AG seeks.

5. Open plant is not evidence of inadequate service quality.

The AG's claim that "open plant provides evidence of inadequate service quality," AG Brief at 17-18, is unfounded and unreasonable. Open plant is a fact of life in the telephone industry, and technicians close open plant every day. Tr. (Conroy) at 722. No one disputes that open plant influences the volume of trouble reports, as the AG asserts, but that does not support an inference that the existence of open plant demonstrates inadequate service or that the volume

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<sup>5</sup> See [http://en.wikipedia.org/wiki/Minority\\_Report\\_\(film\)](http://en.wikipedia.org/wiki/Minority_Report_(film)).

of open plant in the region is inappropriate or high. Indeed, the Department has received no evidence of an appropriate standard for volume of open plant or even how much plant is open. The only relevant evidence is that the RPHL in the region - the barometer of the health of the network - is a low 1.40. The AG chides the Company for not having “commenced” the Open Plant program until 2007, AG Brief at 18, but Verizon MA has been very clear throughout this proceeding that it has addressed open plant for decades and that the Open Plant program at issue was “reinvigorated,” not commenced, in 2007. *See* VZ Brief at 10; Verizon Direct at 53-57. Verizon MA also questions the point of the AG’s claim; the Open Plant program is in place and has been for a few years. It helps reduce the trouble report volume and prevent additional troubles from arising. That it was reinvigorated in 2007 rather than in, say, 2005, has no bearing on service quality at this point. The AG also questions whether Verizon MA “is committed to closing open plant in Western Massachusetts in a timely manner,” AG Brief at 18, but since the AG offered no evidence of what would be “timely” completion of that work, there is no basis for the insinuation that Verizon MA lacks commitment to the project.

Nor is there any basis for the AG’s claim that evidence “is lacking about the Company’s future commitment to act in a proactive rather than a reactive manner in Western Massachusetts.” *Id.* at 19. The AG ignores the substantial testimony submitted by Verizon MA explaining its PCM process programs, including the Predictor, Capital and Open Plan programs, and its Quality Inspection program, all of which have been in place in their present form since 2007, and its testimony that not only is Verizon MA committed to these programs, but due to their success, the company is expanding them to other states. *See* VZ Brief at 10. Moreover, these programs not only prevent troubles and result in improved service quality, but the volume reduction saves Verizon MA expense. *See* Tr. (Sordillo) at 678, 700. Indeed, part of Verizon

MA's argument in this case is that the best way to ensure good service quality in Western Massachusetts and the state is to continue to allow Verizon MA the flexibility to choose to focus on reducing RPHL, rather than be forced under pain of penalty to meet outdated standards for clearing troubles in a given time period, which would be a much more expensive and less efficient undertaking.

**B. The anecdotal evidence that some Verizon MA customers in Western Massachusetts have had trouble with their telephone service does not support a finding of inadequate service quality at the regional level.**

The AG and the IBEW argue that the anecdotal testimony of the individual Verizon MA customers who testified in this case supports a finding that service quality is inadequate across the entire Western Massachusetts region. *See* AG Brief at 23-24; IBEW Brief at 10-17. Indeed, the IBEW stakes much of its case on this claim, devoting a substantial portion of its brief to the testimony of three customers.<sup>6</sup> As Verizon MA explained in its Initial Brief, however, the 37 customers who testified in this proceeding comprise only a fraction of one percent of its customer base in Western Massachusetts, and this sample of customers was not randomly selected. It cannot therefore be extrapolated to support any conclusions about service quality across Western Massachusetts. *See* VZ Brief at 23-24. The IBEW baldly asserts that the testimony of Mr. Derby “well-encapsulates the problems that customers in western Massachusetts have faced for years now,” IBEW Brief at 12, but the IBEW provides no facts showing that the service issues Mr. Derby discussed are common throughout the region. The only evidence of service quality on the regional level is the data showing Verizon MA's

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<sup>6</sup> The IBEW also places substantial reliance on the Department's preliminary findings in the Order Opening Investigation and its comments in the Request For Comments. *See e.g.* IBEW Brief at 1, 2, 3, 7, 8, 10. But those documents do not purport to make findings based on evidence (since at the time they were issued, the Department had not yet opened a case in which to conduct its investigation and receive evidence), and neither the documents themselves nor the facts they cite are evidence in this proceeding. The IBEW appears to be suggesting that the Department pre-judged the outcome of the case when it opened this investigation.

performance on the 12 metrics in the Plan, which shows that service quality at the regional level meets the Plan and is just, reasonable and adequate. *See* VZ Brief at 23. Thus, the anecdotal evidence is not representative of service quality across the region as a whole.<sup>7</sup>

In addition, the bulk of that anecdotal evidence concerns only a few towns. Eighteen of the 37 customers who testified are from Hancock or Egremont. *See* VZ Brief at 22. This tells the Department absolutely nothing about service quality in the Holyoke wire center, or the Pittsfield wire center or the approximately 80 municipalities in Western Massachusetts which did not yield a single witness in this proceeding.

In response to Verizon MA's demonstration that the anecdotal evidence from a few customers does not support a finding of inadequate service quality, the IBEW argues that Ms. Baldwin testified that, "we hear endless concerns by consumers" about service quality problems. *See* IBEW Brief at 16. But Ms. Baldwin did not offer any independent evidence of "endless" customer complaints. Her testimony was merely (mis)characterizing the same anecdotal evidence discussed above. Nor is it a valid response to Verizon MA's position to assert, as Ms. Baldwin and Mr. Rowley do, that the anecdotal evidence here is just "the tip of the iceberg" of many more complaints of customers who didn't or couldn't testify. *See id.* at 16, 17.<sup>8</sup> ***Of course*** 37 customer complaints are just the tip of the iceberg -- after all, Verizon MA fields tens of thousands of trouble reports every year -- but they don't provide any information about the size of the iceberg itself, which is what the Department needs to know. As Verizon MA explained in its Initial Brief at 23, an iceberg of 30,000 reports annually would yield a regional RPHL of

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<sup>7</sup> In a slightly different context, the IBEW argues that a sample size of even 50 is too small to support conclusions about service quality at the regional level. "Such a small sample should not be given much weight." IBEW Brief at 26. The IBEW fails to explain how a sample of 50 randomly selected customers is too small to demonstrate high levels of customer satisfaction at the regional level, yet a sample of only 37 self-selected customers is allegedly large enough to demonstrate low levels of customer satisfaction at that level.

<sup>8</sup> Given that Mr. Rowley is not an expert in regulatory policy, regulatory administration or service quality metric reporting and interpretation, the Department should disregard his speculation on this issue.

about 1.0, an undisputedly excellent result. Because the existence of 37 (or even many, many more) customer troubles is consistent with a low regional RPHL, it does not support a finding of inadequate service quality across the region.<sup>9</sup>

In the absence of any actual evidence of service inadequacy at the regional level, the Intervenors wildly exaggerate the limited anecdotal evidence to make it appear to be region-wide in scope. The AG, for example, asserts that “Customers in Western Massachusetts have expressed great frustration with Verizon’s landline service for many years,” AG Brief at 1 (citation omitted), without explaining that only a few customers have expressed such frustration here. Likewise, the IBEW claims that “many” customers in Western Massachusetts have trouble using their phones after a rain and that “the evidentiary record is filled with numerous customer complaints of inadequate service quality.” IBEW Brief at 8, 46. But “many” and “numerous” are relevant terms, and 37 is not many or numerous complaints where even thousands of complaints would be consistent with good service quality. Like the AG, the IBEW often speaks of “customers” in the plural -- accurately but misleadingly -- when referring to only two or three customers. *See e.g.*, IBEW Brief at 46-47 (stating that “unresolved and recurring problems ... have cause substantial inconvenience to customers,” “Customers have had to drive ...,” “Customers are unable to contact emergency services ...”).<sup>10</sup>

The anecdotal evidence is far too limited to represent service quality throughout Western Massachusetts. The plural of “anecdote” is “data,” and the only evidence in the record that reflects the experiences of Verizon MA’s entire customer base in the region is the data of Verizon MA’s performance on the 12 service quality metrics. On that basis, the Department

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<sup>9</sup> At most, this evidence shows that the infrastructure serving Hancock, Egremont and a few other towns may need some attention, and Verizon MA is providing that in the form of its proven program to close open plant.

<sup>10</sup> This last claim is not supported by any evidence at all. The evidence cited in the IBEW’s Brief, at 47 n. 58, does not support this claim.

must reject the Intervenors' claims and find that Verizon MA's service quality in the region is just, reasonable and adequate.

**C. The IBEW's generalized, unsupported claims concerning Verizon MA's infrastructure and policies in Western Massachusetts do not support a finding of inadequate service quality.**

The IBEW makes a number of general claims about Verizon MA's infrastructure and policies and cites witnesses' conclusions about the Company's service quality, but it fails to support those claims with factual evidence. For example, the IBEW cites to Mr. Sordillo's testimony explaining how water in a cable can affect service and then leaps to the conclusion, stated by Mr. Rowley that "frequent outages [in Western Massachusetts] are likely a result of old cable and equipment being affected by rain." *See* IBEW Brief at 9 (also claiming that the cable in the region is "old and in need of repair and replacement"). There is no doubt that *some* instances of frequent outages are caused by water infiltrating the plant, but there is no evidence that Verizon MA's outside plant across the region is "old" or that the age of the cable affects service, *see* VZ Brief at 24-26, nor has the IBEW submitted any evidence showing the frequency with which this occurs or that such frequency is overly high. Given that Mr. Rowley has no experience or expertise in installing, maintaining or managing outside plant, *see* Tr. (Rowley) at 101-102, he would not be qualified to testify to these issues in any event. Mr. Rowley seeks to rely on other "Members and [Verizon] managers" who allegedly told him that "the copper within Western MA is old and [in] poor condition." IBEW Brief at 9. This statement is not just overly general hearsay, but it is irrelevant in light of the regional data, which shows that -- whatever the age and condition of the outside plant -- it is generating only 1.4 trouble reports per hundred lines per month on average.

The IBEW also argues that Verizon MA managers have stated that “when the sun comes out, the troubles go away.” IBEW Brief at 9-10. The IBEW apparently offers this as evidence of some sort of improper conduct by Verizon MA, but it shows nothing of the sort. Verizon MA does not dispute that some troubles do go away when wet cable dries out. Verizon MA has already demonstrated as untrue Mr. Rowley’s initial claim (not made in the IBEW Brief) that the Company sometimes does not issue trouble tickets on the assumption that troubles will go away on their own. *See* Verizon MA Brief at 32.

As additional evidence of poor service quality, the IBEW cites Mr. Rowley’s broad, unsupported claims that Verizon’s service quality in Western Massachusetts is not at the same level as the rest of the state, that “customers are routinely subject to delayed response, and unresolved problems, including outages lasting for several days,” and that “customers are frustrated....” IBEW Brief at 18. These general conclusions -- like Ms. Baldwin’s claim that there are “region-wide service quality problems,” also cited by the IBEW, at 18 -- do not themselves provide any evidence of inadequate service quality. And as shown above, the record evidence contradicts these claims.

Finally, the IBEW argues that “there has been a long history of service quality problems coming from western Massachusetts,” citing the Department’s decision in D.P.U. 89-300. *See* IBEW Brief at 21. The IBEW claims that, “Twenty years later, consumers in western Massachusetts still confront the same problem of inferior service.” *Id.* Except that they don’t. Service quality in Western Massachusetts today is far superior to that addressed in D.P.U. 89-300 by all but one measure and is even better generally than the average service quality across the state at that time. For example, the regional RPHL is currently 1.40, but in 1989 it was 2.34,

and the statewide average RPHL was 2.17. *See id.* at 407. See table below for a more full comparison.

Figure 1<sup>11</sup>

<u>Measure</u>	<u>Statewide Results 1989</u>	<u>W. MA Results 1989</u>	<u>W. MA Results 12 Mo. Ending Jan. 2010</u>
Network Trouble Report Rate	2.17	2.34	1.40
% Troubles Cleared in 24 hours Residence Customers	59	56	50.66
% Troubles Cleared in 24 hours Business Customers	80	82	89.12
% Appointments missed All Customers	Not available	Not available	1.26
% Appointments missed Residence Customers	4.24	6.84	1.09
% Appointments missed Due to Company Facilities	Not available	Not available	0.42
% Installation Trouble Reports (troubles within 30 days of install)	8.32	8.56	3.5

It is not surprising that Verizon MA’s performance on Troubles Cleared - Residence has not improved over time, given the need to reduce expenses in light of declining revenues as discussed in the Company’s testimony and Initial Brief, but on the other metrics, service quality is substantially better today. Turning to the wire center level, in 1988, 16 wire centers in Western Massachusetts failed the Department’s then-standard of exceeding RPHL of 4.5 for three consecutive months, and 13 wire centers failed it in 1989. *See D.P.U. 89-300* at 409. In 2009, only two wire centers (Huntington and Worthington) would not have met that standard. *See Response to Information Request AG-VZ 13-4*. Thus, customers in Western Massachusetts

<sup>11</sup> The statewide data and 1989 Western Massachusetts results come from *D.P.U. 89-300* at 402-407. For the 2010 Western Massachusetts results, *see Verizon Rebuttal* at 6.

today enjoy far superior service quality overall than they did twenty years ago and in many ways even better than the state average at that time.

**D. The IBEW’s claim that Verizon MA has not invested “adequately” in Western Massachusetts is not supported by the evidence and is disproved by the hard data showing that service quality in the region is just, reasonable and adequate.**

The IBEW devotes much of its brief to its claim that Verizon MA is investing “disproportionately” outside of Western Massachusetts and is uninterested in investing sufficiently in the region to provide adequate service quality. *See* IBEW Brief at 31-43. The IBEW’s argument rests on vague claims, general comments of others concerning corporate strategy and investment (taken out of context) and a few factual assertions that are inconsistent with the evidence. Moreover, the IBEW’s entire argument is logically backwards. It presumes that proven “underinvestment” would show that service quality is inadequate, but the proper measurement of the sufficiency of investment is to determine whether it has resulted in the desired outcome, *i.e.* adequate service quality. In this case, the Department has before it substantial, uncontroverted evidence demonstrating that Verizon MA’s service quality in Western Massachusetts meets the dictates of the Plan and is just, reasonable and adequate. Thus, the Company’s investment in Western Massachusetts is sufficient by definition, and the IBEW’s claims on this issue are not material.

Nor are those claims supported by the evidence. The IBEW admits that its “strongest evidence” that Verizon MA “is not interested in investing sufficiently” in Western Massachusetts are statements by the Chairman of Verizon MA’s parent company, Verizon Communications Inc., concerning overall business strategy and the business consequences of deploying the FiOS platform. *See* IBEW Brief at 31-32. The IBEW claims that these comments do not “give the Department any comfort that he is interested in maintaining adequate service quality in

Massachusetts, or even maintaining garages and call centers.” *Id.* But the fact that FiOS may be the Company’s “preferred platform” does not imply that it is not “interested in” continuing to provide good service quality to its customers over its copper platform as well, and Mr. Seidenberg’s comments that “we can begin to think about” streamlining the Company’s infrastructure obviously relate to the undisputed fact that demand for Verizon’s copper-based services is shrinking. Further, the IBEW’s unreasonable inferences from these comments are not borne out by any evidence that Verizon MA has in fact failed to provide adequate service quality in Western Massachusetts.

The IBEW’s other investment-related arguments are even weaker. It claims that Verizon MA has shifted resources and employees from Western Massachusetts to support its FiOS effort in other parts of the state and that Western Massachusetts suffered as a result. *See* IBEW Brief at 32, 39-40. The IBEW submits no details in support of these claims, and Verizon MA demonstrated in its Initial Brief that it never transfers out the technicians who are responsible for resolving customer trouble reports and that it often transfers technicians into Western Massachusetts, annually in the Spring, in response to weather events when the workload requires it, and by “cascading” the force, which it does “all the time, all year long as we need it.” *See* VZ Brief at 32-33, *quoting* Tr. (Sordillo) at 915.

The IBEW seeks additional support in its witnesses’ general, hearsay<sup>12</sup> claims about statements related to “investment” allegedly made by Verizon MA managers. *See* IBEW Brief at 32-33. But the IBEW provides little to no context for those remarks, and the bulk of them do not appear to refer to service quality but were made in the context of Verizon MA’s investments to deploy new services, such as the comment by the then-president of Verizon MA ten years ago

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<sup>12</sup> Verizon MA does not argue that the IBEW hearsay testimony is not admissible in this administrative proceeding, but the Department should nevertheless give no credit to specific words and statements the IBEW asserts were made by others, not present as witnesses, in a different context and often years ago.

concerning investment in DSL. *See* Verizon Direct at 73-74. In any event, the network in Western Massachusetts remains healthy, as shown by the low RPHL in the region.

The IBEW claims that “there is a difference in investment decisions for western part of the state versus the eastern part....,” IBEW Brief at 34, but the IBEW offers no evidence of different investment decisions *with respect to service quality*. Instead, its only evidence -- and its real complaint -- is that Verizon MA has elected to *deploy new services* such as FiOS in Eastern Massachusetts before Western Massachusetts. *See e.g.* IBEW Brief at 33 (arguing that FiOS has not yet come to Western Massachusetts), 34 (testimony that ““They’ll get it in Northern Maine ... before they get it in Springfield...””) and 35 (alleging that “new products and services reach the four western counties last, or not at all” and complaining about the pace of deployment of touch-tine dialing, DSL and FiOS).<sup>13</sup> There is no basis for the IBEW’s proffered inference that Verizon MA’s decisions to offer new services in some areas of Eastern Massachusetts before rolling them out in Western Massachusetts means that Verizon MA does not invest adequately in supporting the services it does offer in the West, and the data showing comparable levels of service quality in both regions precludes any such inference.

The same applies to the IBEW’s citation to a Florida PUC decision allegedly finding that FiOS deployment “can” hinder investment in the copper network, *see* IBEW Brief at 36, since there is no evidence here that such deployment actually has had such an effect. At a larger conceptual level, the IBEW (and the AG) misstep in attempting to imply that Verizon MA’s “desire to earn a profit in the state” by investing in FiOS is somehow wrong, or antithetical to providing good service quality. As Verizon MA’s panel testified, “[p]ursuing ‘new lines of business,’ as Ms. Baldwin puts it, is not simply a choice for Verizon MA; rather, it is an

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<sup>13</sup> The Department held in *Town of Athol*, D.T.E. 99-77, at 28, that, “Verizon is not required to ‘roll out’ service features, high-speed services, or advances services to all communities in the state at the same time.” The IBEW does not argue to the contrary.

imperative for survival.” Verizon Direct at 90. Requiring Verizon MA to divert resources from the “imperative” FiOS business to improve even further the already-good service quality it provides on the copper platform in Western Massachusetts, when Verizon MA loses money in the state, would foist on the company an entirely irrational business decision and would only cause it to lose even more money in Massachusetts than it is today, ultimately leaving it with less money to invest in service quality for any of its products, services or customers.

The IBEW likewise seeks to cast blame on Verizon MA for employing a return of investment test in its process for determining whether particular cable should be replaced. *See* IBEW Brief at 37. But that is an appropriate business practice, and indeed a requirement; no facilities-based telephone company could stay in business long if it made determinations about replacing its infrastructure *without considering the cost*. With this in mind, the IBEW is entirely off-base in alleging generally that Verizon MA “*may* choose to repair an old cable or other equipment when replacement is clearly needed to ensure that problems will not re-occur.” *Id.* (emphasis added). The IBEW has not submitted evidence of a single instance in which Verizon MA has elected not to replace a cable that was “clearly needed,” and the IBEW does not even try to explain how one might decide whether replacement is “clearly needed” without considering the cost.<sup>14</sup>

Finally, the IBEW’s citation to a West Virginia PSC decision for the proposition that providing good service quality requires sufficient workforce, *see* IBEW Brief at 42, is inapposite. No one disagrees with that general claim, but the West Virginia case obviously does not address

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<sup>14</sup> In the absence of hard evidence that Verizon MA actually fails to replace cable where appropriate, the IBEW seeks to buttress its theory by citing comments of Verizon MA customers that technicians - IBEW members - have told them that the cable serving them is old and needs to be replaced. *See e.g.* IBEW Brief at 38 (citing the testimony of Ms. Foxmyn concerning tales of other customers). In considering these third-hand statements and the IBEW’s argument in general, the Department should keep in mind the self-interest of a labor union in generating more work for its members.

Western Massachusetts and provides no information concerning the appropriate level of staffing here. Furthermore, Verizon MA has pointed out that service quality in West Virginia is very different than in Western Massachusetts, *see* VZ Brief at 38, and in the absence of any evidence regarding the financial condition of Verizon West Virginia, there is no basis for implying that the monetary aspect of the West Virginia decision has any relevance here, although the IBEW cites it at least three times. *See* IBEW Brief at 42, 51 and 56.

**E. Verizon MA’s Customer Care Index Survey results are strong evidence that customers are satisfied with Verizon MA’s performance in responding to service requests.**

As shown above, Verizon MA has submitted substantial data demonstrating that its service quality in Western Massachusetts meets the requirements of the Department’s Service Quality Plan and is just, reasonable and adequate. Verizon MA has also buttressed that evidence with six years of results from its Customer Care Index (“CCI”) surveys, in which the great majority of its customers have reported that they are satisfied with the service response they receive from the Company. *See* VZ Brief at 9. The Intervenors offer numerous arguments against the CCI survey results, but none hit the mark.

The AG claims that the CCI responses “are limited to measurement of customer satisfaction of recent repair or installation service, not overall service quality.” AG Brief at 25; *see also* IBEW Brief at 27. Note first that in this context (but no other), the AG considers “overall service quality” to be something more than repair or installation service. Given the extraordinary importance that the AG would have the Department place on Verizon MA’s ability to repair troubles and install new service quickly, however, the facts that 95% of its installation customers are satisfied with the Company’s response and that 85% of those customers are

satisfied with its response to repair requests demonstrate that Verizon MA’s performance in these areas is reasonable and adequate.

The Department also should reject the AG’s conjecture that the favorable customer reviews of Verizon MA’s responses to service requests means that customers are “satisfied” merely that their phones were repaired. But the CCI surveys do not simply ask customers whether they are satisfied that their phone was properly repaired but walks the customers through a series of detailed questions regarding Verizon MA’s service response and asks for an “overall performance” rating. *See* Attachments AG-VZ 8-4. As the sole basis for its conjecture, the AG offers the verbatim comments of 10 surveyed customers, which the AG interpret as showing “the distinction Verizon MA customers make between satisfaction that their phone is once again working and dissatisfaction that it had to be repaired *yet again*.” AG Brief at 26 (emphasis in original). Yet not one of the comments states that the customer gave a good overall performance rating merely because his or her phone was fixed. Rather, all these comments show is that these 10 customers felt that Verizon MA’s service quality was satisfactory, very good or even outstanding, *even though* they were unhappy with particular aspects of that performance. It is worth noting that some other customers give Verizon MA a *low* overall rating even though they say *good* things about it in their comments:

<u>Performance Rating</u>	<u>Verbatim Comments</u>
Not So Good	...They can rely, they fix the problem very fast, it’s very good. I don’t have any problem otherwise.
Poor	They offer a good service and they’re ninety nine percent on top of things when it comes to problems, so, I would go with them.

*See* Response to Record Request 17. Of course, these responses and those cited by the AG are just a few of the thousands of responses that comprise the CCI survey results,<sup>15</sup> and they may not be representative of the whole, but they show that the Department should take the customers' scoring of Verizon MA's performance as they stand, and should decline the AG's patronizing invitation to second-guess those evaluations under the guise of "interpreting" their alleged true meaning. Lastly, the AG's theory of interpretation fails to account for the fact that Verizon MA has long commissioned these surveys for its own business use, not for regulatory purposes. *See* Verizon Direct at 16. If the CCI survey results reflect only that customers are happy that their phones have been repaired, as the AG suggests, they would be of little use to Verizon MA and would not have been conducted for long.

The AG and IBEW argue that the CCI surveys are "biased" because "There is a five point scale: 3 out of 5 are satisfactory; 2 out of 5 are unsatisfactory. That would seem to tip your result." AG Brief at 25; *see also* IBEW Brief at 27. But customer responses to the survey are not *random*, such that the classification of three of five potential results as favorable to Verizon MA would skew the results, and customers clearly have two options to choose from if they are not satisfied with Verizon MA's service response -- the five categories are Poor, Not So Good, Satisfactory, Very Good and Outstanding. *See* Response to Information Request AG-VZ 8-4. The IBEW's opinion that "satisfactory" is equivalent to "mediocre," IBEW Brief at 27, is backed by no testimony or authority and stretches the meaning of the terms beyond recognition. A

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<sup>15</sup> Contrary to the assumption in the IBEW's Brief, at 26, the figure of 50 customers surveyed per region that was discussed at hearing is a monthly, not annual, figure. *See* Response to Information Request AG-VZ 14-7. Thus, the six years of survey results summarized in Verizon Direct at 17-18 represent thousands of customer responses.

better synonym for “satisfactory” is “adequate,” which the dictionary defines as: “1. Sufficient to meet a need. 2. *Barely satisfactory* or sufficient.”<sup>16</sup>

The AG claims that Verizon MA overstates the results of the CCI surveys because the surveys also categorize customers as a Promoter, a Detractor or Passive, and adding the number of customers who gave Verizon MA negative performance ratings to the number of those classified as Detractors reduces the overall satisfaction results. *See* AG Brief at 28. But this is double counting, since customers who give the Company low performance ratings are most often classified as Detractors. *See* responses to CCI surveys collected in response to Record Request 17.

Equally lacking in merit is the IBEW’s argument that the Department should give the CCI survey results no weight because Verizon MA failed to produce the raw survey responses, the name of the company that conducts the survey and a copy of Verizon MA’s contract with that company. *See* IBEW Brief at 26. This claim is factually incorrect and legally wrong. Verizon MA did produce hundreds of raw customer responses to the CCI surveys, in response to Record Request 17, and also provided the name of its vendor - twice. *See* Responses to Information Requests IBEW-VZ 10-11 and AG-VZ 8-4. Verizon MA did not produce the vendor contract because it is irrelevant and beyond the scope of discovery. *See* Responses to Information Requests IBEW-VZ 10-11. The IBEW did not move to compel that information and even at this point has failed to explain how the terms of that contract could possibly show bias in the data. Moreover, an order precluding a party from introducing evidence on an issue, which is effectively what the IBEW is asking for, is a sanction against a party for refusing to comply with

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<sup>16</sup> *See* American Heritage College Dictionary, Third Edition, 1993 (emphasis added) (also defining “reasonable” in the sense it applies here, as “not excessive or extreme; fair.”)

a discovery order. *See e.g.* Mass. R. Civ. P. 37(b)(2). There is no basis for such prejudicial action against Verizon MA merely for objecting to a discovery request.

**F. Verizon MA’s service quality in Western Massachusetts was good before the Department opened this proceeding, and there is no basis to presume that the Company would allow it to deteriorate once the case is closed.**

As a catch-all justification for the many new regulations the AG and the IBEW seek to impose on Verizon MA, they claim that service quality in Western Massachusetts is good today only because Verizon MA, after allegedly ignoring the area for some time, has directed attention and resources to it now only in response to the Department’s investigation in this case, and they speculate that Verizon MA might allow service quality to deteriorate once this case is over. *See* AG Brief at 12, 19 and 21 (alleging that new metrics are needed to prevent “post-investigation backsliding”). The IBEW alleges that Verizon MA’s capital predictor packages work has “picked up substantially in the second half of 2009” and that Verizon MA’s actions to address “customer complaints and underlying service quality problems have only been adopted since issuance of the OOI, or during the pendency of the preceding *Middlefield* case.” IBEW Brief at 43-44. It claims that once this case ends, service quality “would absolutely go back to the way it was before” without additional Department monitoring. *Id.*

There is nothing to the Intervenors’ claims. To begin with, service quality in Western Massachusetts -- *i.e.* “the way it was before” -- was good even before the Department opened this case. As Verizon MA has demonstrated, its service quality in the region satisfied the requirements of the Plan and met 11 of the 12 metrics in the Plan for the twelve months ***beginning in*** October of 2008 and ending in September of 2009. *See* Verizon Direct at 11-12. Figure 2 in Verizon’s Direct Testimony, at 10, shows that the RPHL in the region exceeded the Department’s standard only twice in the 30 months before the Department opened this case, both

times when the region was beset with severe weather, attesting to the good health of the infrastructure. Verizon MA explained that it reinvigorated and centralized management of the successful PCM and Quality Inspection programs in 2007, not in response to this proceeding and long before the case was opened. *See* VZ Brief at 10; Verizon Direct at 53-57. That this began after the *Middlefield* complaint was filed is immaterial; there is no evidence that the Company revitalized these statewide programs in response to that complaint, the revitalized programs have been in place for three years now, and, far from reducing resources for these programs, the Company is using them as the model for service quality operations across its footprint. *See* VZ Brief at 10; Tr. (Sordillo) at 485; Response to Record Request 15. This record precludes any speculation that Verizon MA not committed to providing good service quality to its customers in Western Massachusetts in the past and in the future.

The AG correctly asserts that Verizon MA has an “interest in cutting costs....” AG Brief at 12.<sup>17</sup> The need to reduce operating expenses, however, does not imply that the Company will suddenly turn a blind eye to Western Massachusetts once this case is over. Indeed, Verizon MA has managed to make use of the flexibility it is allowed under the current Service Quality Plan to provide good service quality in the region for a long time, and even improve it, despite the fact that it has not operated at a profit in the Commonwealth for at least six years. *See* VZ Brief at 46-47.

While service quality in Western Massachusetts was good before the Department opened this case, Verizon MA has made no bones about the fact that it seeks to be responsive to the Department’s concerns, and to that end has conducted Open Plant surveys and is now closing the

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<sup>17</sup> The AG is absolutely *incorrect* in alleging that Verizon MA wishes to cut costs in order to “increase[e] profits,” *id.*, since Verizon MA has no profits and has not had any for at least six years. *See* VZ Brief at 46-47.

open items identified in every wire center in Western Massachusetts where any party has even alleged that the RPHL is too high. See VZ Brief at 21. As Mr. Conroy testified more generally:

[W]e've been very clear that the Department's proceeding here has cast a spotlight on western Massachusetts, and we have evaluated our network and worked to improve it. We noted before the investigation opened in the comment that we filed ... that we were going to do the open plant surveys that we've been talking about in the towns where there were major complaints. ... So we recognize the Department's concern and we want to address that concern, and by doing the surveys and completing the work to fix the open plant, we are addressing that concern.

Tr. (Conroy) at 465-466. Verizon MA has also been clear, however, that it would have performed some of the open plant surveys now pending in Western Massachusetts even if none of the municipalities had filed complaints with the Department. See Response to Information Request AG-VZ 14-5. Likewise, the IBEW's claim that work on "predictor packages" has suddenly "picked up substantially" is not supported by the record. Attachment IBEW-VZ 12-10(d) shows that in the 25 months before the Department issued its Request for Comments related to this case, Verizon MA completed 54 predictor packages in Western Massachusetts, or an average of 2.16 per month. In the 14 months from that time through March, 2010, the Company completed 30 such packages, or an average of 2.14 a month, showing virtually no change.

In sum, Intervenors' claims that Verizon MA has brought service quality up to standard in Western Massachusetts only in response to this proceeding are false. The evidence shows that service quality in the region was good before the case opened, and that part of Verizon MA's response to this proceeding has been an effort to improve service quality even further by addressing the infrastructure issues in the wire centers where the RPHL is even allegedly too

high. This affords no basis for the additional reporting, new metrics or third-party audit the Intervenor seek.

**III. THE INTERVENORS' HAVE OFFERED NO VALID GROUNDS FOR THE MANY NEW, REGION-WIDE SERVICE QUALITY REGULATIONS THEY SEEK TO IMPOSE ON VERIZON MA.**

**A. There is no evidentiary basis for a third-party audit of Verizon MA's infrastructure in Western Massachusetts.**

Verizon MA has already refuted the factual bases the Intervenor offer in support of their proposal for a third-party audit of Verizon MA's infrastructure across all of Western Massachusetts. The AG and the IBEW both cite to Ms. Baldwin's claim that, "Consumer complaints, the age of the outside plant, the disproportionate number of troubles reported and Verizon MA's delay in repairing troubles all point to fundamental problems with the level of resources being assigned to Western Massachusetts and the state of the infrastructure." AG Brief at 47; IBEW Brief at 53. But Verizon MA has demonstrated that: (1) the anecdotal evidence of individual customer service problems are not representative of service quality across the region; (2) the age of the cable, unproven here in any event, is not relevant to an assessment of service quality; (3) the network trouble report rate in Western Massachusetts is not "disproportionate" to, but is on par with, the rate in the rest of the state; and (4) the Company's speed of repair alone cannot support a finding of inadequate service quality. *See* Verizon Direct at 98; VZ Brief at 6-9, 22-26; Parts II.A(1), (2) and II.B above.

Likewise, the AG argues that the information an audit might yield is needed for a number of reasons: because "it is difficult to ascertain precisely which aspects of Verizon MA's network and operations require attention;" because Ms. Baldwin's analysis of the wire centers with higher report rates was limited to the "evidence produced by the Company in this proceeding;" to

“ensure that all relevant information is considered in determining which portions of Verizon MA’s outside plant require remedial attention;” and to address an alleged “asymmetry” in the infrastructure data available to the Department. *See* AG Brief at 47-48; *see also* IBEW Brief at

54. As Verizon MA testified in response to these claims, however:

[T]he Attorney General and the other parties have had ample opportunity to take discovery in this proceeding, and they have taken full advantage of that opportunity. In response to more than 30 separate sets of data requests, Verizon MA has produced an enormous amount of data concerning service quality in Western Massachusetts on a broad variety of related (and unrelated) topics. An audit to collect even more information would be superfluous, wasteful, and result in needless delay.

Verizon Rebuttal at 46. More specifically, no additional information is necessary to “ascertain precisely which aspects” of Verizon MA’s infrastructure is in need of “remedial attention” because there is ample and undisputed evidence here showing the RPHL in each wire center in the region. Nor does the AG even try to identify what additional “relevant information” might be necessary for that inquiry, and if there were such information, the AG should have sought it in discovery. Having participated fully in this massive investigation, the AG should not now be heard to claim that even more, unspecified information is needed. Clearly, where a wire center’s RPHL is even lower than the Department’s statewide standard -- as it is in 57 of the 63 wire centers in Western Massachusetts -- the network is healthy and there are no grounds for imposing an audit of Verizon MA’s infrastructure in that wire center. Neither the AG nor the IBEW has offered or can offer any rational basis for requiring an audit of these wire centers, including, for example, the Springfield wire center, where the average RPHL in 2009 was only 1.25, Holyoke (1.19 average RPHL) and Pittsfield (1.06 RPHL). Moreover, Verizon MA is taking action to reduce the RPHL in the six wire centers that do not meet the Department’s

former “hot spot” standard, as well as in 26 wire centers that do meet that standard, by identifying and closing the open plant in those areas. VZ Brief at 21-22.

The AG’s additional arguments fare no better. Incredibly, the AG continues to argue that Verizon MA “should be a step ahead of problems rather than in a reactive mode,” and that “Verizon has been unable to get a step ahead of the problems in Western Massachusetts,” AG Brief at 48, despite the substantial testimony and documentary evidence that Verizon MA manages its network proactively through its Proactive Cable Maintenance programs and the Quality inspection program to prevent customer service-affecting troubles from arising, *see* VZ Brief at 9-11; Verizon Direct at 99, resulting in a very low report rate for the region. The AG also claims that an audit is necessary to determine the resources that would be needed for Verizon MA to meet the troubles Cleared - Residence metric. AG Brief at 48-49. Verizon MA has already estimated the minimum resources that would be needed for that task, *see* VZ Brief at 44, without any valid dispute (see below). And the AG has not even attempted to explain how a third-party audit of Verizon MA’s infrastructure -- see Tr. (Baldwin) at 306, 308; IBEW Brief at 55 -- could provide better data concerning the resources needed to address what is largely a workforce issue. *See e.g.* VZ Brief at 43.

Despite the evidence that the Open Plant program is the best and most efficient means of reducing the RPHL in an area, *see id.*, the IBEW argues that the Department should require an audit of all wire centers in Western Massachusetts anyway, on the grounds that “the record does not make clear the extent of those surveys” and that Ms. Baldwin claimed that closing plant can be just a temporary “band-aid” for cable that should be replaced. See IBEW Brief at 54, 38, citing Tr. (Baldwin) at 120. These claims are groundless. First, the attachment IBEW-VZ 12-1 identifies each item of open plant identified in the wire center surveys and which will be closed

by Verizon MA, so the extent of the work being performed is clear and on the record. Second, Ms. Baldwin has no expertise in installing, repairing or managing outside plant, and her claim that installing closures on plant may be only a temporary fix should be given no weight. In contrast, Mr. Sordillo, who *is* expert in the subject, testified that closing open plant is an effective means of reducing trouble report volume, and that cable that is properly closed has an unlimited lifespan. *See e.g.*, Verizon Direct at 57-58; VZ Brief at 21-22, 25-26. Of course, if weather causes plant to open or technicians fail to close plant in any of the wire centers in Western Massachusetts, including the 32 in which Verizon MA is currently closing open plant, and the RPHL rises, then the Verizon MA Open Plant program team will turn its attention and resources to that, as it has done throughout the state for the past three years. Closing open plant in areas with high RPHL ultimately saves Verizon MA money and cost-justifies itself. *See* Tr. (Sordillo) at 678, 700.

The case law the Intervenors cite in support of their proposed audit does not help their cause. The IBEW cites to the Department of Public Utilities' decision in *Fitchburg Gas and Electric Light Company*, D.P.U. 09-01-A (November 2, 2009), but that case has absolutely no bearing here. Unitil is a public utility and electric company whose operations are governed by M.G.L. c. 164; Verizon MA is neither. In *Fitchburg*, Unitil lost service -- electrical power -- to 100% of its customer base as a result of the ice storm of December, 2008, and had yet to restore service to almost 20% of its customers a week later. *See Fitchburg* at 91. In contrast, the record in the instant case shows that Verizon MA meets the requirements of the Service Quality Plan and provides generally good service, and there is no evidence of any broad, lengthy service failure even approaching that addressed in *Fitchburg*. Additionally, in *Fitchburg*, the D.P.U. found that "the failures in [Unitil's] preparation for and response to Winter Storm 2008 were numerous and systematic." *See id.*, at x- xiii. Among other "remedies," the D.P.U. ordered an audit

of Unitil's management practices, which the D.P.U. clearly considered extraordinary. *See id.* at ix. In the instant case, Verizon MA has demonstrated its preparation for and ability to respond to severe weather events in Western Massachusetts, *see e.g.* Verizon Direct at 52-53, and there is no basis for any finding to the contrary.

The AG cites a decision of the Maryland PSC regarding the alleged issue of "inadequate information." *See* AG Brief at 51. As noted above, however, the record here is enormous, and the AG has failed to identify any relevant but missing information or explained why any additional information has not been sought in discovery. Moreover, in the passage of the Maryland decision quoted by the AG, the Maryland PSC *abstained* from the kind of micro-management the AG seeks here:

We will not prescribe a particular plan [for Verizon MD to meet the service quality standards], nor will we substitute our judgment for Verizon's as to what operational steps will best accomplish its service quality goals.

*In The Matters of Request of Verizon Maryland to Reclassify Certain Retail Bundled Services*, etc., Maryland Public Service Commission Case Nos. 9072, 9114, 9120, 9121 and 9133, Order No. 83137, February 2, 2010 at 46. A third-party audit to "ascertain precisely" where Verizon MA's "network and operations require attention," presumably followed by the Department's consideration of specific recommendations of the auditor, would put the Department in exactly the position the Maryland PSC properly avoided -- substituting its judgment for that of Verizon MA in determining how best to provide good service quality.

The AG's cite to the Department's decision in *Town of Middlefield* is no less puzzling. The AG admits that the department ordered **Verizon MA**, not a third party, to review its service quality and infrastructure in Middlefield, AG Brief at 51-52, and in that case the Department allowed Verizon MA to address the town's concerns through a network survey similar to those it has already conducted here. *See* Verizon Direct at 99.

The proposed third-party audit suffers from additional fatal flaws. Verizon MA has testified that the process would be slow and cumbersome, and Ms. Baldwin herself laid out a long list of steps that must precede implementation of any recommendations of an audit. *See* VZ Brief at 40. In her brief, the AG asks the Department to order that the audit “be completed within six months” but does not explain how the Department can complete the necessary steps in that limited amount of time. *See* AG Brief at 47-50. Moreover, the AG completely ignores the additional process the Department will need to afford Verizon MA -- such as testimony, discovery, hearings and briefs -- to test and contest any recommendations of the third-party auditor and to consider the financial ability of the Company to comply with those recommendations, as required by statute.

Indeed, the AG steadfastly refuses to consider the costs of implementing a third-party audit and any resulting recommendations, and Ms. Baldwin even argues that it “would be helpful” to have an auditor who *doesn’t* take costs into account. *See* AG Brief at 47. The AG’s position is directly contrary to the terms of M.G.L. c. 159, § 16. The IBEW at least acknowledges that the Department would need to consider the financial ability of the Company to implement any audit recommendations approved by the Department, *see* IBEW Brief at 56, but the IBEW is wrong in suggesting that the Department can fulfill its statutory obligation by looking at Verizon MA’s revenues alone. *See id.* at 57. Revenues are only part of a financial evaluation, and Verizon MA’s bottom-line net income and return on investment have been substantially negative for years. *See* VZ Brief at 46-47. In this light, the costs of implementing the recommendations of a third-party audit, although currently unknown, are unlikely to pass statutory and Constitutional muster. *See id.*, at 43-51 (discussing the costs of meeting the Troubles Cleared - Residence metric and the analogous metrics in the Hypothetical Plan).

Not only is there no basis for a region-wide audit here, but neither the AG nor the IBEW has offered any basis for requiring that such audit be conducted by a third party. Nor have they refuted Verizon MA's evidence that it is the best qualified entity to perform such work. *See* VZ Brief at 40. The AG merely notes that the Department once commented that an independent audit "could free the results from the kind of bias inherent in the Company's own data." *See* AG Brief at 47, *citing New England Telephone & Telegraph Company*, D.P.U. 86-33-G (1989). The Department's concern about bias in the data in that case, twenty years ago, is irrelevant here, where Verizon MA has produced almost all of the data that is in the record and all parties have relied on that data extensively throughout this proceeding. *See e.g.* Baldwin Rebuttal at 16; Tr. (Rowley) at 110-111. Furthermore, the Town of Middlefield was satisfied with the results of Verizon MA's evaluation and subsequent work on its infrastructure in that case, *see* Verizon Direct at 91, and the Intervenors have offered no grounds for suggesting that similar work by Verizon MA in this case would not be satisfactory.

**B. Findings regarding service quality in individual wire centers are outside the scope of this proceeding, but even if they were not, such findings would not support adoption of the region-wide remedies sought by the Intervenors.**

The AG and IBEW argue that findings assessing Verizon MA's service quality in individual wire centers fall within the scope of this case. *See* AG Brief at 34-38; IBEW Brief at 47-48. Verizon MA explained in its Initial Brief why this is not so, *see* VZ Brief at 20-21, and will not repeat its arguments here. But two points bear making here in response to the Intervenors.

First, the Intervenors' citations to "precedent" in support of their position are weak. The AG cites to the Department's decision in D.P.U. 89-300, but the Department made *findings* in that case at the regional and district level, not the wire center level. Moreover, there is no

indication in the Department's decision in D.P.U. 89-300 that it opened the service quality part of the case over any objections that the investigation should not be statewide but should be limited to individual wire centers. That the Department subsequently made regional and district-level findings as part of its statewide investigation in D.P.U. 89-300, provides little support for the Intervenors' argument that the Department, having specifically elected in this case, over Verizon MA's objections, not to conduct individual investigations of service quality at the wire center level, can do so now. As additional support for their position, the AG and the IBEW also cite the Department's decision in *Town of Middlefield*, D.T.C. 06-6, but that case was opened as an investigation of service quality in a single municipality and therefore did not raise the question that is at issue here.

Second, even if findings regarding service quality at the wire center level were within the scope of this case, the evidence at the wire center level shows that service quality is good in the vast majority of the wire centers in Western Massachusetts, and that Verizon MA is taking appropriate action to improve service further in more than half of the wire centers in the region. *See* Part II.A.4 above and VZ Brief at 19-22. Findings of inadequate service quality in a few wire centers would not support a more general finding that service quality is inadequate in the rest of Western Massachusetts. Thus, while such findings would support appropriate remedial directives concerning those few wire centers, they would not support imposition of any of the region-wide remedies the Intervenors' seek.

**C. The Intervenors offer no basis for imposing penalties for failure to meet the Troubles Cleared - Residence metric or for imposing new OOS and SA metrics on Verizon MA, and the Department lacks authority to take such actions here.**

The AG argues that the Department has authority here to modify the current Service Quality Plan, as it applies to Western Massachusetts, and that it should do so by imposing

penalties for failure to meet the Troubles Cleared - Residence metric alone, by adopting new OOS metrics and, apparently separately, by adopting the Hypothetical Plan. *See* AG Brief at 38-41, 58-62; see also IBEW Brief at 59 (supporting new OOS metrics and application of metrics on a wire center level). The Intervenor's arguments are not supported by the evidence and have no merit.

Verizon MA has demonstrated in its Initial Brief that consideration of and modifications to the existing Service Quality Plan (whether applicable to Western Massachusetts only or statewide) were not properly noticed as part of this proceeding and not within its scope. *See* VZ Brief at 42-43, 63. The AG cites to *Mission Hill*, D.P.U. 96-30, as precedent for Department jurisdiction to consider changes to Verizon MA's SQI and Plan even where the Department had not properly noticed those issues, as long as parties themselves raised the issues. The AG argues that in this case, Ms. Baldwin's testimony regarding the Service Quality Plan put Verizon on notice that the Department would consider such issues. *See* AG Brief at 39. But a mere party to a proceeding, even the AG, cannot speak for the Department and has no authority to expand unilaterally the scope of the proceeding by the simple expedient of submitting testimony on new, extraneous issues. M.G.L. c. 30A, § 11, requires that, "Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument." Parties to a proceeding cannot and should not reasonably be expected to presume that every issue addressed in another party's testimony is automatically included in the case for Department disposition, and it certainly is not in the Department's interest or the interest of the fair administration of justice to allow the parties to define and continually redefine the scope of a case without any Department ruling on the matter. That the Department arguably allowed this to happen in the *Mission Hill* case appears to be error, not precedent to be adhered to today.

Verizon MA had no notice from *the Department* that it intended to consider changes to the current Service Quality Plan in this proceeding until Staff submitted the Hypothetical Plan at hearing on April 1, 2010, and Verizon MA has not been afforded reasonable opportunity since that time to prepare and present its evidence and argument. *See* VZ Brief at 63.

Turning to the merits of the Intervenors' arguments, Verizon MA demonstrated in its Initial Brief that the Department does not have statutory authority to impose penalties on Verizon MA for inadequate service quality as the AG seeks to do here. *See* VZ Brief at 35-36. Verizon MA also explained why its service quality cannot be assessed on the basis of its performance on the Troubles Cleared - Residence metric alone, and that the widespread availability of wireless service has put customer reliance on landline service, and the relative importance of speedy landline service restoration, in steep decline. *See id.* at 12-16. Further, Verizon MA demonstrated that, among other infirmities, there is no evidence of inadequate service quality supporting adoption of the Hypothetical Plan or the particular OOS and SA metrics and penalty provisions in that Plan, and that there is no basis for applying metrics at a wire center level. *See id.* 51-63.<sup>18</sup> The Intervenors do not even try to refute some of these arguments, and the arguments they do make have no basis in the facts or the law.

The AG quotes (twice) the Department's finding in D.T.E. 01-31 that, "competition for some customers may introduce a financial incentive for the regulated entity to reduce costs by reducing service quality to other customers ...." The AG then argues that "competition for DSL, FiOS customers and for customers in Eastern Massachusetts among other regions" motivates

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<sup>18</sup> Verizon MA also demonstrated that it does not have the financial ability to comply with the Troubles Cleared - Residence metric or the analogous metrics in the Hypothetical Plan, *id.* at 43-47, that an order adopting such requirements would be unconstitutional, *id.* at 48-51, and that none of these metrics is needed to motivate Verizon MA to provide good service quality because competition in the market is more than enough motivation for that purpose. *See id.* at 64-68. *See* Part III.E below, for further discussion of Verizon MA's financial ability to comply with the Intervenors' proposed regulations and Part III.D for further discussion of the role of competition as incentive for good service quality.

Verizon MA to reduce service quality to other customers, and that “residential customers in rural areas are particularly vulnerable.” *See* AG Brief at 53-54. This argument has no basis in the evidence, and the AG’s conclusion -- that the Department should open a new case to address service quality statewide -- is unsupported and immaterial. First, the Department’s statement in D.T.C. 01-31 quoted by the AG would justify, at most, regulating service quality where there is no competition, but it would not justify blanket regulations for all services - competitive and non-competitive alike -- across all of Western Massachusetts, where there is substantial competition.<sup>19</sup> Second, Verizon MA refuted the claim that “competition for DSL, FiOS customers and customers in Eastern Massachusetts” draws resources away from Western Massachusetts in Part II.D above, regarding the IBEW’s similar claims. The AG offers no evidence in support of the generalization that “customers in rural areas are particularly vulnerable” to cost-cutting efforts. Verizon MA provides very good service in Western Massachusetts, even in small wire centers.<sup>20</sup> Thus, there is no basis for the AG’s recommendation that the Department open another case to determine whether the SQI protects consumers throughout Massachusetts.

As for this proceeding, the AG’s arguments in favor of penalties and additional metrics boil down to the old assertion that the Service Quality Plan doesn’t impose penalties for Verizon MA’s failure to meet the Troubles Cleared -Residence metric alone and is therefore “failing to protect Western Massachusetts consumers” and “immediate remedies are essential.” *See* AG

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<sup>19</sup> *See* Part III.D, below; *see also* Baldwin Rebuttal at 65 (CLECs control almost 40% of the landlines in Western Massachusetts).

<sup>20</sup> For example, the Millers Falls wire center serves only 579 access lines, *see* Attachment AG-VZ 3-71(d), but had an average RPHL in 2009 of only 1.12. *See* Baldwin Rebuttal at 16. Likewise, Bernardston serves 742 lines and had an RPHL of 1.09, and the RPHL in the Warren wire center (1,467 lines) was only 1.10. A comparison of the sources noted here reveals many more examples. Contrary to Ms. Baldwin’s claim, *see* Tr. (Baldwin) at 284, the low RPHL in these small wire centers does not necessarily mean that Verizon MA can provide the same level of service in all other small wire centers. Conditions vary across wire centers, and some wire centers are more difficult to serve than others. *See* VZ Brief at 59-60; Verizon Supplemental at 20-21.

Brief at 55; *see also id.* at 56, 58. Verizon MA has demonstrated, however, that it is inappropriate, improper and inconsistent with decades of Department precedent to evaluate service quality based on a single metric, and to ignore all other aspects of the Company's service quality, as the AG does. *See e.g.* VZ Brief 12-16. An evaluation that properly includes consideration of all 12 metrics shows that Verizon MA's overall service quality in Western Massachusetts is just, reasonable and adequate -- even though the Company does not often meet the Troubles Cleared - Residence metric. The AG does not even attempt to respond to Verizon MA's arguments, nor does the AG explain why the Department should suddenly make the Troubles Cleared - Residence so important that failure to meet it alone would result in penalties, when the evidence shows that the speed of repair of landlines is becoming less and less important to actual customers.

Moreover, the AG dismisses out-of-hand the notion that competition provides sufficient incentive for good service quality, asserting without support that Verizon MA could allow its rate of clearing troubles in 24 hours to slip to extremely low levels "without any marketplace repercussions." AG Brief at 56. As discussed in more detail in Part III.D below, this betrays a fundamental misunderstanding on the AG's part of the nature of competition in Western Massachusetts and the incentives it provides. For now, it suffices to say that the AG's theory that competition in the region is insufficient incentive does not even begin to explain the current state of affairs. In other words, it does not explain why Verizon MA clears 50% of residence troubles within 24 hours today, and has not already allowed its performance to slip to the levels suggested by the AG. Nor does the AG's theory explain why Verizon MA meets and surpasses, *all* of the Department's other metrics as they apply to Western Massachusetts, since in Ms. Baldwin's view, Verizon MA could have allowed those aspects of its service quality to fall as

well. *See* AG Brief at 55 (arguing that Verizon MA could miss all seven regional metrics in an SBU and still meet the 33-point minimum of the SQI). The only explanation is that Verizon MA provides good service quality in Western Massachusetts in order to win and retain customers.

In response to Verizon MA's testimony that complying with the Troubles Cleared - Residence metric and the analogous metrics in the Hypothetical Plan, *see* VZ Brief at 43-44, the AG argues that Verizon MA's position is not merely wrong but "misleading," based on Ms. Baldwin's speculation that the Company's efforts to reduce the volume of trouble reports will free up resources that could be used to meet these metrics. *See* AG Brief at 56-57. But as Verizon MA explained in its Initial Brief, there is no basis for such speculation, and in this environment of declining revenues, "resources are not 'freed-up;' they are eliminated.... [N]o one should have any illusions that the challenge of restoring service in 24 hours will get any easier under any expected trends." " VZ Brief at 56, *quoting* Verizon Supplemental at 17. The AG is completely off-base in alleging that Verizon MA has the option of retaining any such resources but would "likely" eliminate them anyway "to increase shareholder profit." AG Brief at 57; *see also id.* at 12. Not only has Verizon MA offered extensive, uncontested evidence demonstrating that it has had no profit in Massachusetts in years (discussed in greater detail in Part III.E below), but no party has submitted any affirmative evidence of any kind showing that Verizon MA has in fact returned a profit. Rather, Verizon MA's effort to reduce expenses is driven by its need to catch up with the continuing decline in revenues. *See* VZ Brief at 45-46.

That the AG has failed to give any serious consideration of the cost to Verizon MA of complying with the new government regulations the AG seeks is not surprising, in light of the AG's misunderstanding of the statutory role and responsibilities of the Department. The AG argues, without citing any authority, that "[i]t is the Department, and not the Company, that

should determine the appropriate time period within which consumers can expect to have their basic dial tone repaired. It is then up to the Company to ensure that sufficient resources are available to meet the Department's directives." AG Brief at 57. But neither case law nor statute vests the Department with such *carte blanche* authority to dictate the practices a regulated carrier must obey at all costs. Rather, M.G.L. c. 159, § 16, expressly requires the Department to consider, in determining reasonable and adequate practices, the carrier's financial ability to comply with its order. The AG's failure to consider the cost of compliance renders the AG's position unsustainable.

In support of the AG's argument, the AG cites to a recent decision by the Connecticut Department of Public Utility Control fining AT&T for missing its OOS metric in that state. AG Brief at 57-58. But the AG makes no attempt to show that the statutory scheme in Connecticut is the same as in Massachusetts, that the other service quality regulations applicable to AT&T (including penalty provisions) are the same as the Department's Plan and that AT&T's performance on all other metrics is similar to Verizon MA's in Western Massachusetts. In light of that failure, the Department cannot reasonably rely on the Connecticut decision as authority to impose penalties here.

In addition to penalizing Verizon MA for failure to satisfy the Troubles Cleared - Residence metric, the AG also argues for new metrics requiring Verizon MA to clear 80% of OOS troubles in 24 and 80% of SA troubles in 48 hours. Verizon MA has demonstrated that there is no evidentiary basis for imposing these new metrics, for the particular 80% standards or for the AG's proposal to ratchet the standards tighter every year, and it has also refuted the AG's

specious claim that the proposed standards “comport with” Verizon MA’s existing practices. *See* VZ Brief at 55-56.<sup>21</sup>

The AG’s arguments in favor of even more metrics also lack merit. The AG argues for a new metric for “repeat trouble report rate” to “keep Verizon MA accountable” and to motivate it to “implement repairs of long duration so that the same consumers are not repeatedly inconvenienced...” and because repeat trouble is the top reason customers give for being dissatisfied with Verizon MA’s repair response. AG Brief at 12. But *something* has to be the “top reason” for dissatisfaction in surveys, and that alone does not show that Verizon MA’s repeat trouble report rate is not reasonable. Indeed, there is no evidence here of any kind by which the Department could determine whether Verizon MA’s 30-day repeat trouble report rate is not reasonable, and therefore there is no basis for imposing this new metric. *See* VZ Brief at 54. Similar reasoning applies to the AG’s argument for additional reporting of repair intervals. *See* AG Brief at 60. Other than the fact that Ms. Baldwin would like this information, the AG has not explained how or why the Department should impose yet another metric on Verizon MA, especially in light of the fact that the Company already reports on Troubles Cleared - Residence and Troubles cleared - Business.

Finally, the AG recommends that the Department adopt the Hypothetical Plan but provides no argument in support of that plan. Instead, the AG merely cites to Ms. Baldwin’s speculation that a reduction in trouble report volume might “free up” enough resources to enable Verizon MA it to meet the metrics in the Hypothetical Plan, and that Verizon MA has not submitted sufficient evidence showing that it is not financially able to comply with the dictates

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<sup>21</sup> Verizon MA also explained why it would be inappropriate to apply metrics at the wire center level, especially with the same standards that are designed for statewide application. *See* VZ Brief at 59-60, citing Verizon Supplemental Testimony. The IBEW provides its opinion that it “sees great value” in applying metrics on a wire center basis, IBEW Brief at 59, but the IBEW is not a witness, is not an expert witness, offers no explanation for its opinion and does not address Verizon MA’s Supplemental Testimony on this point.

of the Plan. *See* AG Brief at 60-62. Verizon MA has refuted the first claim above, and refutes the second claim in Part III.E below.

**D. Competition provides ample incentive for Verizon MA to provide good service quality in Western Massachusetts. The Intervenor misunderstands the nature and consequences of competition in the region.**

The Intervenor argues that new, region-wide, service quality regulations are necessary to provide Verizon MA with “economic incentive” to provide good service quality, because competition does not provide this incentive in Western Massachusetts, *see e.g.* AG Brief at 29-34; IBEW Brief at 60. First, of course, the Intervenor’s argument fails because service quality in Western Massachusetts is adequate, and, therefore, the extent to which competition provides incentives for that performance is beside the point. In addition, the Intervenor misunderstands the nature of the services Verizon offers in Western Massachusetts, and Verizon MA has demonstrated that robust competition provides ample incentive for the Company to provide good service to all of its customers in the region, even though competition itself may be less than rampant in some geographic areas within the region or competitors may not offer the exact same products that Verizon MA offers in the region. *See* VZ Brief at 64-68. None of the arguments in the Intervenor’s briefs refute that showing.

The AG begins her discussion of competition with an odd, disingenuous argument that Verizon MA’s carrier-of-last-resort obligations require it to serve all customers who seek service in Massachusetts, alleging that Verizon MA has “disregarded” the evidence in this proceeding, and implying that the Company has sought to “pick and choose” which customers to serve and/or has intentionally refused to provide service or possibly good service quality to its customers who purchase basic exchange service only. *See* AG Brief at 29-30, citing testimony of Ms. Baldwin. Any COLR obligations that might exist in and of themselves impose no service quality standards

or obligations on Verizon MA. And Ms. Baldwin has again offered rank speculation instead of evidence to support her assertion. To the contrary, there is absolutely no evidence that Verizon MA intentionally provides sub-standard service quality to customers in small communities. In fact, many small wire centers in Western Massachusetts enjoy very low average RPHL, and only six wire centers in the region exceeded the Department's former RPHL standard for wire centers, contrary to the AG's insinuation. *See* Part III.C and Part II.A.4 above.

Overwhelming evidence in this case shows that there is substantial competition in Western Massachusetts for voice service. *See* VZ Brief at 64-66. Mr. Vasington estimated that upwards of 90% of the customers in the region have the option of taking their business elsewhere, and Ms. Baldwin testified that 40% of all landline customers in the region have exercised that option and are now served by CLECs. *See id.*, at 65, 66; Ev. Ex. 21. Nevertheless, the AG argues that for those customers who do not have a choice of carriers, no matter how few, competition somehow does not provide sufficient incentive to provide good service quality and the impact of a competitive market should be completely disregarded in determining adequate service quality. *See* AG Brief at 31. But as a factual matter, Verizon MA demonstrated that it does not manage its operations on a wire center basis at all, much less according to the level of competition in a wire center (nor is such an operational structure even feasible), and that the level of competition has no bearing on any specific aspect of its infrastructure management, such as, whether to repair or to replace a cable. *See* VZ Brief at 66-67. Verizon MA also submitted similarly uncontested evidence explaining that it does not have different networks to provide basic and bundled services and therefore "cannot differentiate the quality of the network facilities on the basis of whether or not a particular customer receives service as part of a bundle or as a stand-alone product." *Id.* at 66, quoting Tr. (Vasington) at 879.

The AG claims that this last argument is “particularly unpersuasive” because “Verizon, throughout its testimony refuses to acknowledge that it is unable or unwilling to offer bundled services in Western Massachusetts...to the extent that it offers them in Eastern Massachusetts....” AG Brief at 33. The AG’s argument is wrong and off point. Verizon MA has not disputed that FiOS-based services are not available in Western Massachusetts, but that does not mean that the Company offers no bundles in the region. To the contrary, Verizon MA provides DSL across much of Western Massachusetts and offers long distance service and video service throughout its operating area in Massachusetts. *See Verizon Direct at 73-74; Response to Information Request 13-15.* Various combinations of these services and local exchange service are available as bundles throughout Western Massachusetts. That customers in other regions may have different bundles to choose from is irrelevant; the point of Verizon MA’s evidence is that the customers in Western Massachusetts who purchase or consider purchasing bundles are interspersed with those who buy only basic exchange service, and all of them are served by a single network. Consequently, Verizon MA cannot and does not differentiate the quality of the network infrastructure or service quality based on whether a customer purchases a bundle or stand-alone basic exchange service. Thus, even under the AG’s theory that basic exchange service is a market unto itself, untouched by competition, competition for customers who purchase bundles provides incentive for Verizon MA to provide good service quality to all of its customers. Finally, Verizon MA notes that the AG has not offered any evidence showing that in fact, customers who purchase stand-alone basic exchange service receive a lower level of service quality than enjoyed by customers who purchase bundles.

The AG’s arguments concerning competition rest in part on mischaracterizations of the evidence. For example the AG falsely claims that Verizon MA has acknowledged that “a

competitive environment ... does not include portions of its Western Massachusetts service territory.” AG Brief at 31. The AG cites to Tr. at 372-373 in support, but in that testimony, Mr. Vasington agreed only that there are geographic areas in Western Massachusetts in which no *CATV carrier* competes for voice customers, not that there is no competition at all, for example from wireless providers. Also, Mr. Vasington pointed out that a map of such areas likely overemphasizes their importance, since relatively few people live in those areas. The AG also asserts that “Verizon indicated that it had not conducted any research of competition in Western Massachusetts,” *citing* Response to Information Request AG-VZ 9-17. That response states only that Verizon MA does not know the lowest price charged by each of its competitors for residential service, not that the Company has done no research “of competition in Western Massachusetts.” In fact, Verizon MA has offered substantial evidence on that issue. *See e.g.* Verizon Direct at 81-90.

The Intervenors sometimes resort to obvious hyperbole, asserting that there is no or very little competition in Western Massachusetts in general. For example, the AG claims that “[w]hen no competitive alternative is available, as in Western Massachusetts ....” AG Brief at 31. Similarly, the IBEW quotes Ms. Baldwin’s unsupported statement at hearing that the “vast majority of households in ... Western Massachusetts rely on Verizon’s landline...” *See* IBEW Brief at 30. And the AG, again, asserts that Ms. Baldwin determined that “there is little competition in Western Massachusetts.” In support of this claim, the AG cites Table 16 in Ms. Baldwin’s Rebuttal Testimony, the very same Table which, as updated in Ev. Ex. 16, shows that CLECs not only compete but actually control almost 40% of the landlines in Western Massachusetts. Given this testimony, the testimony of Mr. Vasington cited above and additional evidence showing that Verizon MA in fact serves only half of the households in the region, *see*

Tr. (Vasington) at 952, *citing* Attachment AG-VZ 3-8, the Department should give no weight to the Intervenor’s undisciplined claims of little competition in Western Massachusetts.

The IBEW misconstrues the evidence in its additional claims that competition in Western Massachusetts is weak. The IBEW claims first that Verizon MA faces no competition “at the level of ILECs.” IBEW Brief at 28. No one has claimed otherwise. By definition, there can be only one “incumbent” in any particular geographic area. The IBEW next argues that the Department’s Competition Status Report found that “relatively few CLECs actively market services to residential customers.” *Id.* at 29. But as used in the Department’s Report, the term “CLEC” does not include CATV carriers who offer voice services and who may or may not qualify as Competitive Local Exchange Carriers under federal law. The IBEW also argues that 50 communities in Massachusetts have no cable voice service providers. *Id.* This does not mean that customers in those regions have no choice of voice providers, however, and as demonstrated above, Verizon MA does not manage its network infrastructure based on the extent of competition in a wire center. The IBEW cites the conclusion in the Competition Status Report to the effect that moderate- and low-income customers who wish to purchase basic exchange service only have no choice of provider.<sup>22</sup> But because Verizon MA has only one network that provides services to all of its customers in Western Massachusetts, and Verizon MA cannot differentiate the quality of the network facilities on the basis of the service purchased by its customers, with respect to “service quality incentives and challenges, there is no distinct product market” for stand-alone basic exchange services. Tr. (Vasington) at 879. Finally, the IBEW argues that some customers in Western Massachusetts do not have access to wireless service. IBEW Brief at 29-30. The extent to which that is true is not material, since it is undisputed that

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<sup>22</sup> This is precisely the kind of analytic conclusion in the Competition Report that should not have been admitted and should not be considered by the Department in rendering a decision in this proceeding.

the vast majority of customers in the region do have such access, and competition for those customers provides Verizon MA with incentive to provide good service quality throughout the region, has it has in the past and continues to do.

**E. The evidence of Verizon MA's financial condition, showing that the Company does not have the financial ability to comply with the current or proposed troubles cleared metrics, is uncontested and is entitled to substantial weight.**

Verizon MA demonstrated in its Initial Brief that the costs of complying with the Troubles Cleared - Residence metric and the similar OOS and SA metrics in the Hypothetical Plan would be extreme in relation to Verizon MA's financial condition. The Company explained that with the rise of competition, its access lines and revenues have been declining for years, and those declines are difficult to match by reducing expenses. Consequently, Verizon MA's net income in Massachusetts has been substantially negative since at least 2004, and its rate of return on investment on intrastate operations in Massachusetts was negative each year from 2004 through 2008. Verizon MA thus does not have the financial ability to meet the current and proposed troubles cleared metrics. *See* VZ Brief at 43-47.<sup>23</sup>

No party has submitted any evidence contesting Verizon MA's testimony or documentation of its financial condition. Nor has any party identified any inaccuracy in the data submitted by Verizon MA. Indeed, no party even took discovery on the financial evidence submitted by Verizon MA. The Attorney General now claims that the Department should give no weight to this evidence, on the alleged grounds that: (1) the evidence is "scant;" (2) Verizon

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<sup>23</sup> Ms. Baldwin would blame Verizon MA for the high cost of complying with these metrics, speculating that, "if it costs too much, it may be because there's been along period of underinvestment, such as the West Virginia Public Service Commission found." *See* AG Brief at 62. But Verizon MA has not underinvested in its facilities and provides overall good service quality in Western Massachusetts, as demonstrated above. Moreover, if Verizon MA had maintained the workforce necessary to clear 60% of troubles within 24 hours, it would be even deeper in the red than it is today. In addition, even if Verizon MA were meeting that standard today, Ms. Baldwin's conjecture does not explain away the enormous additional costs the Company would have to incur to move even that performance up to the 80% standard the AG proposes for new OOS and SA metrics.

MA's panel of witnesses was incompetent; (3) the AG declined to contest the evidence; and (4) Verizon MA's financial accounting might not comply with the FCC's rules if the FCC changes them in the future. *See* AG Brief at 66-72. These arguments are, frankly, nonsense. The evidence submitted by Verizon MA is entitled to substantial weight, and since it is the *only* evidence before the Department on this issue, the only finding available on the record is that Verizon MA does not have the financial ability to meet the current or proposed troubles cleared metrics, and the AG's proposed penalties and metrics must be rejected.

The AG claims first that Verizon "has provided skeletal cost and revenue information..." AG Brief at 66. But that evidence consisted of substantial, undisputed testimony explaining the overall business environment in which Verizon MA's revenues have been declining for many years and the company has been unable to reduce expenses to match. *See* VZ Brief at 45-46. Mr. Vasington testified that the company's net earnings have been negative since 2004, and he backed that testimony up with specific figures and with six annual, ARMIS, financial statements -- FCC Reports 43-02 -- that were not prepared for this proceeding but were prepared for and submitted to the FCC each year. *See* VZ Brief at 46-436; Verizon Rebuttal at 44 and Exhibit 2; Attachments IBEW-VZ 1-19; Attachment to Record Request 24. And the losses are not minor; in 2009 the Company's net earnings were negative \$234,000,000. Mr. Vasington also submitted his analysis showing that Verizon MA's rate of return on investment for Massachusetts intrastate operations only was negative each year from 2004 through 2008, and Tr. (Vasington) at 985-897, as well as a document setting forth his calculations. *See* Evidentiary Exhibit 60, "Calculation of Intrastate Rate of Return - FCC Basis." The AG now characterizes this significant showing as "skeletal" and "scant," but just a month ago, the AG sang a very different tune, arguing to the Department that:

Verizon has offered *extensive testimony* in hearings and in its filed testimony *concerning its lack of profitability* and the implications that lack of profitability has on the Department's ability to order remedies.

See letter from Office of Attorney General to Catrice Williams dated May 27, 2010, in reply to Verizon MA's opposition to the AG's motion to compel discovery, at 2 (emphasis added).<sup>24</sup> Clearly, the AG's current characterization of the evidence is not based on the facts but on expediency.

The AG's claim that Verizon MA's witnesses were unable to answer "basic questions" concerning the company's financial condition, AG Brief at 66, seriously mischaracterizes the testimony. Far from asking "basic questions" related to Verizon MA's financial testimony, the AG questioned the panel on matters only tangentially related to their testimony - such as the types of information that might be filed in a rate proceeding, the profitability of a single subset of interstate operations (FiOS services) and whether the Company tracks FiOS financial information by individual operating company. See Tr. at 735-739, 1005, 1028. That the witnesses could not answer such questions off the tops of their heads shows only that the AG should not have tried to use the hearing as a substitute for discovery.<sup>25</sup> The AG points out that Mr. Vasington is not sure what other, non FCC regulatory accounting the Company does, AG Brief at 66, but Mr. Vasington's testimony concerned regulatory accounting performed in accordance with FCC cost-accounting regulations, and a question about *other* possible accounting systems, far from being a "basic question" about Mr. Vasington's testimony, is not

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<sup>24</sup> Likewise, the Hearing Officer has found that Verizon MA has "argued extensively in its Rebuttal that financial constraints limit its ability to comply with any of the changes contemplated..." Hearing Officer's Ruling Regarding the Attorney General's Motion to Compel Response to Discovery at 5, 10.

<sup>25</sup> Moreover, when asked whether "the company makes a profit on its FiOS business," Mr. Vasington first identified a number of ways of defining "profit," and then answered the question with respect to each of them, on a Verizon-wide basis, stating that, "I believe in some of our earnings reports, or earnings conference calls, we have reported that FiOS is accretive, and on an EBITDA basis, which is a measure of cash flow, on a total-company basis." See Tr. (Vasington) at 1005. This is hardly the testimony of a witness not qualified to speak on regulatory accounting issues.

even relevant. When asked about the *FCC's* accounting rules and practices, Mr. Vasington answered in great detail. *See* Tr. (Vasington) at 1014-1017

The AG's claim that Verizon MA failed to "provide a witness who could competently address regulated and unregulated revenues and expenses and management, and operational financial information," AG Brief at 67, is a wholesale fabrication. The testimony the AG cites in support of this claim, Tr. at 735-747, actually demonstrates the expertise and competence of Verizon MA's panel.<sup>26</sup> On pages 735 to 739, the AG asked whether and when Verizon MA had submitted to the Department different types of financial reports that might be relevant in a rate-making proceeding. Mr. Vasington not only answered these questions but even pointed out that some of these reports are not required by the Department and that Verizon MA does not file them. *Id.* at 736. More importantly, this is not a rate case, and the AG's questioning had no bearing on the straightforward income statements and testimony submitted by Verizon MA. The AG has not explained how a cost-of-service study, for example, would be even remotely relevant or provide any helpful information to the Department in this case. As Mr. Vasington stated at hearing with regard to the AG's question about cost studies, "This is apples and oranges. This is an income statement. The cost-of-service study is a regulatory document that would underlie a rate case. They are two different things that are not related to each other at all." Tr. (Vasington) at 735.

Mr. Vasington also answered the AG's questions regarding whether certain revenues were classified as intrastate or interstate, explaining that revenues from basic exchange services, call waiting, intrastate toll and a portion of Freedom package revenues are intrastate revenues, but that DSL revenues are not. *See id.* at 740-742. The only question Mr. Vasington could not

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<sup>26</sup> Mr. Vasington is a former Department staff member, commissioner and chairman, with substantial experience in evaluating financial reports and cost accounting.

answer was how the Company calculates the portion of Freedom revenues that are classified as intrastate. *Id.* at 742. Mr. Vasington also explained the Department's 2009 order capping intrastate access rates; that 25% of loop costs is allocated to interstate; and that DSL revenue is not regulated at the interstate level. *Id.* at 743-745. He also identified for the AG the specific account in the FCC 43-02 Reports used to report advertising expenses, and he corrected the AG that the amount listed was \$13 million, not \$13,000. *Id.* at 746. He could not answer only the AG's "pop quiz" question asking for the category in those reports for reporting lobbying expenses, and he could not identify off the top of his head each sub-category of expenses that are included in General and Administrative Expenses, which is, as he said, "a big category." *Id.* at 747. Overall, these passages of the transcript demonstrate that Verizon MA provided an extremely competent and knowledgeable witness panel that was able to answer not only the few questions that actually pertained to its testimony, but also the majority of the questions on unrelated topics, such as rate of return regulation.

The AG argues that the Department cannot give weight to the substantial testimony and documentary evidence demonstrating Verizon MA's financial condition because that evidence "has not undergone any serious regulatory scrutiny." AG Brief at 676; *see also id.* at 68, 69 (alleging that the Department cannot take that evidence "at face value" until it "conducts a complete investigation of Verizon's cost and revenues"). The Department must reject such sophistry. If the evidence submitted by Verizon MA has not "undergone any serious regulatory scrutiny," it is because neither the AG nor any other party has scrutinized it. Verizon MA testified to its financial condition and submitted two of the six supporting ARMIS 43-02 Reports in its Rebuttal Testimony filed on March 16, 2010. (Verizon MA had produced three other then-existing FCC reports to the AG many months before. *See* Attachments IBEW-VZ 1-19(a), (b)

and (c). The final 43-02 report, for 2009, was produced in response to RR 24.) The AG had full opportunity to take discovery on that evidence but elected not to, even after the Hearing Officer offered the parties additional time to take discovery on the matter. *See* Tr. at 24. Nor has the AG or any other party submitted any expert testimony or other evidence contesting any of the facts in Verizon MA's testimony and financial statements or disputing the methodology or accounting underlying its conclusions. Thus, the AG essentially argues that the Department cannot give Verizon MA's evidence any weight *because the AG did not contest it*. To the contrary, because the evidence is uncontested, the Department should afford it substantial weight and find that Verizon MA does not have the financial ability to comply with the various penalty and metric proposals of the AG and the IBEW.

The AG seems to take the position that Verizon MA's evidence must be "scrutinized" in a particular way – in a rate case or a case concerning the competitiveness of Verizon MA's services before the Department could consider it here. *See* AG Brief at 67, 68. But the AG provides no authority for this novel and convenient theory, and no rule of law requires Verizon MA to have its financial statements reviewed in a particular type of proceeding before they can be considered in this service quality case. The AG's argument is particularly hollow given that so much of the evidence she now contests consists of regulatory filings, of which the Department could simply take judicial notice. Likewise, the AG disagrees with Verizon MA's testimony that, "you don't need a rate case to show that unfortunately we've been losing money for a significant period of time." *See* AG Brief at 66, *citing* Tr. (Vasington) at 1021. But if the AG were correct, then the Department would have to conduct a rate case in every proceeding under M.G.L. c. 159, § 16, since the statute requires the Department to consider the financial ability of

a carrier to comply with a potential order. The AG's apparent standard of proof is clearly untenable.

It is not enough for the AG to speculate on brief that Verizon MA's financial evidence "would not survive regulatory scrutiny," or that the Department or other agencies have required adjustments in utilities' financial statements in other cases. *See* AG Brief at 67-68. That is like a defendant in a civil action arguing that he is entitled to judgment, although he didn't contest the plaintiff's evidence, because other defendants successfully contested other plaintiffs' evidence in other cases. The Department must base its decision in this proceeding on substantial evidence in the record of this proceeding, not some other proceeding, and the record here contains no evidence disputing or contradicting the accuracy or appropriateness of Verizon MA's financial statements. The AG desperately claims that "cost accounting and separations are complex topics that should not be resolved within this proceeding," AG Brief at 69, but the AG has offered no evidence here raising any accounting or separations issue, never mind a complex one. Even if the AG had submitted such evidence, she has failed to explain why, amid all the other complex issues in this case, the Department should exclude consideration of complex financial issues. In considering Verizon MA's financial ability to comply with an order in this case, the Department cannot simply ignore evidence merely because a party contends that it might have been able to raise an issue about that evidence if it had tried.

Another desperate claim by the AG to discredit Verizon MA's financial evidence relates to a proposal by some state regulators to adjust separations rules. At the hearing on the Hypothetical Plan, held on May 21, 2010, the AG asked Verizon MA's panel several questions about "the proposal under consideration by the FCC that was submitted by the state members of the Federal-State Joint Board on Separations." Tr. at 1036-1038. The Panel indicated that it was

not familiar with the proposal.<sup>27</sup> Now on brief, the AG asserts that the existence of the proposal calls into question the reliability of financial reports that were developed in compliance with longstanding FCC cost accounting rules. *See* AG Brief at 69-72. This argument is frivolous.

In the first place, it relies entirely on facts that are not in evidence. The AG purports to describe in her brief the proposal made by the state members of the Joint Board, *id.* at 70, 71, but there is no evidence before the Department of the substance of the proposal. At hearing, the AG purported to summarize the proposal while questioning Verizon MA's panel at hearing, but the witnesses did not vouch for that description, and the AG did not submit any document purporting to be the proposal or discussing the proposal. *See* Tr. at 1037-1038. The AG's Brief, at 70, n. 16, cites to a letter regarding the proposal, but that letter is not in evidence either. The AG alleges that over the past nine years, Verizon MA has assigned its special access revenues and costs to interstate and interstate jurisdictions in a particular manner, AG Brief at 71, but there is no evidence showing how Verizon MA has assigned those revenues and costs, and the AG does not cite any. Finally, the AG offers its "analysis" that under the state members' proposal, the Department could possibly finagle the numbers to show that Verizon MA's intrastate earnings were positive. *See* AG Brief at 71-72. But the effects that changes in separations accounting rules may have on a particular financial statement is a complex matter, as the AG asserts, which requires expert testimony. There is none here. The Department must ground its decisions on substantial evidence, and therefore must reject the AG's argument.

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<sup>27</sup> The AG asserts that the witnesses' lack of familiarity with the state members' proposal "undermines Verizon's ability to testify to profitability with any degree of accuracy or credibility," and calls questions about the proposal "basic questions that go to" the profitability of its intrastate operations. *See* AG Brief at 71, 66. The Department should not countenance flippant attacks on witnesses' credibility or competence. The fact that the four state members of the Separations Joint Board have made a proposal to change separations factors is not related to Verizon MA's profitability and was not even discussed or mentioned in the testimony offered by the AG in this case.

Moreover, just because the four state members of the Joint Board have made a proposal for a change in jurisdictional separations does not mean that financial reports compiled in accordance with existing cost accounting rules are suspect. The mere existence of a proposal does not change the FCC's rule, and there is no evidence that either the Joint Board or the FCC will accept it. In addition, even if the Joint Board were to consider and accept the state members' proposal, and even if the FCC were to consider it and ultimately revise its rules, the consequence would be that subsequent cost accounting and financial reports would be prepared differently than they are today. That would not change the fact that the financial statements now before the Department were prepared in accordance with the FCC rules that were in place at the time they were prepared and are therefore completely appropriate. Again, the Department should afford those statements and the other evidence of Verizon MA's unenviable financial condition substantial weight.

**F. There is no record basis for imposing additional reporting requirements on Verizon MA.**

The Intervenors have failed to demonstrate any need or basis for the various additional reporting requirements they seek to impose on Verizon MA in this proceeding. As Verizon MA noted in its Initial Brief, at 41, the Intervenors have failed to offer substantial evidence that service quality in Western Massachusetts is inadequate, so there are no grounds here for imposing any new reporting requirements on the Company.

This applies with particularly force to the Intervenors' request that the Department order Verizon MA to report its performance in Western Massachusetts separately from the rest of the BayPath SBU under the Service Quality Plan. The AG argues that this additional regulation is necessary because reporting at the SBU level results in "diluted data that hinders the

Department's ability to exercise its regulatory authority and to ensure that Verizon MA does not 'backslide' in Western Massachusetts after this investigation is complete. *See* AG Brief at 63. But service quality in Western Massachusetts is good, so there is no factual basis for concluding that the current reporting system (which includes reporting RPHL monthly for each wire center in Western Massachusetts) is insufficient or has hindered appropriate Department oversight in any way. *See* Verizon Rebuttal at 53. In addition, the AG has offered no evidence that service quality in the Springfield district of the BayPath SBU (*i.e.* Western Massachusetts) is materially different than in the Marlborough district, and in fact the average RPHL in the two regions are virtually the same - 1.40 in Western Massachusetts and 1.20 in Marlborough. *See* Part II.A.1. Thus, there is no evidence that the current reporting system "dilutes" the data from Western Massachusetts by mixing it with data from Marlborough. As for the AG's claim about potential "backsliding," *see* Part II.F above, demonstrating that there is no basis for such speculation.

The AG argues that the Department should require Verizon MA to report to it the ARMIS data that the FCC has decided need no longer be filed. *See* AG Brief at 64. Verizon MA demonstrated in its Initial brief, at 41-43, that there is no basis for the AG's position, and that this proposal (as well as the proposal to require metric reporting specifically for Western Massachusetts addressed above) would modify the Service Quality Plan and is beyond the scope of this case. *See also* Part III.C above.

The AG also argues that the Department should order Verizon MA to file annual reports with "a detailed description of its outside plant surveys and plans for follow-up work in Western Massachusetts, on the sole grounds that Verizon MA has "failed to demonstrate" that it will continue to conduct such work. *See* AG Brief at 45-46. But Verizon MA has demonstrated in Parts II.A.5 and III.A, above, not only that it continues to support the Open Plant program but

that it is expanding it to other states, and that closing open plant is in the Company's own best financial interest. The AG does not even attempt to come to terms with this evidence disproving this conjecture. Moreover, the AG's proposed annual reporting would be redundant in light of the monthly service quality reports Verizon MA already files with the Department. The purpose and effect of the open plant surveys is to prevent service-affecting troubles and reduce the network trouble report rate. Exactly where and when Verizon MA performs open plant surveys is subsidiary information that does not tell the Department what it needs to know, which is whether that work was successful. That information is found in the monthly RPHL data that Verizon MA already provides to the Department.

Finally, the Department should also reject the IBEW's proposal to require Verizon MA to report RPHL by municipality. *See* IBEW Brief at 57-58. The IBEW claims that reporting by municipality is important "given the serious problems that have been reported by some of the smaller towns in western Massachusetts." IBEW Brief at 58. But as shown above, the evidence does not support the IBEW's overblown factual claims. Also, there is no need for such reporting. Not one of the municipalities that have participated in this proceeding has requested that Verizon MA report RPHL by municipality, nor has any municipal official testified that such reporting would be important or even useful to the town. Verizon MA testified, however, that its network and therefore its record-keeping are structured by wire center, not by municipality:

Verizon MA already reports RPHL by wire center, which is just as granular, and often more granular, than would be municipal reporting. Municipal reporting would add nothing of value to the Department's knowledge of trouble report rates. In addition, Verizon MA's system of tracking trouble reports is necessarily geared to and organized by wire center in order to respond to and resolve the trouble report. Verizon MA has no automated way of generating monthly reports of troubles by municipality. To [prepare its monthly reports] for the entire region of Western Massachusetts - or to develop an entirely new automated reporting system for that area - would be prohibitively time consuming and expensive and, as noted, would serve no end.

Verizon Rebuttal at 54. Given the extreme difficulty and expense to Verizon MA of reporting by municipality, that Verizon MA already reports on a similarly granular basis to the Department, and the absolute absence of any evidence that any town wants or could use this information, there is no merit to the IBEW's proposal, and the Department should reject it.

#### IV. CONCLUSION

Nothing in the Intervenors' Briefs alters the conclusion from Verizon MA's Initial Brief: "For the reasons stated above, the only rational conclusion on the evidence before the Department is that Verizon MA provides just, reasonable and adequate telephone service quality across Western Massachusetts and that no remedial action by the Department is necessary or appropriate in this proceeding."

Respectfully submitted,

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