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October 31, 2016

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

Re: D.T.C. No. 16-2, Rulemaking and Regulation Review Pursuant to
Executive Order No. 562 To Reduce Unnecessary Regulatory Burdens

Dear Secretary Clark:

As you know, Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) submitted three sets of comments in the Department’s informal investigation into its regulations last year, prior to the above-captioned rulemaking. Those comments, dated August 14, October 20 and November 20, 2015, are enclosed herewith. Please accept this letter and the enclosures as Verizon MA’s comments in this rulemaking.

By way of updating those comments, Verizon MA appreciates the largely technical changes the Department has proposed to its regulations, including the change to Rule 1.02(8)(c) to allow electronic filing of documents. (As Verizon MA noted in its comments of November 2015, however, Rules 5.02(1), 5.02(2)(a) and 5.03(1) would continue to require that tariffs be filed in hard copy. As the Department moves to electronic filings, there is no reason to leave tariff filings behind in the 20th Century. The Department should eliminate Rules 5.02(1), 5.02(2)(a) and the final sentence of Rule 5.03(1).)

Technical changes, however, do nothing to reduce the very real burdens that the Department’s regulations – both those in the C.M.R. and those arising from adjudicatory proceedings – impose on service providers. Verizon MA again urges the Department to eliminate or modify its many regulations that have long outlived their usefulness and are now counter-productive in today’s highly competitive communications market, as set forth in the enclosed comments.

Thank you for your attention to this matter.

Sincerely,

Alexander W. Moore

Enclosures
cc: Service List

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August 14, 2015

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

**Re: DTC's July 27, 2015 Request for Comment and Notice of Listening Session
(Executive Order Number 562, dated March 31, 2015)**

Dear Secretary Clark:

In response to the Department's Request for Comments and Listening Session, dated July 27, 2015, Verizon submits the attached comments.

Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Alex Moore", written over a horizontal line.

Alexander W. Moore

Enclosure

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Department Regulation Review

COMMENTS OF VERIZON NEW ENGLAND INC.

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) files these comments in response to the Request for Comment and Notice of Listening Session issued by the Department on July 27, 2015 (“Request for Comment”), seeking comment on the review and potential elimination of its regulations pursuant to Executive Order No. 562.

Verizon MA supports the goal of the Executive Order to address regulations that “have imposed unnecessary cost, burden and complexity.” With respect to the communications industry, many of the Department’s regulations were adopted decades ago, when the telephone and cable television industries were distinct from one another and largely monopolistic. Those industries (and Internet-based services and technologies that did not even exist when the rules were created) converged some time ago into a highly competitive communications market. Today, customers enjoy a broad choice of voice services, including WiFi, wireless, VoIP (both facilities-based and over-the-top), email, texting, and other Internet-based social media such as Facebook, Twitter, Instagram, Vine and others. With so many options, consumers often use multiple services and technologies each day to communicate, and traditional landline telephone service now plays a small and declining role in consumers’ service portfolio. For video services, consumers enjoy choices among facilities-based CATV providers as well as widely accepted

alternatives in the form of satellite television and free and subscription-based video streaming services over broadband connections.

Competition constrains not only service providers' rates but also their customer service practices, including the quality of their service, policies for addressing customer complaints and inquiries and treatment of billing and nonpayment issues. In this way, market forces driven by new technology, changes in consumer habits and by federal and state regulatory decisions designed to open the voice and cable markets to competition long ago rendered obsolete the Department's need for regulations that dictate behavior on these issues.

A few of these regulations are found in the Code of Massachusetts Regulations – namely, the CATV Billing and Termination of Service regulations at 207 C.M.R. § 10 (“CATV B&T Rules”), the Security Deposit and Late Payment rules in 220 C.M.R. § 26 that apply to business telephone customers, and the CATV Form 500 complaint reports at 207 C.M.R. § 7.03. These regulations no longer serve any purpose but continue to impose costs on service providers and distort the market, chilling investment and constraining competition. They satisfy few, if any, of the criteria in ¶ 3 of the Executive Order, and the Department should eliminate them.¹

The Department should not, however, limit this review to the formalized regulations in the C.M.R., as the Request for Comment appears to anticipate. Many of the Department's most archaic and burdensome rules are not embedded in the C.M.R. but instead were inherited in orders and informal directives from predecessor agencies. These include the superannuated Rules and Practices Relating to Telephone Service to Residential Customers (“B&T Rules”) dating from 1977 and a number of obligations imposed solely on Verizon MA at the dawn of the

¹ Other C.M.R. regulations which require parties to file and serve hardcopies of all submissions to the Department are simply outdated by the ubiquity of secure electronic transmission over the Internet. The Department should eliminate this requirement and the attendant unnecessary costs. *See* Part III below.

competitive era, such as the Retail Service Quality plan and other retail relics from the Alternative Regulation Plan. The clear goal of the Executive Order is to eliminate state agency regulations that “inhibit business growth and the creation of jobs” and retain only those that are “essential to the health, safety environment or welfare of the Commonwealth’s residents.” Order at Introduction and ¶ 3. That the B&T Rules, for example, do not appear in the C.M.R. does not make these monopoly-era strictures relevant in an era of rampant competition or make them any less burdensome to residential telephone service providers. Limiting this investigation to formal regulations in the C.M.R. while ignoring the Department’s more numerous, burdensome and archaic rules would elevate form over substance and defeat the purpose of the Executive Order.

I. Competition Has Rendered Many Department Rules Obsolete and Counterproductive, And The Department Should Eliminate Them.

It is beyond debate that competition in the communications market in Massachusetts is widespread, deep and well-established, as Verizon MA demonstrated four years ago.² In today’s market, telephone, CATV, VoIP and satellite providers vie with each other and with texting, email, Internet video streaming services, Facebook, Twitter and the ever-expanding world of social media for customers’ voice and video business. With respect to landline competition alone, competitive carriers controlled 52% of the landlines in the state as of 2013, the latest federal data available.³ Even as early as 2008, 97% of all households in Massachusetts had access to voice service provided by CATV providers, and the Department noted that “cable voice

² See Initial Comments of Verizon New England Inc., dated August 22, 2011, filed in the Department’s informal proceeding captioned *Notice of Public Informational Forums: Billing and Termination Regulations*.

³ See Federal Communications Commission, Wireline Competition Bureau, *Local Telephone Competition, Status as of December 31, 2013*, (rel. October, 2014) (“*Local Competition Report*”), Table 9, at 20. That report is available at <https://www.fcc.gov/encyclopedia/local-telephone-competition-reports>.

has developed from a new entrant voice service offering to being a widely adopted alternative in the residential voice market.”⁴

And landline is now just a small subsector of the communications market. There are twice as many wireless subscriptions in Massachusetts as there are landlines.⁵ In 2010, the Department found that more than 99% of state residents have access to at least one wireless carrier, based on data that is now *seven* years old.⁶ More recent data show that 99.9% of Massachusetts residents have a choice of at least *two* wireless providers, and 94% can choose from among five or more.⁷ The Massachusetts data is part of a larger, national trend of consumers’ embrace of mobile and Internet-based services. In fact, more than 45% of households in America had only wireless telephones at the end of 2014, and another 15% of households received all or almost all calls on wireless phones.⁸ To respond to this demand, wireless carriers offer consumers a growing array of service plans and rates designed to meet different consumer needs, including low-cost pre-paid plans.

Competition is also the hallmark of the CATV and video sub-market. Using 2008 data, the Department has found that 40% of the households in Massachusetts had a choice of two CATV providers, and 19% could choose from among three providers.⁹ Those figures do not

⁴ See *Competition Status Report* (rel. February 12, 2010), at iv;

<http://quickfacts.census.gov/qfd/states/25000.html> (showing 2,465,654 households in Massachusetts).

⁵ There were 6,928,000 wireless subscribers and 3,466,000 total switched access lines and VoIP lines in Massachusetts as of December 31, 2013. See *Local Competition Report*, Tables 9 and 18. Indeed, there are now more wireless subscribers than people in Massachusetts, which had 6,547,629 residents as of the last census. See <http://quickfacts.census.gov/qfd/states/25000.html>.

⁶ See *Competition Status Report*, at 50, 52, using December, 2008 and January, 2009, data.

⁷ See, National Broadband Map, Summary for Massachusetts, available at <http://www.broadbandmap.gov/summarize/state/massachusetts>.

⁸ See Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2014* (“CDC Report”), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201506.pdf>.

⁹ See *Competition Status Report*, at xi. The percentages for CATV competition are higher today, at a minimum because Verizon MA has since expanded its FiOS TV service from 96 communities at the time of the Department’s findings to 113 communities today.

even account for the additional choices afforded all customers across the state by satellite video services such as Dish and DirectTV, which is now part of AT&T.

In addition, both video and voice providers are subject to increasing competition from broadband. Ninety-nine percent of Massachusetts residents have access to broadband service, and 97% have a choice of at least two landline providers.¹⁰ Consequently, while pockets remain, virtually the entire population has access to VoIP services, video websites, the explosively popular Internet video streaming services and the ever-growing array of communications services delivered over the Internet.

Even the state itself has stepped into the market. Through the Massachusetts Broadband Initiative, the Commonwealth has used state and federal funds to build a middle-mile broadband network to more than 1,300 locations throughout central and western Massachusetts. Other local broadband initiatives are well underway, from Open Cape's middle mile project to grassroots efforts in Leverett and a growing number of western Massachusetts towns which are seeking to build last-mile broadband connections in some of the smallest towns in the state. All of these networks are capable of carrying voice, data and video traffic and acting as effective substitutes for traditional cable and telephone networks.

All of these competitive forces together discipline all aspects of service providers' relationships with their customers, including rates, terms, conditions, customer service, quality of service, repair response policies, dispute resolution policies, and billing and termination practices. Service providers know that innovative programs and practices that improve customers' experience help win and retain business. They also understand that customers can and do switch to competing carriers quickly and easily, and that unreasonable or unfair customer service practices and policies only drive customers to take their business elsewhere. Given these

¹⁰ National Broadband Map, Summary for Massachusetts

market-based incentives, there is no longer a need for government intervention, especially by way of regulations designed to dictate the behavior of a single, monopoly provider.

For example, the B&T Rules and the CATV B&T Rules contain complex, monopoly-era provisions defining when an unpaid bill becomes delinquent and the steps a service provider must take before disconnecting the customer's service for nonpayment. In the competitive market, however, the goals of winning and retaining customers, rather than government regulation, drive service providers to implement fair, reasonable and customer-centric policies on payment terms, customer dispute resolution and (where necessary) to provide customers with ample notice of impending discontinuance of service. Because of the risk of losing to competitors customers who may eventually resolve an arrearage, service providers have every incentive to preserve the customer relationship if possible and to not disconnect a customer unless it is absolutely necessary.¹¹

For the same reasons, there is no need for rules regarding late charges, termination notices, return check charges or security deposits in the CATV B&T Rules or in 220 C.M.R. § 26.01(1), 26.09 and 26.10 (regarding business telephone customers). In a competitive market, retaining customers is ample incentive for service providers to adopt fair and reasonable policies.

Likewise, the decades-old Retail Service Quality Plan and other regulations in the Verizon MA Alternative Regulation Plan have long outlived any usefulness and serve only to impose costs on Verizon MA. Verizon MA is doing all it can to provide its remaining customers with high quality voice services, the latest technology and responsive customer service policies, all in order to prevent them from decamping to its many competitors. But to compete fully,

¹¹ The many filing, publication and notice requirements in the B&T Rules and the CATV B&T Rules are likewise superfluous and counterproductive. A service provider that repeatedly slaps surprise rate increases on its customers will soon have no customers. Moreover, the Internet has simply bypassed these rules; company websites are a far more effective means of making available to customers and regulators alike the provider's current rates, terms, condition, policies and channel lineups.

Verizon MA should be focused on meeting the needs of customers *as expressed by customers*, rather than devoting resources to standards set by the Department twenty years ago based on performance results and expectations from another era, before cellphones, before broadband and before the 1996 Act and the Department's own rulings opened the industry to competition. For example, due to the ubiquity of cell phones, customers today often prefer to schedule a landline repair appointment for a convenient time, rather than as soon as possible. When Verizon MA agrees to schedule a landline repair appointment for more than 24 hours after the trouble was reported, however, the company will miss the decades-old requirement that it complete repairs within 24 hours, even though the later appointment better meets the customer's preference.

On the CATV side, the Department should drastically simplify the Form 500 reports of consumer complaints in 207 C.M.R. § 7.03. The detailed complaint data that Form 500 requires carriers to report has always far exceeded the mandate of G.L. c. 166A, which requires only the nature of the complaints and their resolution and the time required to resolve. Requiring carriers to break down those complaints into ten vague categories imposes substantial costs and results in fairly random reported results, presumably so that the Department can monitor carriers' service quality and performance. But there is no need for such micro-monitoring in the highly competitive Massachusetts market, in which customers can and do switch providers if they are unhappy with their CATV providers' performance or treatment of them.¹²

In light of the constraints that competition imposes on service providers' policies and practices, there is no longer any policy basis for treating telecommunications and CATV providers any differently than other businesses. Massachusetts' strong consumer protection laws of general application are more than adequate to protect consumers of these services, just as they

¹² Moreover, only one other state in which Verizon provides CATV service, New Jersey, requires providers to report the number of customer complaints.

protect consumers in other areas of competitive commercial activity. For example, M.G.L. c. 93A protects CATV consumers from unfair and deceptive practices, gives the Attorney General enforcement authority, and affords a private right of action to consumers as well. The Attorney General has issued general Consumer Protection regulations (at 940 CMR § 3), and both the Attorney General (at 940 CMR § 7.00) and the Division of Banks (at 209 CMR § 18.00) have issued regulations specifically protecting consumers from unfair or deceptive debt collections practices. Likewise, M.G.L. c. 93H and regulations promulgated thereunder (at 201 CMR § 17.00) provide comprehensive protection of Massachusetts consumers' personal information owned or licensed by any person, including telephone and CATV providers.¹³

In addition, the FCC's Truth-in-Billing rules regulate the form and content of telephone bills. Among other things, they require bills to be clearly organized and to state the name of the service provider, any change in service providers, a "brief, clear non-misleading, plain language description of the service or services rendered" for each charge and clear and conspicuous information on how to contact the service provider, including a toll-free telephone number. *See* 47 CFR § 64.2401. The FCC recognized that these rules, "will compel subject carriers to provide consumers with clear and necessary information in order to make informed choices and safeguard themselves against fraud."¹⁴ In the competitive Massachusetts telecommunications market, the FCC's Truth-in-Billing rules allow carriers flexibility to address customer-defined needs and demands while ensuring protection of consumers from abuse.¹⁵

¹³ Similarly, the FCC's regulations at 47 C.F.R. § 64.2001 *et seq.* provide comprehensive protection to Customer Proprietary Network Information ("CPNI").

¹⁴ *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 F.C.C.R. 7492 (1999), at 27.

¹⁵ In addition, the hyper-detailed billing format requirements of Rule 3.4 of the B&T Rules far exceed the federal requirements, and thus fail to meet the criteria of § 3(3) of the Executive Order.

The highly competitive Massachusetts marketplace, coupled with the general consumer protection rules above, provides ample assurance that service providers will act fairly, reasonably and appropriately toward their customers. This is not mere theory but is solidly grounded in experience. After all, the vast majority of voice subscriptions in Massachusetts (i.e. all of them except subscriptions to traditional, residential telephone service) are not covered by the presumed protections of the B&T Rules (which apply only to residential POTS customers) or the Retail Service Quality Plan (which applies only to telephone customers of Verizon MA).¹⁶ Similarly, the CATV B&T Rules do not apply to satellite television customers or to the untold multitudes who stream video over the Internet. Yet there is no evidence of mounting consumer complaints from these “unprotected” consumers on the basic customer service issues addressed in these regulations, and the unregulated services continue to grow in consumer popularity. Indeed, the Department’s own data show that the rate of consumer complaints regarding all voice service providers – both regulated and unregulated – has been consistently low for years – about 1/50th of one percent of the subscriber base.¹⁷ These complaints confirm that the market is fully protecting consumers’ interests and there is no need for industry-specific regulations.

In sum, mandated customer service standards are no longer a legitimate regulatory concern. Massachusetts has achieved what it set out to do: competition is driving providers to develop consumer-friendly policies in key areas, improve their services, and innovate to earn the business of their customers. The Department should eliminate both sets of B&T Rules and the other rules noted above and allow customers to determine for themselves the policies that are

¹⁶ Verizon MA’s telephone customers comprise less than 13% of the voice market. *See Local Competition Report*, Tables 9 and 18 (showing 1,308,000 ILEC switched access lines and 10,394,000 landline and wireless connection in Massachusetts).

¹⁷ *See* Department Annual Reports for 2009 through 2015, detailing the number of telecom complaints received each year and, since 2010, complaints on “unregulated matters,” which includes wireless, satellite and VoIP. The Annual Report for 2014, for example, shows 1,855 total complaints on telecom and unregulated matters, compared to a subscriber base of 10.4 million for all voice services.

important to them and select their providers accordingly. Government one-size-fits-all regulation in this market will only harm competition, choice and innovation.

II. The Department Should Review Its Non-C.M.R. Rules, Regulations And Obligations.

The Department should also take the opportunity afforded by the Executive Order to review all of the substantive obligations it has imposed on carriers over the years, not just the few that have been codified in the C.M.R. Verizon MA appreciates that the specific directive to agencies in the Executive Order is to “to promptly undertake a review of each and every regulation currently published in the Code of Massachusetts Regulations under its jurisdiction.” That makes sense for most agencies, which typically promulgate rules of general application through the rulemaking procedures in the Administrative Procedures Act, G.L. c. 30A, resulting in formal regulations in the C.M.R. The Department’s predecessor agencies have acted differently, however, often eschewing rulemakings in favor of adjudicatory proceedings. As a result, most of the Department’s formal regulations are limited in scope to specific issues,¹⁸ while the bulk of the obligations on telephone companies derive from orders in adjudicatory proceedings or less formal directives issued over the years.

The B&T Rules, for example, are regulations in all but name. The Department of Public Utilities created them in 1977 in Docket No. 18448, an adjudicatory proceeding, and later extended them through informal means to all carriers providing residential telephone service. Thus, the B&T Rules are “rule(s), regulation(s), standard(s) or other requirement(s) of general application and future effect ... adopted by an agency to implement or interpret the law enforced or administered by it” as provided in G.L. c. 30A, § 1(5) (definition of “regulation”). Indeed, it would be entirely anomalous and internally inconsistent for the Department to review and

¹⁸ See e.g. 220 C.M.R. Chapter 13 (slamming), Chapter 15 (rocket docket for wholesale telecom disputes), Chapter 16 (911 expenses); Chapter 37 (automatic dialing systems) and Chapter 45 (pole attachments).

eliminate the CATV B&T Rules in this proceeding (as it should) but refuse to review the analogous rules on the telephone side of the Department's remit. Other substantive regulations imposed through adjudicatory proceedings include the Retail Service Quality Plan and the Alternative Regulation Plan. These provide no benefit to consumers in the competitive market yet impose significant obligations and costs on Verizon MA, hampering its ability to compete.

In addition, reviewing and eliminating the non-C.M.R. regulations would be consistent with the spirit of the Executive Order and better effectuate its goals. The Order expresses deep concern over the plethora of state regulations that impose unnecessary expense and burden, "inhibit business growth and the creation of jobs," place Massachusetts companies at a competitive disadvantage or otherwise harm competition. *See* Executive Order, Whereas clauses. It seeks to retain only those regulations "that are essential to the public good," i.e. "the health, safety environment or welfare of the Commonwealth's residents." *Id.*, and ¶ 3. To that end, it establishes seven rigorous criteria that any regulation must meet in order to pass review, including that: "there is a clearly identified need for governmental intervention;" that the costs of the regulation do not exceed its benefits; that "the regulation does not exceed federal requirements;" that "less restrictive and intrusive alternatives" are not available; that the regulation does not adversely affect the competitive environment; and that the regulation is time-limited. *Id.* Section 6 of the Order requires that any agency proposing a new regulation prepare a "business/competitiveness impact statement" and "assess the disruptive economic impacts" of the regulation on business, including "medium and large for profit enterprises." Although § 6 is not directly applicable to the Department's effort to *eliminate* regulations, it drives home the general purpose of the Order to ensure that state regulations do not unduly disrupt business or competition.

The Department certainly could treat this proceeding as a mere exercise in eliminating the length, but not the burdens, of its regulations. Such an approach, however, would miss the point of the Executive Order and an opportunity to unburden Massachusetts businesses and consumers alike from inefficient and ineffective government regulations that impede, not advance, competition in an increasingly critical sector of the economy of the Commonwealth.

III. The Department Should Allow For Electronic Filing And Service Of Papers.

The Request for Comment asks whether the Department should “unify its procedural rules among its industry segments” and if so, whether it should use the default procedural rules from C.M.R. Title 801 or the “simplified rules from Title 220, Chapter 1?” In Verizon MA’s view, the Department should apply the Title 220 rules to both telecommunications and cable matters. A single set of rules would avoid undue complexity, and the Title 220 rules are the better choice. The Title 801 rules appear to offer no discernable improvement over the Department’s longstanding rules (with one exception) and, due to lack of specialization, may result in greater inefficiencies in Department proceedings.¹⁹

The exception is that the Title 801 rules provide for filing and service of papers by Electronic Medium, including email. *See* 801 C.M.R. § 1.01(2)(c) (definition), § 1.01(4)(b) (filing) and § 1.01(5)(f) (service). Adopt these or similar provisions would greatly improve the efficiency of Department proceedings and is the one procedural change the Department could make to reduce the regulatory burden on service providers. The Department’s current rules require parties to file and serve hardcopies – *see* 220 C.M.R. § 1.02(2)(b), § 1.02(8)(a) and § 1.05(1)(a) – and are inefficient and woefully outdated. Many other jurisdictions allow electronic

¹⁹ As for the first question on which the Department seeks comment, whether the Department codifies its regulations under a single title of the Code is inconsequential.

filing, and some require it, including the Maine PUC and the Federal District Court for the District of Massachusetts. In this day and age, there is no excuse for insisting on filing and serving hardcopies when electronic filing offers a vastly superior, well-accepted alternative.

IV. Conclusion

For these reasons, the Department should embrace the spirit of the Executive Order and eliminate the rules, regulations and obligations discussed above while allowing for electronic filing and service of papers.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney



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Dated: August 14, 2015

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Deputy General Counsel



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October 20, 2015

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

Re: Department Reg Review – 207 C.M.R. 2.00, 3.00, 4.00, 6.00
and 10.00 and 220 C.M.R. §§ 1.00, 26.00 and 45.00

Dear Secretary Clark:

Enclosed for filing in the above-referenced proceeding are the Comments of Verizon New England Inc. on Proposed Revisions to Regulations and an attachment.

Thank you for your attention to this matter.

Sincerely,


Alexander W. Moore 

Enclosures

cc: Michael Scott, Hearing Officer
Sean M. Carroll, Hearing Officer
Kerri DeYoung Phillips, Hearing Officer

Rule 10.05(2) Insert “cable” before “operator”

Rule 10.05(3) Insert “cable” before “subscribers”

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Department Regulation Review

**COMMENTS OF VERIZON NEW ENGLAND INC.
ON PROPOSED REVISIONS TO REGULATIONS**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) files these comments in response to the Notices Seeking Comment on Hearing Officer Recommendations issued by the Department on October 6, 2015 (“Notices”) pursuant to Executive Order No. 562.

As Verizon MA explained in its Comments submitted on August 14, 2015, many of the Department’s regulations adopted decades ago to govern monopolies are obsolete in today’s highly competitive communications market, in which customers enjoy a broad choice of voice and video services, including (in addition to traditional landline telephone service and cable television) wireless, WiFi, VoIP, email, texts, social media, satellite television and video streaming services. Competition constrains service providers’ rates, customer service practices, quality of service, policies for addressing customer inquiries and billing and nonpayment policies. And Massachusetts’ strong consumer protection laws of general application such as M.G.L. c. 93A are more than adequate to protect consumers of these services, just as they protect consumers in other areas of competitive commercial activity. Regulations on these subjects no longer serve any purpose but continue to “impose[] unnecessary cost, burden and complexity,”¹ and distort the market, chilling investment and constraining competition. The Department should eliminate them.

¹ See Executive Order.

These outdated rules include the CATV Billing and Termination Rules at 207 C.M.R. 10.00, the Security Deposit and Late Payment rules in 220 C.M.R. 26.00, and the CATV Form 500 complaint reports referenced at 207 C.M.R. 2.03. The Department should not limit its review to the C.M.R., however, because its more burdensome and harmful rules do not appear there but derive from orders and informal directives issued by predecessor agencies. These include the residential telephone Billing and Termination Rules, Verizon MA's Retail Service Quality plan and its Alternative Regulation Plan. Excluding these regulations from review, or limiting its review of the C.M.R. to administrative issues while ignoring the very real burdens the above regulations impose on service providers would render this exercise mere lip service and defeat the goal of the Executive Order to eliminate state agency regulations that "inhibit business growth and the creation of jobs" and retain only those that are "essential to the health, safety environment or welfare of the Commonwealth's residents."²

Verizon MA offers the following specific comments on the Hearing Officers' recommendations on the regulations currently at 207 C.M.R. 2.00, 3.00, 4.00, 6.00 and 10.00 and 220 C.M.R. §§ 1.00, 26.00 and 45.00.³

The CATV Rules.

Verizon MA agrees that it is sensible to consolidate all of the Department's regulations under title 207 of the Code. Upon that consolidation, however, the CMR titles will no longer serve to distinguish rules that apply only to cable television from general rules and rules that apply only to telephone service. Verizon MA suggests in Attachment A to these Comments

² *Id.*, at Introduction and ¶ 3

³ Verizon MA has no comment at this time on the Hearing Officers' recommendations regarding 220 C.M.R. 2.00, 13.00, 15.00, 16.00, 37.00, 77.00, 78.00 and 273.00 but reserves the right to submit comments in response to other parties' submissions or in a formal rulemaking.

changes to a number of CATV rules (mainly to insert the term “cable”) to clearly convey their limited scope without altering their substance. For example, 207 C.M.R. 2.00 is entitled “General Rules,” which would be misleading and confusing because only Rule 2.01 would apply to all of the Department’s operations; Rules 2.02, 2.03 and 2.04 by their terms apply only to CATV matters. Verizon MA suggests revising the title of the Rule 2 to Adoption of Regulations and General Cable Rules and clarifying the application of Rules 2.02, 2.03 and 2.04 as set forth in Attachment A.

In addition, as Verizon MA stated in its August 14 Comments, the Department should drastically simplify the Form 500 reports of consumer complaints governed by 207 C.M.R. 2.03(3). The detailed complaint data that Form 500 requires carriers to report has always far exceeded the mandate of G.L. c. 166A, which requires only the nature of the complaints and their resolution and the time required to resolve. Requiring carriers to break down those complaints into ten vague categories imposes substantial costs and results in fairly random reported results, presumably so that the Department can monitor carriers’ service quality and performance. But there is no need for such micro-monitoring in the highly competitive Massachusetts market, in which customers can and do switch providers if they are unhappy with their cable provider’s performance or treatment of them.

Further, the Department should eliminate the monopoly-era CATV Billing and Termination rules in 207 C.M.R. § 10.00. In today’s competitive market, the goals of winning and retaining customers, rather than government regulation, drive service providers to implement fair, reasonable and customer-centric policies on payment terms, notice of rate and policy changes, customer dispute resolution and discontinuance of service. Service providers have every incentive to preserve the customer relationship if possible and to not disconnect a customer

unless it is absolutely necessary. The many filing and notice requirements in these rules are doubly superfluous in light of the Internet and company websites, which provide a far more effective means than regulatory filings of making the providers' rates, terms, conditions, policies and channel lineups available to consumers.

220 C.M.R. § 1.00

Verizon MA supports the Hearing Officer's recommendation for the Department to adopt its own version of the procedural rules rather than rely on 880 C.M.R. 1.00. That said, however, Verizon MA objects to the proposed new rules on Motions for Protection from Public Disclosure in Rule 1.04(5)(e) to the extent they are intended to change current practice before the Department. Verizon MA questions the appropriateness of promulgating additional procedural regulations – of any stripe – in response to an Executive Order whose goal is to reduce regulation. In addition, Verizon MA is not aware of any infirmities in the Department's and its predecessors' practice on motions for confidential treatment that would warrant a change at this time.

220 C.M.R. 26.00

There is no basis for re-promulgating the Department's age-old rules dictating the interest rate that telephone companies must pay on deposits provided by business customers and the amount such companies may charge business customers for late payment. These are precisely the type of archaic, market-distorting rules that the Executive Order seeks to eliminate. Business services were among the first services the Department found to be competitive and freed from

rate regulation many years ago.⁴ In today's highly competitive market, business customers enjoy ample choice of telecom providers and can (and do) freely switch providers if unsatisfied with the current provider's offerings, including its rates and any late payment charges. In such a market, retaining customers is ample incentive for service providers to adopt fair and reasonable policies. Put another way, there is no basis for continuing to regulate late payment charges to business customers where the Department deregulated the rates for the underlying services more than a decade ago. The Department should rescind these rules.

220 C.M.R. 45.00

Verizon MA has concerns with the recommendation in the Notice Seeking Comment that the Department retain the Pole Attachment regulations "in their current form at this time." From this statement, it is unclear to Verizon MA whether the Department intends to retain the second paragraph of the definition of "utility" in Rule 45.02 and Rule 45.04(2)(h). The Supreme Judicial Court invalidated these provisions in 2002, and they should be deleted from the regulations.

Second, Rule 45.02 defines "Department" to mean the Department of Telecommunications and Energy, which no longer exists, rendering the other rules that refer to "the Department" incoherent. Leaving these rules in title 220 of the Code when all other Department rules are moving to title 207 would only compound the ambiguity and raise the question whether the Department continues to exercise jurisdiction over these issues. Verizon MA suggests that the Department replicate these rules in title 220 of the Code, define "Department" to mean the Department of Telecommunications and Cable, and work with the

⁴ See *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England Inc.*, D.T.E. No. 01-31-Phase I (Order issued May 8, 2002).

Department of Public Utilities (“DPU”) to iron out any inconsistencies that may result from having twin rules. In the alternative, the Department should open a joint proceeding with the DPU to update the pole attachment regulations in light of their shared jurisdiction over the subject matter.

Conclusion

For these reasons, the Department should revise its formal regulations as stated above and should also review and eliminate its many rules not included in the Code that nevertheless impose needless burdens on regulated companies, distort the market and do not meet the requirements of the Executive Order.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney

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Dated: October 20, 2015

ATTACHMENT A

207 CMR 2.00

Amend the title to Adoption of Regulations and General Cable Rules

Rule 2.02 Insert "on CATV Matters" at the end of the title

Rule 2.03(1) Insert "CATV" in front of the title, to read "CATV Statutory Reporting Forms" and in insert "cable" before "license" in each sentence

Rule 2.03(2) Insert "for cable licensees" after "forms" in the first sentence

Rule 2.03(3) Insert "cable" before "complaint" and "licensee"

Rule 2.04 Insert "§§ 2.02, 2.03, 3.00, 4.00 or 6.00"

207 CMR 3.00

Insert "of CATV Systems" at the end of the title

Rule 3.02(1) Insert "cable" before "licensing process"

Rule 3.07(1) Insert "cable" after "final"

207 CMR 4.00

Insert "cable" after "final" in the title

Rule 4.01(2) Insert "cable" before "license"

207 CMR 6.00

Insert "cable" at the beginning of the title

Rule 6.02 Insert "cable" before "service"

Rule 6.04 Insert "cable" before "service"

207 CMR 10.00

Insert "cable" before "service" in the title.

Rule 10.02(2) Insert "cable" before "operator"

Rule 10.03(1) Insert "for cable service" after "bill"

Rule 10.05(1) Insert "to a cable operator" after "subscriber payment"

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November 20, 2015

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

Re: Department Reg Review – 220 C.M.R. 5.00

Dear Secretary Clark:

Enclosed for filing in the above-referenced proceeding are the Comments of Verizon New England Inc. on Proposed Revisions to 220 C.M.R. 5.00.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Moore".

Alexander W. Moore

Enclosure

cc: Kerri DeYoung Phillips, Hearing Officer

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Department Regulation Review

**COMMENTS OF VERIZON NEW ENGLAND INC.
ON PROPOSED REVISIONS TO 220 C.M.R. 5.00**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) files these comments in response to the Notice Seeking Comment on Hearing Officer Recommendation 220 C.M.R. § 5.00 issued by the Department on November 7, 2015 (“Notice”) pursuant to Executive Order No. 562. Verizon MA responds below to the specific questions posed by the Department, followed by brief comments on the revisions to 220 C.M.R. 5.00 proposed in the Notice.

Responses to Department Questions

1. Should the Department implement baseline regulations involving Section 19F’s electronic notice and online posting requirements similar to those already required of Section 19 filings?

No. There is no demonstrable need to regulate the precise manner in which a service provider may post the terms of its retail services on its website under M.G.L. c. 159, § 19F, and thereby free those services from the old tariffing requirement of § 19. Verizon MA is not aware of evidence that service providers are commonly withdrawing tariffs without posting their services online, that the postings do not fairly state the rates, terms and conditions of those services, or that companies have failed to take advantage of the statute due to confusion as to what steps are necessary. Verizon MA posted its retail Product Guide on its website before withdrawing its retail tariffs effective on January 1, 2015, and that Guide contains the same level

of detail as the company's former tariffs. In the absence of industry-wide failure, regulations governing service providers' web-postings are unnecessary and would merely re-impose the same administrative costs the statute was designed to eliminate.

Such regulations would fail to meet the strict requirements of Executive Order No. 485. For example, there is no "clearly identified need for government intervention" here, either to implement the statute or to "provide guidance" to service providers. *See* Order § 3(1). The costs to service providers of complying with new substantive and procedural obligations in order to exercise their rights under this straightforward statute would vastly "exceed the benefits that would result from the regulation." *See id.*, § 3(2). And the Department retains the "less restrictive and intrusive [and arguably more effective] alternative" of conducting a targeted investigation of any specific instance in which a service provider fails to tariff a service without posting the rates, terms and conditions of the service on its website. *See id.*, § 3(4).

Moreover, § 19F leverages the new communications capabilities made available by the Internet in order to relieve telephone providers of the administrative and substantive burdens of filing tariffs for retail telephone services. Imposing "requirements similar to those already required of Section 19 filings" on web-posting – the action that the Legislature stated would free telephone services from those very requirements – would substantially frustrate and defeat the purpose of the statute.

In addition to the above considerations, the Department does not have authority to issue regulations under § 19F. An administrative agency possesses only those powers, duties and obligations expressly conferred upon it by statute and such powers as are reasonably necessary to carry out the purpose for which it was established. *Saccone v. State Ethics Comm'n*, 395 Mass. 326, 335 (1985) (quoting *Hathaway Bakeries, Inc. v. Labor Relations Comm'n*, 316 Mass. 136,

141 (1944)); *see also* *Mass. Mun. Wholesale Elec. Co. v. Mass. Energy Facilities Siting Council*, 411 Mass. 183, 194 (1991) (citations omitted) (agency has no authority to promulgate regulations that exceed the authority conferred by statute). Nothing in § 19F confers authority on the Department to regulate how a telephone provider may post on its website the rates, terms and conditions of its retail services. Section 19, the tariffing statute, expressly provides that common carriers must file and keep open to the public their tariffs “in such places, within such time, and with such detail as the department may order,” but that authority applies to the filing of tariffs under § 19, not to the very different act of posting service terms on a website under § 19F. Moreover, that the Legislature provided express authority in § 19 with respect to tariffing but did not provide similar authority in § 19F with respect to web postings is strong indication that it did not intend to grant the Department such powers.

2. What, if any, information should be included in electronic notices to the Department? For instance, should these notices: (a) summarize changes made to the online posting; (b) specify the section(s) and page number(s) of those changes; and (c) include a copy of the notice(s) to consumers of rate increases?

There is no need to define by regulation the information a service provider must include in its electronic notices under § 19F. When Verizon MA posts changes to its online Product Guide, it specifies in its notice to the Department the affected sections and page numbers and also identifies the changes directly on the pages of the Guide. This fairly notifies the Department of the changes and where the Department can find them in a lengthy document. To Verizon MA’s knowledge, there is no widespread failure or refusal of other carriers to provide similar information, which might justify a new regulation on the subject. Section 19F does not require a carrier to summarize or characterize in its notice the changes it has made to its online postings, and as long as the notice allows the Department to locate the changes and review them for itself,

there is no need for imposing this additional obligation on carriers. Likewise, while § 19F preserves the Department's ability to require notice to customers of an upcoming rate increase, it does not require a carrier to file that notice with the Department as a prerequisite to exempting the relevant service from the tariffing requirement, so a regulation imposing such a requirement would step beyond the statute. In any event, the Department can always require a carrier to submit a copy of its customer notice of a rate increase if it were to become an issue in a particular case, obviating any need for a broadly applicable regulation.

3. What, if any, format should the online postings have? Do they need to retain the format already required of Section 19 filings?

Service providers should be free to post the terms of their services in the format they deem best. Section 19F neither requires a particular format nor authorizes the Department to mandate one, and regulations in this area would be counterproductive in any event. Verizon MA has to date elected to post its Product Guide in largely the same format as its former tariffs. But Verizon MA and other carriers may find a competitive advantage in developing some other format that they believe communicates the terms of their services more effectively, as a way of differentiating themselves from competitors in the eyes of customers. Providers also need flexibility to change how they make information available to customers in response to changes in the market, in technology and in customers' expectations. Rigid governmental regulations would prevent such innovation and potentially deprive consumers of more effective and user-friendly means of obtaining the terms of their services.

4. What definition should the Department use for an online posting?

Section 19F does not use the term "online posting," and the Department need not define it via regulation. The statute states that a service provider may "post on its website the rates, terms

and conditions of any retail service it offers....” In Verizon MA’s view, this phrase is self-explanatory and does not require additional elucidation or interpretation through an agency rulemaking. And as noted above with respect to similar issues, Verizon MA is not aware of widespread or common failure of service providers to post, or to adequately post, the rates, terms and conditions of their services on their websites before withdrawing the tariffs for those services. Regulations seeking to define what constitutes “online posting” are therefore unnecessary both because the statute is clear as written and because there is no market failure that requires yet another regulation.

5. How should the Department account for contract service arrangements of retail rates, terms, and conditions that veer from those rates, terms, and conditions posted online by a carrier?

There is no action for the Department to take with respect to such contracts, because they are not subject to Department approval. Under § 19F, once a service provider posts on its website the rates, terms and conditions of a retail service, “[s]ection 19 shall not apply” to that service. Section 19 requires common carriers to not only tariff their services but also file all “forms of contract or agreements in any manner affecting” those services. M.G.L. c. 159, § 19. Accordingly, the posting of rates, terms and conditions of a retail service under § 19F eliminates any obligation on the service provider to file any contracts for the service.¹

Other terms of § 19F confirm this. Specifically, the statute provides that:

Upon written notice to the department, such common carrier may withdraw any schedule, *contract or agreement* previously filed with the department under section 19 for such retail service so posted under this paragraph.

¹ The Department Notice, *Use of Contract Service Arrangements*, (April 6, 2004) (“CSA Notice”), does not yield a different result. The CSA Notice grounds the Department’s authority to require the filing of customer-specific pricing plans on the provisions of § 19, so the limits on the scope of § 19 found in § 19F similarly restrict the scope of the CSA Notice.

(Emphasis added.) It would be patently unreasonable to interpret the statute as allowing service providers to withdraw contracts previously filed with the Department but require them to file any contracts entered into *after* the relevant service had been de-tariffed, and such an interpretation would have no rational policy justification.

6. What other requirements should the DTC implement

None.

Comments on proposed revisions to 220 C.M.R. 5.00

Rules 5.02 (1), 5.02(2)(a) and 5.03(1)(a)

A number of stakeholders have commented in support of allowing electronic filing and service, and we note that the Department has proposed changes to 220 C.M.R. 1.02(2)(b) and 1.05(1)(a) in this regard. The above regulations, however, would continue to require hardcopies of tariff filings. Electronic filing is far more efficient than hardcopy, and is widely accepted across many jurisdictions. Verizon MA again recommends that the Department allow electronic filing with respect to all submissions, including filings made pursuant to 220 C.M.R. 5.00.

Rule 5.02(2)(b)

This proposed rule would enshrine in regulation the contract filing requirements currently found in the CSA Notice. Presumably, these requirements would apply to contracts for services not posted pursuant to § 19F and to contracts entered into by rural service providers, who are not covered by § 19F. The Department should not weigh down the C.M.R. with these new regulations, however, even with respect to these limited circumstances. The CSA Notice has been in place for more than a decade, and to Verizon MA's knowledge, no service provider has refused to comply with it on the grounds that it is not a regulation and therefore unenforceable.

There is therefore no benefit to formalizing the terms of the CSA Notice in formal regulations. To the contrary, given the policy of the Legislature as expressed by the enactment of § 19F, the Department should seek to retain as much flexibility on this issue as possible, and consider eliminating these filing requirements in response to the rapidly evolving competitive market.

Rule 5.06

This proposed rule would enshrine in regulation the requirement to notify customers of rate increases at least thirty days in advance, originally imposed in the Department's Industry Notice, *Customer Notice of Rate Increases*, issued on February 8, 2002. As with the CSA Notice, there is no evidence that this Industry Notice has been ineffective or proven unenforceable over its long life because it is not a formal regulation. In the absence of general industry non-compliance on those grounds, there is no benefit to be gained by converting this requirement into a regulation.

Moreover, this would send the Department in the exact wrong direction. Verizon MA agrees with AT&T that the 30-day period is far too long and makes Massachusetts anti-competitive, and that the Notice's prohibition on website postings and other means of notifying customers of rate increases is outdated and contrary to the policy underlying § 19F. In our highly competitive telecommunications market, the goals of winning and retaining customers drive service providers to implement fair and reasonable customer policies, including advance notification of rate increases. The Department should allow service providers to compete on this basis and allow customers to decide for themselves the policies that are important to them and chose their providers accordingly. If the Department does not eliminate the advance notice requirement altogether, it should at a minimum preserve its current ability to revise it without the need for a formal rulemaking.

Conclusion

For these reasons, the Department should not propose regulations on web postings under M.G.L. c. 159, § 19F, and should revise its proposed changes to 220 C.M.R. 5.00 as discussed above.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney



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Dated: November 20, 2015