

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

Investigation by the Department of Telecommunications and
Cable on its own motion, pursuant to General Law Chapter 159,
Section 16, of the telephone service quality of Verizon New
England Inc., d/b/a Verizon Massachusetts, in Berkshire,
Hampden, Hampshire, and Franklin Counties

D.T.C. 09-1

**INITIAL BRIEF OF THE
ATTORNEY GENERAL**

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I. INTRODUCTION

Verizon Massachusetts' customers in Western Massachusetts are relying on the Department of Telecommunications and Cable ("Department" or "DTC") to ensure that they have adequate basic telephone service. Verizon Massachusetts ("Verizon MA," "Verizon" or the "Company") has, at best, overestimated the level of customer satisfaction with its service in Western Massachusetts and, at worst, ignored repeated problems with and complaints about that service. Verizon MA has made it clear by its actions and testimony in this case that, without Department intervention, its customers in Western Massachusetts will continue to be disadvantaged. Verizon candidly stated that it has difficulty assisting customers who do not have wireless coverage and have poor wireline service because it "can't manage the business to meet the requirements of a very, very few customers for whom the situation has not changed much in the last 20 years." Tr. Vol. 3 (Confidential), p. 460. While the number of Verizon customers without access to any other form of communication may be few, those customers are therefore the most vulnerable because they depend more upon their landline service than do customers with other choices.¹

One of the most fundamental purposes of a government and its regulatory bodies is to ensure that basic services such as electricity and plain old telephone service ("POTS") are available to its citizens reliably and affordably. Consumers in Western Massachusetts have expressed great frustration with Verizon's landline service for many years. One customer expressed it this way: "if somebody is not forced to do it, we would not have phone lines at all, let alone good phone lines, because it is expensive." D.T.C. 09-1, Greenfield Public Hearing Tr., pp. 19-20 (June 23, 2009). "Public utilities in Massachusetts are obligated not only to provide

¹ The Attorney General does not intend to imply that there is sufficient competition for basic local service anywhere in the Commonwealth; rather, simply, that consumers in Western Massachusetts have relatively far fewer alternatives than do their counterparts in some urban and suburban areas in Eastern Massachusetts.

services to consumers-they must provide services of reasonable quality. If utilities' services do not measure up to a reasonable standard, the Department of Telecommunications and Energy has the responsibility of seeing that deficiencies are corrected." 36 Howard J. Alperin & Roland F. Chase, MASS PRACTICE SERIES, PUBLIC UTILITIES, §27.11, p. 703 (2d ed. 2001).

The Department must find that Verizon MA has failed to satisfy its obligations as an incumbent local exchange carrier ("ILEC") in Western Massachusetts. Among other things, Verizon does not timely repair service to residential customers, nor does it invest adequately in its network infrastructure. Attorney General Direct Testimony, pp. 29-35 and pp. 71-73. Verizon's reliance on competition to drive service quality is misplaced in Western Massachusetts, where, more so than anywhere else in Massachusetts, customers have little or no wireless, cable, or VoIP alternatives. *Id.*, p. 83; Attorney General Rebuttal Testimony, p. 59. The evidence presented to the Department in this investigation, contrary to Verizon's oft-repeated and largely unsupported statements, provides ample grounds for the Department to find that Verizon's practices and service in Western Massachusetts are "unjust, unreasonable, unsafe, improper or inadequate" and order immediate remediation. G.L. c. 159, § 16.

II. PROCEDURAL HISTORY

On June 1, 2009, the Department opened an investigation on its own motion "regarding the reasonableness of Verizon Massachusetts' telephone service quality in Berkshire, Hampden, Hampshire and Franklin Counties." *In re Verizon Service Quality in Western Massachusetts*, Order to Open Investigation, D.T.C. 09-1, p. 19. In so doing, the Department consolidated the existing complaints of the Town of Hancock, D.T.C. 07-2, and the Town of Rowe, D.T.C. 07-5, together with pending complaints filed by the Towns of Shutesbury and Egremont into the regional investigation. The Department consolidated the complaints "due to the large scale of

the investigation and efficiencies that can be gained in investigating service quality in a regional manner.” *Id.*, p. 18. “[E]xpanding the scope of the proceeding to a regional investigation would make the best use of the Department’s limited resources.” *Id.*

Public hearings were held in Greenfield on June 23, Florence on June 24, Pittsfield on July 30, and Chester on August 3, 2009. The parties conducted discovery, filed testimony, rebuttal testimony and surrebuttal or supplementary testimony, and issued record requests. The parties include the Attorney General, International Brotherhood of Electrical Workers (“IBEW”) Local 2324, Verizon, and the Towns of Leverett, Hancock, and Rowe. Additional public hearings were held in Northampton on March 31 and April 1, 2010 prior to the start of evidentiary hearings, which took place on those same days. In addition to the two days of evidentiary hearings in Northampton, additional evidentiary hearings were held in Boston on April 6, April 12, April 13, and May 21, 2010.

Verizon MA presented a panel of witnesses including John L. Conroy, Vice President of Regulatory Affairs; Paul Vasington, Director of State Public Policy; and John Sordillo, Director of Operations. Susan Baldwin testified as an expert on behalf of the Attorney General. The Towns of Hancock and Egremont presented Police Chief Sherman Derby of Hancock and Charles Flynn of the Town of Egremont’s Technology Study Committee. The IBEW presented witnesses Myles Calvey, Business Manager of IBEW Local 2222 and John Rowley, Business Manager of Local 2324.

III. STANDARD OF REVIEW

The investigation was opened pursuant to General Laws Chapter 159, Section 16. The statutory requirement for review of the adequacy of Verizon MA’s service quality in Western Massachusetts is found in G.L. c. 159, §16:

If the department is of the opinion, after a hearing...that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force...and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order..." G.L. c. 159, §16.

"Section 16 requires that the Department first determine that the Company's regulations, practices, equipment, appliances or service do not meet the statutory requirement and then consider the cost of the remedy and its impact on the financial ability of the Company to provide service to the public." *New England Telephone and Telegraph Company*, D.P.U. 89-300 (1990), pp. 289-290. *See also* *Petition of the Board of Selectmen of the Town of Middlefield pursuant to G.L. c. 159, §24, regarding the quality of Verizon Massachusetts' telephone service ("Middlefield")*, D.T.C./D.T.E. 06-6 (2009), *Bosley v. Department of Public Utilities*, 417 Mass. 510, 512 (1994). *See also* Comments of Verizon New England, Inc. on Proposed Regional Service Quality Investigation, February 23, 2009, pp. 6-7.

The Department has also found that "telephone service is inappropriate if some parts of the state receive different levels of service quality than other parts of the state." *Middlefield*, p. 5, citing *Investigation of the Department of Telecommunications and Energy into the practices, equipment, appliances and service of Verizon Massachusetts in the Towns of Athol, et al.*, D.T.E. 99-77 (2001), p. 14 ("*Town of Athol*").

The Department will also find service quality to be inadequate when services "substantially impair the ability of a community to undertake commonly required economic, social and public health and safety functions." *Id.*, citing *Town of Athol*, p. 16.

G.L. c. 159, §16 also requires that once the Department makes a determination that service quality is lacking, it must consider the carrier's financial ability to comply with the Department's order.

Before making such order, the department shall consider... the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. . . . G.L. c. 159, § 16.

The Department has broad supervisory power over the provision of telecommunications services.

“The department shall, so far as may be necessary for the purpose of carrying out the provisions of law relative thereto, have general supervision and regulation of, and jurisdiction and control over, the following services...” G.L. c. 159, §12.

“The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method of system of communication...” G.L. c. 159, §12(d).

The Department possesses broad supervisory powers pursuant to G.L. c. 159, §§ 12 and 16. If, as a result of this investigation, the Department finds that service quality in Western Massachusetts is unjust, unreasonable, unsafe, improper or inadequate, and that remedies such as modifications to the Company's Service Quality Index (“SQI”) are necessary to rectify the condition, it “*shall* determine the just, reasonable, safe, adequate and proper regulations and practices. . . and *shall* fix and prescribe the same. . .” (emphasis added) G.L. c. 159, §16. And, where federal requirements are not dispositive of an issue, as here, “the Department, under its authority under G.L. c. 159, §§ 12 and 16, may prescribe its own requirements.” *Petitions of Media One Telecommunication, Inc., and New England Telephone and Telegraph Company d/b/a/ Bell Atlantic – Massachusetts for arbitration to establish an interconnection agreement*, D.T.E. 99-42/43, 99-52 (1999), p. 117 (establishing a rule to prevent Bell Atlantic from using misdirected telephone calls as the basis for marketing).

Verizon must also meet service quality standards set forth in its statewide service quality plan. The Company's Department-approved retail service quality performance plan sets targeted service quality performance levels that the Company must meet. *Petition of New England Telephone and Telegraph Company d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Massachusetts intrastate telecommunications services ("NYNEX")*, D.P.U. 94-50, p. 235-238 (1995); *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. db/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, D.T.E. 01-31, Phase II (2003). Verizon reports each month on twelve measures, on both a regional and a state-wide basis, which include maintenance service, installation service and service response items. Verizon Pre-filed Testimony, pp. 7-9.

IV. ARGUMENT

A. Evidence Shows That Basic Telephone Service Quality in Western Massachusetts Is Inadequate and that Consumers in Western Massachusetts Are Uniquely Harmed by Unreliable Basic Local Service

1. Adequate Service Quality Is Essential to the Safety and Welfare of Consumers in Western Massachusetts, Yet Service Quality Problems Are Pervasive

Adequate service quality is essential to the welfare and safety of consumers in Western Massachusetts. Attorney General Direct Testimony, pp. 36-39, 45, 89; Attorney General Rebuttal Testimony, pp. 2, 5, 6, 26, 31, 71; Tr. Vol. 1, pp. 138, 140. Unless and until the Department determines otherwise, it is reasonable for Western Massachusetts consumers of Verizon MA's basic local exchange service to expect a reliable link to the public switched

network for daily communication and, if and as needed, to reach emergency services. If fulfilling its statutory requirement to provide adequate service quality creates a financial hardship for Verizon, the Company then should seek an investigation of the financial aspects of its intrastate operations. But, meanwhile, in no event should the Department permit Verizon MA's unexamined assertions of financial instability to constrain the Department's findings in this proceeding or to excuse the provision of inadequate service quality to consumers, communities, and the region of Western Massachusetts, which now persists.

2. As Measured Against Service Quality Metrics, Verizon MA Provides Poor Service Quality Throughout the Region and in Individual Wire Centers

Poor service quality exists in Western Massachusetts as measured at several levels of geographic aggregation: consumer-specific, individual wire center, and region-wide. Attorney General Rebuttal Testimony, pp. 6-23. Numerous individual consumers have complained about service quality, and a close examination of the Customer Care Index reveals problems with Verizon MA's service quality as experienced by numerous individual customers. Record Request 17; Tr. Vol. 1, p. 56; Rowe Public Hearing Tr., p. 11 (October 17, 2007). As is discussed in more detail below, to show problems existing at the individual wire center level, the Attorney General provided analysis in her rebuttal testimony including, among other things, the identification of numerous wire centers in Western Massachusetts where fewer than 50 percent of the residential out of service ("OOS") troubles were cleared within 24 hours over the eight-month period spanning January through August 2009. Attorney General Rebuttal Testimony, p. 20 (February 24, 2010). Verizon argues that problems at the individual wire center level do not show a problem with service quality on a region-wide basis because they are localized. Exh. AG-VZ-8-26. However, problems detected at the individual wire centers or localized problems aggregate to make up a whole region, and therefore, cannot be considered as

wholly unrelated to the region. Moreover, with respect to service quality problems measured at the regional level, the Attorney General has also shown that the average monthly reports per hundred lines (“RPHL”) for the Springfield (*i.e.*, Western Massachusetts) region is higher than in all other regions except the Southeast region. Attorney General Rebuttal Testimony, p. 28; Evidentiary Exhibit 17; Evidentiary Exhibit 18.

Throughout the investigation, there have been parallel developments of the record regarding service quality throughout Western Massachusetts and service quality as experienced by individual communities. The Department has the authority to, and indeed should, review evidence about service quality both on a region-wide and community-specific basis, and direct remedies as are appropriate. The evidence in this record amply demonstrates that service quality is inadequate in Western Massachusetts when considered on a region-wide basis and also as provided in certain rural communities.

The Attorney General does not rely on any single factor in her conclusion that Verizon MA provides inadequate service quality in Western Massachusetts. Rather, it is a combination of numerous factors, which, viewed in the aggregate, point to serious concerns and demonstrate that consumers in Western Massachusetts are harmed by the inadequate service that Verizon MA provides. Applying its administrative expertise to the overwhelming evidence in this proceeding, the Department can and should conclude that service quality is inadequate. The Attorney General summarizes some of the evidence below.

- a) Measured on a region-wide basis, consumers in Western Massachusetts experience inadequate service quality

The Attorney General’s analysis of Verizon MA’s performance as measured by various metrics shows that service quality is inadequate in Western Massachusetts. Among the metrics

that she analyzed are the RPHL;² the timeliness of the repair of basic residential local exchange service (for out-of-service troubles, service affecting troubles, and total troubles); and the amount of time required for the installation of basic residential local exchange service. She also analyzed consumers' testimony regarding static on the line, slow repair, and repeat troubles. In aggregate, the data and information that the Attorney General analyzed, the statements of numerous consumers, the complaints submitted by municipalities, and the detailed concerns raised by IBEW all provide evidence of inadequate service quality in Western Massachusetts.

- b) Consumers in Western Massachusetts encounter high quantities of troubles on their lines, which often render them unusable

Compared with four of the five other regions that Verizon MA serves, the RPHL of 1.4 in Western MA is high. Evidentiary Exhibit 17. Reports per hundred lines include out-of-service troubles and service-affecting ("SA") troubles. Attorney General Direct Testimony, Exhibit SMB-10; Exh. AG-VZ 1-3. The RPHL for the other five districts that Verizon serves in Massachusetts are 0.9 (Boston); 1.1 (MetroNorth); 1.2 (Northeast); 1.2 (Marlborough); and 1.6 (Southeast). Evidentiary Exhibit 17. Certainly consumers in Western Massachusetts should expect comparable levels of service quality to the adjacent district of Marlborough as well as the Boston, MetroNorth, and Northeast districts. The level of service quality need not be identical throughout the state, but should be reasonably comparable. With an RPHL that is almost 60 percent higher than that experienced by their counterparts who reside in the Boston district, Western Massachusetts consumers clearly are not receiving reasonably comparable service.

² RPHL measures the quantity of troubles that consumers report to Verizon about their dial tones, expressed per hundred lines.

**Average Monthly RPHL for Six Verizon MA Regions
(Western MA corresponds with “Springfield”)**

2009

Region	Number of Lines	Average Monthly Trouble Reports over 12 months	Average RPHL over 12 Months
Boston	360,445	3,121	0.9
Marlboro	444,321	5,432	1.2
Metro North	280,532	3,060	1.1
Northeast	408,682	4,759	1.2
Southeast	405,426	6,321	1.6
Springfield	257,750	3,649	1.4

Evidentiary Exhibit 17. *See also* Evidentiary Exhibit 18.

Furthermore, during the eight-month period spanning January through August 2009, the Springfield region had *far more* wire centers reporting instances of greater than 3.0 and 4.0 RPHL than did any of the other five regions in Massachusetts. Attorney General Rebuttal Testimony, p. 27. However, poor performance in individual wire centers gets masked in the averaging that Verizon MA does for the purpose of the SQI measurements and calculations. For the purpose of the SQI calculations, Verizon MA reports the RPHL, not for each of the six districts shown above, but rather, for three even larger geographic areas referred to as Strategic Business Units (“SBU”). Attorney General Direct Testimony, Exhibit SMB-9. The Springfield (*i.e.*, Western Massachusetts) district is part of the reporting region called BayPath which includes the much larger Marlboro district. *Id.* As a result, if the RPHL in small rural communities in Western Massachusetts is high, this poor performance can be entirely masked by the fact that Verizon MA’s SQI measures performance for the entire BayPath area. Therefore, the existing SQI is inadequate as a regulatory tool for detecting and preventing inadequate service quality in rural communities.

The Attorney General urges the Department to recognize that Verizon MA has the ability to improve its service quality. Verizon MA Rebuttal Testimony, Figure 1, p. 6; Verizon MA Supplemental Testimony, p. 44; Record Request 14 (Confidential); Record Request 15. The evidence demonstrates that Verizon MA has been able to reduce the volume of troubles reported, even adjusting for line loss. In other words, the total volume of reports is decreasing faster than the quantity of lines served. Attorney General Rebuttal Testimony, p. 30; Record Request 5. For Western Massachusetts, the average RPHL for the twelve months ending September 2009 was 1.57, and for the twelve months ending January 2010, was 1.40, which is a decline of 0.17 percentage points in one-third of a year (that is, the difference between 1.57 RPHL and 1.40 RPHL), which translates into an 11 percent decline in the report rate during only a four-month period. *See also* Verizon Rebuttal Testimony, Figure 1, p. 6. Therefore, during this four-month period (from September 2009 to January 2010), Verizon lowered the RPHL by 11 percent, which translates into an annual reduction in its trouble report rate of approximately one-third. Also, Verizon's actual repeat trouble report rates for 2008 and 2009, show a decline from an average in 2008 of 13.6 percent to an average in 2009 of 13.0 percent. Record Request 5. Therefore, Verizon MA clearly possesses the ability to improve the condition of its outside plant, and this improvement is manifested in the reduction of the number of troubles that consumers report with their basic local lines.

Verizon MA's reduction in its RPHL and repeat trouble report rate raises several issues that the Department should consider carefully. First, Verizon MA clearly possesses the technical ability to improve this aspect of its service quality in Western Massachusetts. Second, Verizon MA's repeated reliance on the SQI generally and the specific SQI standard of 2.25 and the purportedly "stringent" target of 1.90 for the RPHL as somehow indicative of adequate service quality rings hollow, because both the standard and the target greatly exceed the levels of service

quality that Verizon MA has clearly demonstrated that it is able to deliver. Clearly, Verizon MA can and should be held to a higher benchmark than those that the SQI encompasses. Also, the Department should establish a repeat trouble report rate metric to hold Verizon MA accountable and to create an incentive for Verizon to implement repairs of long duration so that the same consumers are not repeatedly inconvenienced as a result of “band-aid” solutions. As testified by Mr. Sordillo, the top reason given in customer surveys for repair dissatisfaction is repeat trouble. “The very first one is repeat reports. The second one is duration. The third is missed appointments.” Tr. Vol. 4, p. 718; Record Request 5.

Third, although the improvement that has occurred during the course of this investigation clearly benefits consumers (and the Department should be commended for opening up this investigation, which appears to have contributed to Verizon MA’s recent improvement), the Attorney General is concerned that after the Department completes this investigation Verizon MA’s service quality will deteriorate. There is insufficient evidence to show a commitment from Verizon MA to continue to reduce troubles reported and to improve and then to sustain an improved level of service quality, absent Department oversight. Instead, the evidence overwhelmingly points to Verizon MA’s interest in cutting costs and increasing profits. *See* Record Request 31. Therefore, the Attorney General urges the Department to ensure accountability on Verizon MA’s part to improve and to sustain improvement in its service quality.

- c) Verizon MA’s persistent failure to repair lines in a timely manner provides evidence of inadequate service quality throughout Western Massachusetts.

Verizon MA reports the timeliness of its repair of basic dial tone to the Department using the metric, percent cleared within 24 hours, and reports this metric separately for residence and business customers. Attorney General Direct Testimony, Exhibit SMB-9. The standard for this

metric for residential customers is 60 percent, and the target is 70 percent. *Id.* However, for the 12 months ended September 2009, Verizon's performance for this metric was 46.93 percent, and for the 12 months ended January 2010, Verizon's performance was 50.66 percent, both well below the standard threshold of 60 percent. Verizon Pre-Filed Testimony, Figure 4, p. 15; Verizon Rebuttal Testimony, Figure 1, p. 6. Verizon states that it meets the troubles cleared within 24 hours residential metric in Western Massachusetts from time to time. Verizon Pre-Filed Testimony, p. 14. As part of its plan for alternative regulation and its release from rate of return regulation, Verizon is required to meet service quality metrics on a regional and statewide basis. The Company acknowledges that this metric "presents an ongoing challenge and that its performance leaves room for improvement." *Id.*, p. 13. The Company goes on to state that the metric must be viewed with each of the other Verizon metrics that Verizon must meet. However, this point of view does not erase the fact that Verizon is not meeting the metric for troubles cleared within 24 hours – residence, and this can have a significant impact on households with no other form of communication, including health and safety concerns. The Company's failure to repair dial tone lines in Western Massachusetts in a timely manner provides evidence of region-wide problems with Verizon MA's service quality. Tr. Vol. 1, p. 139.

Between September 2007 and August 2009, in Western Massachusetts, Verizon MA's service quality, as measured by the percentage of out-of-service troubles cleared within 24 hours, was inadequate. Attorney General Direct Testimony, Exhibit SMB-7, Exh. AG-VZ 1-5. During this two-year time period, in Western Massachusetts, Verizon cleared more than 60 percent of OOS residential troubles within 24 hours in only seven of the 24 months. *Id.* Between April 2009 and March 2010, as measured on a statewide basis, Verizon's timeliness of repair of all residential troubles (OOS and SA) improved somewhat during the 12-month period (perhaps in response to the scrutiny that this investigation has afforded Verizon MA's service quality), but,

never met the 60 percent Department-established standard: statewide, the monthly percentages of residential troubles cleared within 24 hours were as follows: 48, 47, 47, 47, 48, 50, 51, 53, 54, 56, 56, and 56. *See* Verizon Monthly Quality of Service Report for March 2010.

Similarly, in Western Massachusetts, Verizon MA submitted data that shows for the twelve months ending January 2010, that its average clearance for residential troubles in Western Massachusetts was only 50.66 percent. Verizon Rebuttal Testimony, Figure 1, p. 6. Although Verizon MA might argue that its repair performance in Western Massachusetts is reasonably comparable to that of the entire state, and therefore might further argue that its performance is acceptable, the Department should instead come to a different conclusion. First, neither the standard nor the target for this metric is particularly stringent. For example, in Connecticut, the target is 90 percent. Record Request 5. Second, despite Verizon MA's persistent failure to repair lines in Western Massachusetts in a timely manner, and despite consumers' reliance on basic dial tone to reach emergency and other services, there is no consequence under the SQI Plan for Verizon MA's failure to meet the lenient Department standard. 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. Furthermore, Western Massachusetts consumers are uniquely harmed by faulty and non-functional dial tone lines. Attorney General Direct Testimony, pp. 36-39, 45, 89; Attorney General Rebuttal Testimony, pp. 2, 5, 6, 26, 31, 71; Tr. Vol. 1, pp. 138, 140. Therefore Verizon MA's persistent failure to repair residential dial tone in Western Massachusetts provides substantial evidence of inadequate service quality.

Substantial evidence in this proceeding has been submitted regarding this metric concerning: (1) Verizon MA's failure to meet the residential standard; (2) the implications for consumers of Verizon MA's slow repair of basic local exchange service; (3) the possibility of

disaggregating the metric into OOSSA troubles; (4) the resources that might be necessary to enable Verizon MA to meet the Department-established standard; (5) raising the standard to a higher level; (6) the fact that Verizon MA can repeatedly fail to meet the Department's standard without any consequence for the Company; and (7) the need for and design of financial consequences for the Company's failure to meet the Department's standard.

The evidence clearly shows that Verizon MA's quality of service is inadequate as measured by its persistent failure to repair lines in a timely manner, thus depriving consumers who reside in isolated parts of the state of reliable access to the public network for communication and public safety needs. The Attorney General conducted a detailed examination of data specific to Western Massachusetts regarding the timeliness of Verizon MA's repair of residential troubles (on a combined basis, separately for out-of-service troubles, and separately for service affecting troubles). Attorney General Rebuttal Testimony, pp. 29-36; Record Request 5. For example, Table 8 in the Attorney General's Rebuttal Testimony shows that during 2009, in Western Massachusetts, almost 14,000 customers waited more than 24 hours to have their out of-service lines repaired, and approximately 6,000 customers waited more than 48 hours to have their service restored. Exh.AG-VZ 8-21; Attorney General Rebuttal Testimony, pp. 31-32 (Table 9 in the Attorney General's Rebuttal shows that in 2009, Verizon MA cleared only 51 percent of OOS troubles in less than 24 hours in Western Massachusetts.); Attorney General Rebuttal Testimony, pp. 33-36, Tables 10 through 13. The implications of slow repair for consumers are clear—when their dial tone is out of service, the harm is greater than simply inconvenience—the inability to get dial tone means that a consumer cannot reach emergency services. Timely repair of service-affecting problems is also important. Indeed service-affecting problems (cross-talk, static, etc.) can be so great that they render dial tones unusable. As explained by Ms. Baldwin:

[S]ervice quality is inadequate throughout Western Massachusetts because Verizon MA fails to repair lines in a timely manner. The reliance by elderly persons and households with infants or young children on wireline service to reach public safety and other essential services, the spotty wireless coverage, and the lack of competitive alternatives (see discussion below) all underscore the need for timely repair throughout Western Massachusetts, regardless of the status of the infrastructure.

Attorney General Rebuttal Testimony, p. 27.

- d) Verizon MA's installation of basic residential service is slow in Western Massachusetts

Verizon MA's slow speed of installation provides evidence of inadequate service quality. None of the existing Department SQI metrics measure the installation interval, that is, the time between when a customer calls to request service and the date that Verizon installs service. The Attorney General sought information on this aspect of Verizon MA's service quality through discovery and also analyzed public ARMIS data that Verizon MA submits to the FCC. Based on a detailed review of this data, the Attorney General concludes that this aspect of Verizon MA's service quality is inadequate, deteriorating, and at risk of worsening further as Verizon MA seeks ways to cut costs.

For data specific to Western Massachusetts regarding residential installation intervals, see the discussion of proprietary information on pages 28-29 of the Attorney General's Direct Testimony, which provides evidence of inadequate service quality. Also, as explained by Ms. Baldwin, because the data that she analyzed

are averaged for each wire center, they mask individual installations that involved extraordinarily long waits for particular residential and business customers. To put it another way, a wire center average of, for example, 6.5 days, necessarily masks the fact that some installations in that wire center took more time, and some less time.

Attorney General Direct Testimony, p. 29.

As Ms. Baldwin also indicated: "[a]verage installation intervals for all residential customers [throughout Massachusetts] rose from 0.8 days in 2005 to 2.4 in 2008." Attorney General Direct Testimony, p. 26. A review of 2009 ARMIS data, shows that the quality of

installation service has deteriorated significantly even relative to 2008. The 2009 total residential average interval was 6.5 days. Record Request 5 *citing* FCC Report 43-05, the ARMIS Service Quality Report Table II, Installation and Repair Intervals (Local Service), Row 134 (2009).

Verizon MA was provided the opportunity to respond to Record Request 5, but nowhere in its supplemental testimony did Verizon MA explain or seek to justify why consumers today are waiting substantially longer to be connected to the network than they were four years ago, or why the average residential dial tone installation interval increased from 0.8 days in 2005 to 6.5 days in 2009. Although these are statewide data, absent any information from Verizon MA in its supplemental testimony to the contrary, it is reasonable to assume that this pattern is indicative of that experienced by consumers in Western Massachusetts. For the same reasons that slow repair harms consumers, so too can prolonged wait times for installation service harm consumers, particularly those living in sparsely populated areas in Western Massachusetts with poor wireless coverage. The fact that residential customers must wait increasingly long periods of time for Verizon MA to connect their homes to the public network, as measured both within Western Massachusetts and on a statewide basis, provides evidence of poor service quality.

e) Open plant provides evidence of inadequate service quality

When it rains, many consumers in Western Massachusetts experience static, and when the Company closes its open plant, that procedure reduces the quantity of troubles that consumers experience. Tr. Vol. 4, pp. 671-673. Open plant is a major factor influencing the quantity of troubles that consumers report on their basic local lines, such as static. Tr. Vol. 4, p. 673. Rain is and will continue to be a constant element of weather in Western Massachusetts, and therefore is not an operational factor that should be of surprise to Verizon. Instead, Verizon has had ample notice over the years that the combination of rain and open plant cause troubles

with consumers' dial tone lines. Nonetheless, the evidence in this proceeding suggests that until relatively recently Verizon MA has been *responding* to troubles rather than *preventing* them from occurring in the first place. Verizon commenced its "volume reduction program" in 2007. Record Request 15. Furthermore, it is not evident that, as a routine manner, the Company retains adequate resources to properly maintain its outside plant in Western Massachusetts. Tr. Vol. 4, pp. 667-668 (regarding re-assignment of 30 splice service technicians from Eastern Massachusetts to Western Massachusetts). Absent the regulatory oversight that this investigation has afforded Verizon's operations in Western Massachusetts, the Attorney General is not persuaded that the Company would have assigned these 30 service splice technicians outside of Eastern Massachusetts.

The Attorney General acknowledges that Verizon MA has embarked on various "proactive" processes such as its Proactive Cable Maintenance process, Predictor system and packages, the Capital PCM process to replace cable that is causing or may cause issues, an Open Plant program, and the Quality Inspection program. Verizon Rebuttal Testimony, p. 37. However, Verizon MA has not demonstrated that it is committed to closing open plant in Western Massachusetts in a timely manner. Identifying those portions of its network that require attention is of course an important first step toward improving service quality, but Verizon has failed to demonstrate that it will complete the necessary work in a timely manner. Verizon MA indicates that it completed 1,248 open plant items in Western Massachusetts, and plans to complete another 3,500 by the end of 2010. Attorney General Rebuttal Testimony, p. 18, *citing* Exh. AG-VZ 12-20. Verizon MA also indicates that it expects that much of the work identified by its surveys will be complete by the end of June 2010. Verizon Supplemental Testimony, p. 44. However, as of late May, 2010, Verizon MA has completed only 16.4 percent of the work identified by its open plant surveys. Record Request 30. In 19 of the 31 wire centers that

Verizon MA surveyed, Verizon MA has completed less than 10 percent of the work identified by the open plant survey. Exh. AG-VZ 15-40 Supplemental Response.

The condition of Verizon MA's network affects the quality of service that Verizon MA's consumers experience, and, although the Company has taken steps recently to familiarize itself better with the condition of the outside plant that it uses to provide basic service in Western Massachusetts, evidence is lacking as to both the speed with which the Company will remedy defective plant and also is lacking about the Company's future commitment to act in a proactive rather than a reactive manner in Western Massachusetts.

- f) Consumers residing in at least 57 of the 101 municipalities in Western Massachusetts suffer particularly inadequate service quality

Not only is service quality as measured on a region-wide basis inadequate, but also, service quality provided in 57 of the 101 Western Massachusetts communities (which are served by 27 of Verizon MA's 63 Western Massachusetts wire centers) is particularly poor. Attorney General Rebuttal Testimony, pp. 12-25; Table 4, p. 21 (pockets of poor service quality); Table 6, p. 25 (municipalities meriting focused attention). *See also* Attorney General Rebuttal Testimony, Table 5, p. 23 (wire centers where fewer than 50 percent of residential troubles cleared within 24 hours).

Furthermore, an independent audit could well reveal problems with outside plant in some of the other 36 wire centers in Western Massachusetts, which could manifest them in the near future. The Attorney General's concern is that, although the RPHL may not be high now in the communities served by these 36 other wire centers, if Verizon MA fails to maintain outside plant within the next few years, the RPHL could increase. There is insufficient evidence to suggest that, absent the instant investigation, Verizon MA would have conducted open plant surveys to the extent that it has during the last year. Therefore, one cannot assume that post investigation;

the Company will conduct such surveys on a regular basis or otherwise act in a preventive rather than reactive manner. It should not be necessary to await a symptom of poor service quality (a high RPHL) in order to address the root cause (the condition of the network). Instead, Verizon MA should demonstrate that it is routinely and adequately inspecting plant to prevent rather than react to troubles with its basic local exchange lines. Therefore community-specific and region-wide specific remedies are essential.

As stated in the Attorney General's response to Record Request 5:

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

Record Request 5, p. 7.

- g) The fact that Verizon MA scores sufficiently high with its SQI so as to avoid a penalty does not then mean that service quality is adequate

According to Verizon MA, because the Company satisfies the Department-established minimum score of 33 for its SQI, its service quality is adequate. *NYNEX*, Verizon Massachusetts Retail Service Quality Plan, Attachment C (May 2003). However, as the Attorney General has demonstrated, the SQI does not protect consumers from service quality deterioration. Attorney General Direct Testimony, pp. 71-74. 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. Verizon Rebuttal Testimony, Figure 1, p. 6; Attorney

General Direct Testimony, Exhibit SMB-9. Similarly, Verizon could become infinitely slow on repairing lines without any repercussion under the SQI. *Id.*

Indeed, the fact that Verizon MA can “pass” the Department’s overall service quality test despite “flunking” the Department’s standard for the timely repair of residential lines underscores the failure of the existing regulatory framework to protect consumers. Attorney General Rebuttal, pp. 6-7. As explained by Ms. Baldwin:

Verizon fails to demonstrate that the service quality index is protecting consumers in Western Massachusetts. Additional protection and remedies are essential. Verizon objects to my reliance on Verizon’s failure to meet a “sole” metric in the Service Quality Plan. But this is an important metric. Also, if we were to carry Verizon’s logic to its extreme, it would be permissible for Verizon to become even slower in repairing residential basic service than it is now - provided that it met the other 11 metrics. Using Verizon’s rationale, provided it meets the other 11 metrics, it would be acceptable to clear 40% or 30% or even 20% of residential troubles within 24 hours. But consumers in Western Massachusetts are uniquely harmed when dial tone is out of service. It would be unwise public policy to allow Verizon to ignore a single metric simply because it meets the other 11 metrics.

Tr. Vol. 1, p. 7.

- h) The Department should establish better metrics and incentives to prevent post-investigation back-sliding and to maintain adequate service quality following this investigation

As is discussed above, the existing SQI fails to protect consumers in Western Massachusetts against service quality deterioration for many reasons (for example, Verizon MA can consistently fail to repair residential lines in a timely manner and nonetheless satisfy the Department’s 33-point minimum SQI score; the RPHL standard and target of 2.25 and 1.90, respectively are clearly too lenient when compared with Verizon MA’s actual performance; and the region wide average RPHL masks the high RPHL that individual wire centers may experience). In reaching a decision in this proceeding, the Department may need to balance the concerns of consumers with the need for Verizon MA to plan adequate resources to satisfy

Department directives. At present, the scales are tipped in favor of Verizon MA's "race to profitability" and tipped against consumers of basic local exchange service, especially those who live in rural communities. That relatively few people reside in rural communities does not make their level of service quality unimportant.

3. There is no Evidence of Constraints to Achieving Good Service Quality in Western Massachusetts

a) Verizon must meet its service quality mandate despite the weather

Public utility companies have long been required by the Department to be prepared to respond appropriately to the weather conditions present in Massachusetts. *Massachusetts Electric*, D.T.E./D.P.U. 07-22, p. 23 (June 26, 2009) ("The Department expects MECo to respond to known upcoming weather conditions appropriately and with proper diligence.") Verizon is no different. Despite its claims that the weather in Western Massachusetts poses a challenge to its ability to meet the standard for troubles cleared residential within 24 hours, it has not offered any expert testimony or other competent evidence to substantiate either its claims of unusual weather in Western Massachusetts, or its claims that such weather is more severe than that experienced in other parts of Massachusetts. Verizon Pre-Filed Testimony, pp. 14, 24, 28, 33, 50. Verizon's panel testified that the weather was an impediment to its service, but did not offer any qualifications or evidence to substantiate its claims about the extraordinary weather conditions in Western Massachusetts. Tr. Vol. 3, p. 553-555.

b) Verizon must meet its service quality mandate regardless of the rural terrain in Western Massachusetts

Verizon points to the rural character of Western Massachusetts as an impediment to its ability to meet the service quality benchmarks established by the Department. Verizon Pre-Filed Testimony, p. 52. While describing the rural character of Western Massachusetts as including greater cable runs and more aerial cable, Verizon fails to provide compelling evidence that it is

unable to overcome the obstacles posed by customers located far from Central Offices. *Id.* The record is devoid of credible evidence describing the difficulty that phone companies have operating in rural areas. Further, the record is devoid of any evidence showing that Western Massachusetts is considered to be a rural area by the federal government. Moreover, the Verizon panel concedes that Western Massachusetts is not as sparsely populated as other areas in the country where it provides service such as West Virginia. Tr. Vol. 5, April 13, 2010, p. 953.

4. Customer Comments at Public Hearings Support Poor Service Quality Findings and Implicate Public Safety Concerns

In complaints to the Department, in the pre-filed testimony of the Towns of Hancock and Egremont (“Town Testimony”), and in the public hearings throughout Western Massachusetts, the Department has heard numerous complaints about the quality of Verizon’s basic phone service. Telephone service is unavailable or compromised when it rains.³ “Every time it rains, you’ll see [Verizon] repair trucks sitting there. And it’s a constant, constant problem.” Hancock Public Hearing Tr., p. 36 (September 27, 2007). “There had been some rain which regularly and invariably causes interruptions of varying length.” Greenfield Public Hearing Tr., p. 12 (June 23, 2009). Further, customers have experienced continuous problems for an extended period of time. “And, consistently, we have had problems with our telephone ever since we have been here, 1995.” Tr. Vol. 1, p. 56. “I have been here since 1972. The service is an ongoing problem, some of the time, on and off.” Rowe Public Hearing Tr., p. 11 (October 17, 2007). “We have experienced these problems for approximately ten years,” Town Testimony, Affidavit of Barbara Williams.

³ “I lose service several times a year, and have no dial tone to make outgoing calls. There is frequently static on the line, made worse by rainy weather.” Town Testimony, Affidavit of Richard Morin. “Any time there’s rain for an extended period, our phones have a lot of static, sometimes to the extent that it is almost impossible to hear conversation from our end.” Florence Public Hearing, Tr., p. 19.

Concerns have been expressed about public safety and the need to have reliable telephone service, in the absence of alternate means of communication, in order to summon police, fire and ambulance services when the need arises. Police Chief Sherman Derby of Hancock stated, “[I]t was becoming a major safety issue. Not an issue of convenience, but a safety issue.” Tr. Vol. 1, pp. 34-45. The Selectboard of Northfield stated that it is “concerned about Verizon’s back up system for 911 calls in Northfield and Verizon’s lack of response to this important issue.” Complaint to Department of the Town of Northfield, MA (August 13, 2009). The Chief of Police in Peru stated, “[h]owever, if service quality continues at the current level without improvement, it is only a matter of time that a tragedy may occur and the Police Department will be unable to timely respond because someone cannot reach us on the telephone.” Pre-Filed Direct Testimony of Scott Vega on behalf of the IB EW, Local 2324.

5. Customer Care Information Surveys Do Not Show Customer Satisfaction with Service Quality

Verizon has relied substantially throughout this proceeding on its assertion that its Western Massachusetts customers are satisfied with Verizon’s telephone service and with Verizon’s installation and repair practices.⁴ Despite numerous statements to the contrary by Western Massachusetts customers at public hearings in this proceeding, Verizon is unwavering in this opinion. Verizon dismisses these customers as “individual complaints” which are not indicative of a larger problem. To wit, Verizon stated “[w]hen these types of hearings are conducted, you know you’re getting selection bias because the people that are going to drag their three-year-old kid up to a stand are the people that had a problem, not the people that are

⁴ “Verizon MA’s Customers in Western Massachusetts Report High Satisfaction With Verizon MA’s Service Quality.” Verizon MA Pre-filed Testimony, pp. 16-19; “The CCI Surveys show that the vast majority of Verizon MA’s residential customers in Western Massachusetts are either satisfied or more than satisfied with our service.”, Verizon Rebuttal Testimony, p. 7; “Well, my view of the surveys is that with such good results on both our installation and repair, that despite the customer preferences, despite the changes that have occurred in the marketplace, customers are still extremely satisfied with the service that we are providing.” Tr. Vol. 4, p. 618.

satisfied with the service.” Tr. Vol. 4, pp. 645-646. The only evidence that Verizon has provided in support of its opinion are the results of the Customer Care Information (“CCI”), surveys which, as Verizon has admitted, do not show anything other than satisfaction with a single installation or repair transaction. “Again, the purpose of the survey is a transactional survey as a result of a customer calling and asking for an installation or a repair.” Tr. Vol. 4, p. 720.

“An important indication of service quality is the degree to which customers are satisfied with the service they receive.” Verizon Pre-filed Testimony, p. 16. The Attorney General does not agree that Verizon’s CCI Surveys, perhaps relevant to customer satisfaction with restored telephone service after an outage, are related to overall customer satisfaction with Verizon’s service quality. “Over 85% of Western Massachusetts customers who have had a repair issue with Verizon MA in the first eight months of 2009 have indicated that they are satisfied with *the work performed by Verizon MA*,” Verizon Testimony, p. 18 (emphasis added). This is simply common sense. If your phone does not work, you are generally satisfied when it is repaired.

Verizon MA has stated “[t]he CCI surveys show that the vast majority of Verizon MA’s residential customers in Western Massachusetts are either satisfied or more than satisfied with our service.” Verizon Rebuttal Testimony, p. 7. However the way that Verizon tallies overall satisfaction provides a misleading assessment of the survey results. “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.” Tr. Vol. 2, pp. 279-280. The Company’s response to discovery is likely more accurate. The Company stated, “[t]he CCI data shows the percent of customers who were satisfied with their service experience with Verizon.” Exh. AG-VZ 3-37. The CCI is limited to measurement of customer satisfaction of recent repair or installation service, not overall service quality. In response to questioning about the reasons that customers might not be satisfied with specific

repair or installation experiences and how the Company might become aware of those reasons Mr. Sordillo responded “[u]sually what we do is take the customer’s comments, their verbatim, we read that. We assume from what we read what was the source of the dissatisfaction. It is done sparingly now.” Tr. Vol. 4, p. 705. In fact, Verizon stated in its Supplemental Response to Record Request 17 that it had discontinued the practice of reading or eliciting verbatim responses in May 2009. Verizon has not had and has not provided any evidence of customer satisfaction in Western Massachusetts for over a year.

In response to Verizon’s testimony, the Attorney General made Record Request 17 for copies of verbatim or entire CCI surveys for Western Massachusetts for the past six months. Record Request 17.⁵ The actual CCI Surveys reveal in startling detail 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*. For example:

Performance

Verbatim Comments

Very Good

I wish the phone wasn’t down so long. I think it was a total of four days. Other than that I thought they did a good job. Hampden Exchange 566, December 6, 2008.

Satisfactory

Lower their prices. No. Maybe speed it up a little bit. Two days without a phone is too long to wait. Adams Exchange 743, January 20, 2009.

Satisfactory

It has been a reoccurring problem and I think they are trying to do their best to fix it, but for some reason it just seems to be an area with problems. Amherst Exchange 548, January 28, 2009.

⁵ Record Request 17 provided six months of data from December 2008 through May 2009, the latest available six months that included verbatim responses.

Satisfactory	Kind of figure out these lines better, that way they don't have to come back more than once. Springfield Exchange 543, January 29, 2009.
Satisfactory	I'm not really, the service wasn't very quick that's for sure. Ludlow Exchange 589, January 31, 2009.
Outstanding	They're excellent. I'm going to open up my cell phone. It's a direct number for Verizon because we've had so many problems. These people are outstanding, really great. I highly recommend Verizon. All these technicians that come up, I'm on a first name basis. We have that many problems up here. Russell Exchange 862, February 7, 2009.
Very Good	I'm not trying to give you a hard time, but who else is there? You guys are the phone company. You guys are the only ones, I guess. Sandisfield Exchange 258, February 19, 2009.
Very Good	From what I've heard for a lot of repair persons...a lot of the lines are very old. I keep having problems. To me, phone service should work. I understand occasional problems, but five times in one year? Chicopee Exchange 593, February 24, 2009.
Satisfactory	This problem that we've had is a chronic issue that starts with a lot of static on our line...I would like to see a means of cutting down the amount of time it takes to correct a situation where you're without a land line. Springfield Exchange 733, April 2, 2009.
Satisfactory	...Upgrade the telephone lines and that's part of the other service...We have static in these lines. These are very old copper lines on a dirt road. They're not investing the infrastructure in our part of the state because we're less populated. Well, I'm sorry, our needs are still there and we'd still like to have the same services that are being offered elsewhere. For us, this is our only mode of communication. Our cell phone doesn't work. We do not have cable TV. We don't have high speed internet through DSL or any other means. Our land line is our only form of communication from our house if there's an emergency. It'd be nice to know they're updating

the infrastructure a little bit more timely.
Huntington Exchange 667, May 13, 2009.

Record Request 17.

In addition to the metric Verizon uses to define consumer satisfaction—performance—the CCI Surveys provided in response to Record Request 17 show a classification of customers as a Promoter, a Detractor or Passive. The Attorney General analyzed the underlying data in the CCI Surveys and found that using Verizon’s single criteria—performance—the satisfaction rate is approximately 86% for the six month period December 2008 through May 2009. However, if negative performance ratings are added to those customers identified as Detractors, the satisfaction rate drops to 74 percent. Finally, adding the negative performance rating to the Detractors and those customers who were neither Detractors nor gave a negative performance rating, but instead made a negative comment, the satisfaction rate drops to 56 percent. The classification of customers as Detractors combined with those who offer negative comments and a negative performance assessment provides a more accurate indication of customers’ satisfaction with Verizon’s overall service quality. For the foregoing reasons, the Department should give minimal weight to Verizon’s representations that its CCI Surveys show a high level of customer satisfaction. Verizon has offered no other evidence to support its repeated statements that customers in Western Massachusetts are satisfied with their basic telephone service. *See e.g.* Exhs. AG-VZ-9-4 and AG-VZ-9-5. In fact, a closer reading of the CCI survey “verbatim” may indicate the opposite and provide a perspective that is further corroborated by public comments.

Because the CCI Surveys do not support Verizon’s testimony in this proceeding, and because Verizon has failed to provide any other evidence, the Department should disregard Verizon’s assessment of customer satisfaction with its service quality in Western Massachusetts.

In contrast, the Department should place greater weight on the testimony and complaints of public safety officials, elected officials, municipalities and individual consumers of which it has had the benefit in this proceeding. As Ms. Baldwin noted with regard to public participation in this investigation, “[t]he fact that people are showing up, the fact that people have been able to collect so many statements about concerns, to me, is very compelling evidence that there is a pervasive problem and it’s not just isolated.” Tr. Vol. 2, p. 281.

B. Verizon’s Reliance on Competition to Ensure Adequate Service Quality Is Misplaced in Western Massachusetts

1. Verizon is the Incumbent Local Exchange Carrier with Concurrent Obligations

In Massachusetts, Verizon MA is an incumbent local exchange carrier with carrier of last resort responsibilities. The Department has defined a carrier of last resort as “a carrier that will be required to continue service to a particular area or exchange, or to provide service to such an area or exchange, if a particular area or exchange is either left without or not provided with telephone service.” *Petitions of Media One Telecommunications, Inc., a New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration to establish and interconnection agreement*, D.T.E. 99-42/43. 99-52 (1999), p.117, citing *Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition by Common Carriers*, D.P.U. 1731 (1985), p. 71. Verizon has acknowledged that it is the ILEC in virtually all of Western Massachusetts--area code 413--except those areas served by Richmond Telephone and Taconic Telephone based in New York. Tr. Vol. 2, pp. 386-387

“As the ILEC, Bell Atlantic has universal service and tariff obligations that CLECS [Competitive Local Exchange Carriers] do not have.” *Investigation by the department on its own*

motion as to the propriety of the rates and charges of New England Telephone and Telegraph Company d/b/a/ Bell Atlantic – Massachusetts, D.T.E. 98-57 (March 24, 2000), p. 44 (finding that Bell Atlantic should be afforded a more flexible policy on space reservations than CLECs). “[R]egardless of whether an ILEC is reasonably compensated, Bell Atlantic does not have the option to refuse service to customers because of these universal service obligations, and thus must make plans to serve all customers.” *Id.*, pp. 44-45. Because the Department has not released Verizon from its service quality obligations, and because consumers in Western Massachusetts are particularly dependent on the public network, Verizon must continue to provide adequate and reliable service to these customers who are vulnerable to poor service quality. If Verizon believes that basic telephone service is sufficiently competitive throughout the Commonwealth--including Western Massachusetts--it should petition the Department for that determination rather than disregard the evidence in this proceeding. *See* Tr. Vol. 4, p. 590. Ms. Baldwin points out, “[a]gain, I think if we go down the path of Verizon getting to pick and choose, well, 700 that’s not worth it, 17,000, probably not, but 70,000, it is, that’s not the kind of mandate that Verizon has. They have an obligation to serve everybody.” Tr. Vol. 1, pp. 179-180. Verizon’s customers in Western Massachusetts are relying on the Department to remind Verizon of its obligations to all of its basic service customers.

2. Verizon’s Allegation that Competition is the Remedy for Poor Service Quality in Western Massachusetts is Misguided

Verizon stated that the incentives in the SQI are “largely immaterial” to their corporate behavior, and that they are “motivated more by competitive situations.” Tr. Vol. 4, p. 591. Regardless of metrics, incentives, service quality guidelines, and a purportedly competitive marketplace, there are customers in Western Massachusetts who have no alternative when it comes to replacing Verizon’s basic telephone service for their basic communication needs,

including public safety. Absent a competitive environment, which the Company has acknowledged does not include portions of its Western Massachusetts service territory,⁶ the Company has no incentive to maintain adequate service quality levels and, therefore, has not.

Verizon MA has failed to rebut the Attorney General's testimony that Verizon MA continues to dominate the market. Indeed, Verizon MA indicated that it had not conducted any research of competition in Western Massachusetts. Exh. AG-VZ-9-17. Verizon MA had conducted no studies of cord cutters or cable companies in Western Massachusetts. Attorney General Rebuttal Testimony, pp. 53-54. *See also* Exhs. AG-VZ 10-12, AG-VZ 10-13 and AG-VZ 10-14. The Attorney General has amply demonstrated why some alternatives, where available, are not adequate substitutes for basic local exchange service in Western Massachusetts. Attorney General Rebuttal Testimony, pp. 54-62. Line losses in Western Massachusetts could demonstrate that, to the extent that customers are able to choose an alternate carrier, they would do so as a result of Verizon's poor service quality in the region. Verizon has failed to show that customers have been able to migrate to economic substitutes for the Company's basic local service in Western Massachusetts.⁷ For example, in the Company's response to Record Request 12, the Company was unable or unwilling to provide the price that its competitors charge for basic unbundled service. Tr. Vol. 4, pp. 624-625. If basic local service were truly competitive, one would reasonably expect that Verizon would have knowledge of its competitors' offerings.

When no competitive alternative is available, as in Western Massachusetts, Verizon's customers must settle for the level of service quality Verizon provides to them as the Company concentrates its corporate attention on FiOS and wireless service. Verizon has shown a

⁶ *See* Tr. Vol. 2, pp. 372-373.

⁷ Florence Public Hearing Tr., p. 22, (June 24, 2009); Rowe Public Hearing Tr., p. 47 (October 17, 2007).

commitment to its FiOS and DSL services. Record Request 31, Attachment (a), p. 9, Attachment (b), p. 3, Attachment (d), p. 12.

The Attorney General's expert witness, Ms. Baldwin, recognized in her initial testimony the theme that Verizon so candidly expresses in its Quarterly Earnings Conference Calls.

"Monies not spent on and resources not allocated to the copper plant in Western Massachusetts are then available for regions in the Commonwealth where Verizon may confront relatively greater competition." Attorney General Direct Testimony, p. 88. When Ms. Baldwin was questioned what regions she had in mind, she testified: "Wherever they are deploying FiOS, certainly where they are heavily marketing Triple Play, those are the kinds of places that I am thinking about, where they identify an opportunity for high-revenue customers, with relatively less cost." Tr. Vol. 1, pp. 166-167. Furthermore, Verizon MA has not adequately addressed the Attorney General's concerns that consumers of POTS (*i.e.* non-bundled service) may be particularly vulnerable to poor service quality as Verizon focuses on the highly profitable bundled customers in wire centers with competition. Attorney General Rebuttal Testimony, pp. 62-63.

One of the particularly unpersuasive arguments made by Verizon is that, because the network that provides bundled service is identical to the network that provides basic service, Verizon is incented to maintain the network regardless of the type of service being provided. *See* Verizon Rebuttal Testimony, p. 31; Record Request 12. Verizon, throughout its testimony refuses to acknowledge that it is *unable or unwilling* to offer bundled services in Western Massachusetts, particularly small towns in rural Western Massachusetts, to the extent that it offers them in Eastern Massachusetts, because it has chosen not to make the investment. Mr. Calvey testified for the IBEW that "[w]hen a new product came out, the position of whether it was New England Telephone, NYNEX, Bell Atlantic or Verizon, was that we really have no

interest in putting it into Western Mass.” Tr. Vol. 1, p. 71. Mr. Calvey further stated that “when FiOS was rolled out in 2004, the Company was pretty emphatic that there would be no FiOS deployed in Western Mass.” Tr. Vol. 1, p. 85. If bundled services were available in Western Massachusetts to the extent that they are in Eastern Massachusetts, if competition were as robust, perhaps Verizon’s service quality in Western Massachusetts would not have suffered to the extent it has. *See* Evidentiary Exhibit 21 (Confidential) (showing that RPHL is better in Western Massachusetts in areas where competition is more robust).

The Attorney General’s expert witness determined through analysis of the competitive profiles that Verizon MA submits to the Department that there is little competition in Western Massachusetts. Attorney General Rebuttal Testimony, p. 65 (Table 16: Competitor Share of Residential Telephone Market); p. 67 (Table 17: Competitive Profile of Wire Centers Meriting Focused Attention (Confidential)); Exhibits SMB-Reb-C-6(a) and (b)(Confidential); Evidentiary Exhibits 19 and 20. Ms. Baldwin concluded:

“Verizon MA’s position is theoretically appealing but based on a faulty assumption of competitive markets. If effective competition existed, extensive regulation would be superfluous (regulatory oversight could be relaxed to encompass basic consumer protection requirements). However, as my testimony demonstrates, and the actual performance of Verizon MA indicates, the existing level of competition in local telecommunications markets is insufficient to yield reasonable service quality.”

Attorney General Rebuttal Testimony, p. 68.

Finally, the Department’s own report calls Verizon MA’s position into question. Evidentiary Exhibit 12. Ms. Baldwin testified, “I think that the Department can rely on not only its own competition report, which shows the significant overlap between pockets of poor service quality, and lack of competitive alternatives, but also rely on the analysis that I did of the Competitive Profile Data as recently as 2009, which, again, shows a high correlation between areas of poor service quality and areas where customers can't vote with their feet. They can't go

to another provider.” Tr. Vol. 1, p. 290. For these reasons, Verizon MA’s contention that competition is the remedy for poor service quality in Western Massachusetts is misguided.

C. The Department Has the Authority to Order Remedies That It Finds Appropriate in This Proceeding

1. The Regional Investigation Does Not Prohibit Individual Community or Wire Center Findings

The Company’s assertion that the Department’s ability to make findings has been restricted by its decision to open a regional investigation in Western Massachusetts is contradicted by Department precedent. The Department’s Order to Open the Investigation specifically contemplated exactly that which Verizon now alleges is prohibited. “Moreover, the Regional Service Investigation will allow the Department to determine if quality of service problems exist in other communities and, if so, how best to address what may be a widespread regional issue. In addition, the Regional Service Investigation will make it possible for the Department and parties to gather and evaluate sub-regional (central-office) historical trouble report data that, as Verizon itself has acknowledged, is not available on a town-specific basis.” *In re Service Quality in Western Massachusetts*, Order to Open Investigation, D.T.C. 09-1, p. 17 (June 1, 2009).

Verizon contends that, because the Department opened up a regional investigation in Western Massachusetts, it is prohibited from making findings on the wire center level, and has repeatedly stated that wire center finding are “outside the scope” of this proceeding. Mr. Vasington testified, “if you’re reading from the order, I won’t contest what the Department wrote in its order [opening the investigation], but that doesn’t change my testimony, or our testimony and our belief that findings regarding individual wire centers are not within the scope of this investigation of service quality at the regional level.” Tr. Vol. 3, p. 534; Mr. Vasington

continued, “I said in this docket where the Department brought in the scope of the docket to go beyond just individual complaints and consolidated it, and then brought it into the scope and made it a regional investigation it cannot make wire center findings.” Tr. Vol. 4, p. 635.

The Department’s precedent clearly shows that it will make wire center findings in the context of larger investigations. In *New England Telephone and Telegraph Co.*, D.P.U. 89-300 (1990) (“*New England Telephone*”), the Department investigated the service quality of New England Telephone (“NET”), a predecessor to Verizon MA, throughout the state. In the context of the larger investigation, the Department found service quality in the Dorchester District, which included eight communities, to be inadequate. *New England Telephone*, D.P.U. 89-300 (1990), p. 346. The Department noted that the Roxbury wire center served 21 percent of the lines in the Dorchester district in 1989, and found that “Roxbury is not the only part of the state with inadequate service quality.”⁸ *Id.*, n.181 and p. 348. The Department found that the timeframe for the Company’s outside plant rehabilitation program for Roxbury was “unreasonable” and ordered it to be expedited. *Id.*, p. 352. In *New England Telephone*, the Department made findings at the wire center level, approved a remedial plan, and expedited execution of that plan after determining the Company’s timeframe to be unreasonable *at the wire center level*. Despite changes in the regulatory environment over the years, the Department continues to have the authority to order remedies at the level that it finds appropriate to ensure just, reasonable, safe, proper, and adequate basic telephone service for Verizon’s customers. The supervisory and regulatory authority provided to the Department by G.L. c. 159, §§ 12 and 16 allow for no other conclusion.

⁸ As the Company noted during evidentiary hearings in *New England Telephone*, the Department “identified five districts where they made a finding that the service was unacceptable and must be remedied.” Tr. Vol. 3, p. 574. These Districts were Springfield, Worcester, Dorchester, Merrimack Valley and Brockton.

Further, the Department has recently made findings and ordered remedies at a municipal level, which can be even more granular than the wire center level especially in Western Massachusetts. *Town of Middlefield*, D.T.C./D.T.E. 06-06 (2009) (“*Middlefield*”). In *Middlefield*, the Department found “[b]ecause Middlefield comprises only 30 percent of the total lines served by the Becket CO, severe service quality issues in Middlefield would be understated, or go undetected entirely, by reviewing aggregated Becket RPHL rates.” *Id.*, p. 12. After finding service quality to be unjust, unreasonable and inadequate and Verizon’s practices and equipment to be unsafe, improper and inadequate in Middlefield, the Department ordered remedies specific to the Town of Middlefield, including a determination of the nature and cause of the service quality problems and corrective action, including a timetable for completion. *Id.*, p. 18. The Department also ordered the Company to report separately trouble reports per hundred lines (“RPHL”) for the Town of Middlefield with its monthly Quality of Service (“QOS”) Report. *Id.*, p. 19.

In *Middlefield*, the Department found that the “record evidence taken as a whole . . . demonstrates an overall lack of attention by Verizon regarding maintenance of its infrastructure in Middlefield.” *Id.*, p. 16. Because the Attorney General believes that the record evidence in this investigation shows the same overall lack of attention by Verizon to customers in its Western Massachusetts service territory--many of whom *have no other options for telephone service*--the Attorney General is recommending comprehensive remedies applicable to the region as a whole.

Verizon states that by joining the regional investigation and not continuing to pursue separate petitions, the towns “agreed to . . . not having findings made with respect to their particular municipalities.” Tr. Vol. 4, p. 636. Verizon suggests that if the towns “disagree with that, they can always refile with a specific docket.” *Id.* However, Hancock complained to the

Department more than three years ago on May 14, 2007; Rowe complained almost three years ago on August 31, 2007; Shutesbury complained on September 26, 2008; and Egremont complained on March 5, 2009. Each of these communities is relying on this investigation to address the service quality problems forming the basis of their original complaints. That they should now somehow be required to re-set back to zero and begin again with new municipality-specific dockets is illogical.

Even assuming this remedy for municipalities, it does not address the fact that the Department received complaints via comments from many more residents of many more communities in Western Massachusetts, including Alford, Otis, Leverett, New Ashford, Warwick, Williamstown, Conway, Leyden, Huntington, Florence, Williamsburg, Pittsfield, Monterey, Colrain, New Marlboro, Greenfield, Blandford, and Chester. The record is replete with these complaints, which are remarkably similar in nature and involve poor or non-existent telephone quality particularly during rain. The Department gave weight to the nature of the complaints when it opened the current regional investigation. “The number of responses to the Request for Comment, and the near uniformity of their quality of service complaints, further confirm that a Regional Service Investigation is warranted.” *In re Service Quality in Western Massachusetts*, Order to Open Investigation, D.T.C. 09-1, p. 13 (June 1, 2009). The complaints at public hearings and in testimony in this docket are also similar as many note the duration of the poor service over an extended period of years, an inability to obtain adequate basic phone service, despite multiple contacts with the Company, and expressions of concern about the public safety implications of continued poor telephone service quality in areas where alternatives to basic telephone as a means of communication are not readily available.

For all of these reasons, if the Department finds it appropriate based on the evidence in this proceeding, it has the authority to make findings and order corrective action at the wire

center level, the regional level, or the municipal level as it determines is necessary. *See* G.L. c. 159, § 16.

2. The Department May Make Modifications to Verizon’s Service Quality Index Based on the Evidence in the Record

The Department has broad supervisory power over the provision of telecommunications services. G.L. c. 159, §12. “In addition, the Department’s practice over many decades in the regulation of common carriers and other industries shows a consistent pattern in construing its authority to adopt alternative methods of regulation in response to changing market circumstances and consumer needs so as to better fulfill its statutory mandate.” Order on New England Cable Television Association’s Motion to Dismiss, *Petition of New England Telephone and Telegraph Company d/b/a/ NYNEX for an Alternative Regulatory Plan*, D.P.U. 94-50 (February 2, 1995), pp. 45-46 (concluding that the Department has the statutory authority to adopt forms of alternative regulation).

Verizon has repeatedly asserted to the Department that it may not make changes to the Company’s Service Quality Index (“SQI”) as a result of this proceeding. “Section V demonstrates that the Attorney General’s criticisms of the Service Quality Plan are beyond the scope of this proceeding and are inconsistent with the history of service quality regulation in Massachusetts.” Verizon Pre-Filed Testimony, p. 6. “[Ms. Baldwin’s proposal to add a new reporting requirement] is beyond the scope of this proceeding, which concerns the service quality in Western Massachusetts, not changes to the Plan.” *Id.*, p. 96. “[Ms. Baldwin’s proposal to split reporting of the Bay Path SBU into two parts] is yet another effort to revise the Service Quality Plan, which is not within the scope of this proceeding.” Verizon Rebuttal Testimony, p. 53. Although Verizon’s legal theory is not clear from the Company’s testimony, it may, in part,

be related to notice. “Thus, the appropriateness and sufficiency of the current SQI plan has not been noticed as part of the scope of the investigation.” Verizon Testimony, p. 78.

This argument is similar to a theory put forth by NYNEX, a predecessor to Verizon, in a service quality case thirteen years ago. *See Petition of over twenty customers of New England Telephone and Telegraph Company d/b/a/ NYNEX regarding the quality of service in the Mission Hill area*, D.P.U. 96-30 (1997) (“*Mission Hill*”) (investigating a service outage in the Mission Hill area of Boston). In *Mission Hill*, NYNEX argued that the proceeding “was noticed as an investigation into the Mission Hill Petition and was not intended to serve as a forum to address broader issues relating to NYNEX’s Service Quality Index” *Id.*, p. 19. At that time the Department found it “necessary to discuss the scope” of the proceeding prior to making its findings. *Id.* The Department rejected NYNEX’s position and, acknowledging that a generic investigation of NYNEX’s service outage operating procedures had not been noticed, concluded that “the Company was put on notice by issues raised by intervenors and limited participants that the Department would be considering the adequacy of NYNEX’s service outage policies and procedures.” *Id.*, p. 20. Further, the Department found that it had “developed a suitable record from which it can make findings of general application to NYNEX’s entire service territory in Massachusetts.” *Id.*

Verizon has been on notice as to the issues of whether the review of service quality in Western Massachusetts necessarily implicates the current Service Quality Index, whether Verizon’s performance against it was adequate with respect to Western Massachusetts, and whether, even if Verizon meets the SQI in Western Massachusetts, such performance provides sufficient evidence that the Company is providing adequate service quality. The Attorney General’s expert witness has offered testimony and has been questioned on her opinions about the current SQI. Extensive discovery and evidentiary hearings have taken place in this

proceeding. At Verizon's request, the Department granted an additional evidentiary hearing regarding a hypothetical service quality index ("HSQI"). Record Request 5. Verizon was allowed to issue discovery, submit supplemental testimony, cross-examine the Attorney General's expert and issue record requests on the single subject of the HSQI as well as any issue "reasonably related" to it. Tr. Vol. 3, p. 499.

Verizon chose not to provide testimony or evidence that the current SQI is adequate to achieve good service quality in Western Massachusetts, but instead chose to make the inverse argument—that meeting the current SQI, in and of itself, conclusively demonstrates that service quality in Western Massachusetts is adequate. The Company chose to make this argument despite having consistently missed the troubles cleared residential metric every month for five years. In response to numerous troubling anecdotes from customers, Verizon chose to merely repeat that it "provides just, reasonable and adequate service quality in Western Massachusetts." See Verizon Testimony, p. 6; Verizon Rebuttal Testimony, p. 4; Verizon Supplemental Testimony, p. 4.

The Attorney General agrees with the Company that the SQI is one of the methods by which the Department regulates service quality.⁹ Further, the SQI has been at issue in this proceeding for over seven months. When the Department undertakes its statutory responsibility to ensure adequate service quality throughout the Commonwealth, after a hearing and findings to the effect that service quality is lacking, "the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force . . . and shall fix and prescribe the same by order." G.L. c. 159, § 16. As one of the methods by which the

⁹ "Ms. Baldwin's error is to assume that the Service Quality Plan is the sum total of service quality regulation by the Department, when in fact *it is only one component* and works in concert with the Department's review of more granular data than is captured in the SQI and the statutory framework that allows individual communities to bring their complaints directly to the Department for resolution, as well as the ability of individual customers to initiate adjudicatory proceedings." Verizon Pre-filed Testimony, p. 80. (emphasis added).

Department regulates service quality, modifications to the service quality index cannot now be excluded from the remedies available to the Department to ensure that consumers receive adequate service quality.

D. The Department Should Order Verizon MA to Undertake Remedies to Ensure Adequate Service Quality in Western Massachusetts

1. The Department Should Require Verizon to Complete Repairs to Open Plant in the 31 Wire Centers by October 31, 2010

The Attorney General believes that Verizon MA provides inadequate service in Western Massachusetts, which harms consumers, communities, and the welfare and economy of the region and, by extension, the Commonwealth. Attorney General Direct, pp. 39-40, 84-85; Attorney General Rebuttal, pp. 9, 11, 40; Tr. Vol. 1, pp. 133-134; 137-140. Among other things,

as Verizon MA implies, in Western Massachusetts there are likely to be fewer fire stations and police stations per square mile than in Eastern Massachusetts (meaning that emergency vehicles and personnel must travel longer distances than they do in densely populated areas). This underscores the vital importance of a reliable telecommunications network, with timely restoration of dial tones, so that consumers with threats to their health and safety can reach and be assisted by emergency services in a timely manner.

Attorney General Rebuttal Testimony, p. 26.

Verizon MA has not demonstrated that it is unable to improve its service quality. Instead, in part as a consequence of the instant investigation, Verizon MA is taking steps to improve the condition of outside plant in Western Massachusetts, which, in turn, is reducing the total volume of troubles reported by its customers. Verizon Rebuttal Testimony, p. 6; Verizon Supplemental Testimony, p. 44; Record Request 14 (Confidential); Record Request 15.

However, although Verizon MA possesses the ability to improve service quality, it lacks the incentive to do so. Instead it confronts corporate pressure to reduce expenditures. “As we

have discussed at length, resources for Verizon MA are shrinking, and it is a race between declining revenues and reducing expenses for Verizon MA to return to profitability. In this environment, resources are not ‘freed-up’ they are eliminated.” Verizon Supplemental Testimony, p. 17.

Finally, it is burdensome for consumers, municipalities, interested parties, and the Department to address service quality through litigated proceedings. Towns may not have budgeted funds for legal counsel. During these difficult economic times when municipalities face severe budget constraints, expecting consumers and municipalities to bring complaints to the Department’s attention and then to participate in regulatory proceedings is unrealistic. Attorney General Direct Testimony, p. 80.

In summary, (1) service quality in Western Massachusetts is inadequate; (2) unreliable service quality harms consumers, particularly those in isolated, rural areas who lack economic substitutes for basic local exchange service; (3) Verizon MA is able to improve service quality; (4) Verizon MA not only lacks an economic incentive to improve and sustain improved service quality, but instead increasingly confronts a strong incentive to reduce resources allocated to basic local exchange service; and (5) investigations of service quality are burdensome. Therefore, Department-ordered remedies to be implemented in a timely manner are essential to yield sustained, improved service quality in Western Massachusetts and to minimize the need for future investigations of Verizon MA’s service quality in Western Massachusetts.

The Attorney General recommends that the Department adopt remedies that address region-wide and community-specific problems with service quality:

It would make no sense to think that the Department has to pick and choose and could only go down one road. There is absolutely no reason, in my mind, that the Department shouldn't and couldn't be looking both at the region, regional level of service quality, and how it is being provided within individual portions of the state. I mean, if the Department comes to the conclusion that there are problems

with pockets, deal with the pockets. If they think there are problems with pockets and with the region, which is my position, then they should implement remedies to address all of this.

Tr. Vol. 2, pp. 285-286.

The Attorney General also recommends that the Department adopt several remedies, because no single remedy will address all the problems that have been identified in this proceeding. The Department should direct remedies to address the root cause of service quality problems, including but not limited to: (1) providing more complete and impartial information about the conditions of the network and resources now allocated by Verizon MA to serving Western Massachusetts and remediate major findings; (2) establishing economic incentives to counteract the incentive for Verizon MA to cut costs in its race to profitability; (3) preventing future backsliding; and (4) improving the information that Verizon MA reports to the Department. No single remedy will suffice to address the problems that parties identified in this investigation. Furthermore, the Department should offer immediate relief to communities and consumers in Western Massachusetts wherever possible. Ms. Baldwin testified, “[T]o the extent that the Department has identified through the record in this case, immediate remedies that can be offered to Western Massachusetts, it shouldn’t, in my view, seek to adopt all the remedies at one time, but rather should offer immediate relief wherever possible, [then] pursuing a comprehensive objective assessment.” Tr. Vol. 1, pp. 149-150.

Verizon MA should close its open plant in Western Massachusetts by a date certain and should submit annual reports to the Department regarding its outside plant surveys and follow-up plans. The condition of Verizon MA’s network affects the quality of service that Verizon MA’s consumers experience. As Mr. Sordillo testified, “[I]n my opinion, if the plant is open, the plant gets wet. If the plant gets wet, the plant gets in trouble.” Tr. Vol. 4, pp. 671-672. Open plant is a major factor influencing the quantity of troubles that consumers report on their basic local

lines, such as static. Mr. Sordillo continued, “[w]hat we have done is undertaking that process of closing the plant. We began it a while ago in Amherst with a handful of people. That handful of people made such a difference in Amherst that the report rate has dropped significantly.” Tr. Vol. 4, p. 673. Verizon MA has voluntarily surveyed its outside plant in the 18 wire centers having the highest average RPHL in 2009, as well as in the municipalities of Hancock, Rowe, Williamstown, Leverett, Egremont and Shutesbury. Verizon Rebuttal Testimony, p. 3; Exh. AG-VZ 14-5. Mr. Sordillo testified that the Company “would approximate that what we have done, collected already would be somewhere in the \$2 million range, give or take from what we find. It could go up or it could go down.” Tr. Vol. 4, p. 628; Verizon Supplemental Testimony, pp. 7, 44. According to Verizon “[t]his type of work has proven effective in reducing the RPHL of the area surveyed.” *Id.*, p. 7.

Verizon MA’s intentions regarding the completion date for the work that the surveys have identified are ambiguous. Verizon MA indicates that it has completed 1,248 open plant items in Western Massachusetts, and plans to complete another 3,500 by the end of 2010. Attorney General Rebuttal at 18, Exhs. AG-VZ 12-20, AG-VZ 12-21. Verizon MA also indicates that it expects that much of the work identified by its surveys will be complete by the end of June 2010. Verizon Supplemental Testimony, p. 44. But Mr. Sordillo also testified for Verizon that

[w]e have taken a task force of approximately 30 splice service technicians from eastern Massachusetts and we have moved them for this particular project. They are currently and will be in western Massachusetts until the last day of June. Depending upon what’s found as a result of their repairs, we expect that we will make very good progress on what we already identified on those 18 towns and hopefully will complete it all. I can’t guarantee it. I[t] depends what they find and how long it takes them to do the work.

Tr. Vol. 4, pp. 667-668.

However, as of late May, 2010, Verizon MA has completed only 16.4 percent of the work identified by its open plant surveys. Record Request 30. In 19 of the 31 wire centers that

Verizon MA surveyed, Verizon MA has completed less than 10 percent of the work identified by the open plant survey. Exh. AG-VZ 15-40 Supplemental Response. It is not clear from the record when Verizon will accomplish the repairs to the open plant in Western Massachusetts that it has committed to making. Because consumers will not benefit from Verizon MA's work until it is complete, it is imperative that a completion date be established and that the work is accomplished as quickly as possible. The Department opened this investigation more than a year ago, and the towns of Hancock and Rowe have been awaiting relief even longer. If the 30 technicians reassigned to Western Massachusetts from Eastern Massachusetts return to their "home" region, the repair work could be delayed indefinitely. Verizon MA agrees that this repair work is necessary to improve service quality in Western Massachusetts. "Verizon would not expect a significant change in the RPHL with only 16.4% of the work completed." Record Request 30. The repair work should be accomplished at the earliest possible opportunity.

Although Verizon MA "expects" to complete the work by June 2010, this hardly seems realistic considering the minimal progress that the Company has made to date. Verizon MA suggests that the Department "could require regular progress reports for a set period of time to ensure itself that the work is being completed." Verizon MA Supplemental Testimony, p. 44. Delay in completing the work delays relief for consumers in the rural communities served by these 31 wire centers. Therefore, the Department should direct Verizon MA to complete the work no later than October 31, 2010, or within two months of the date of the Order issued in this proceeding.

2. The Department Should Require Annual Reports by Verizon to Ensure a Continued Focus on Closing Open Plant

Verizon MA's outside plant surveys and follow-up work merit scrutiny by the Department. First, Verizon MA has failed to demonstrate that it will "voluntarily" continue to

conduct these types of ongoing surveys on a going-forward basis after the completion of this investigation. Therefore accountability is essential:

But make sure there is some accountability and then all come back and take a look. I just don't think we are all going to be here again. And how about the open plant in two years, are they going to close that? For immediate interim relief for certain communities, that sounds like an excellent plan, as long as there is a lot of accountability and a timeframe and some consequence if they don't meet it. But in terms of the larger problem of what got us here in the first place, lack of investment in Western Massachusetts, that is a harder -- I'm not sure that would be dealt with through that route.

Tr. Vol. 2, pp. 294-295.

Verizon MA indicates that it will continue to apply its Proactive Cable Maintenance process in Western Massachusetts to identify and remedy open plant. AG-VZ 15-35. However, the Attorney General is concerned that, in the interest of cost-cutting, Verizon MA will reduce its efforts in this aspect of its network operations in Western Massachusetts. When asked whether the Company had made any specific plans or commitments for its infrastructure in 2009, 2010 or 2011, the Company did not have an answer. Tr. Vol. 4, p. 698. Similarly, when asked whether there was some plan to continue its infrastructure work into 2001 or 2012 the Company could not provide a specific answer. Tr. Vol. 4, p. 699.

To ensure a continued focus on closing open plant in Western Massachusetts, the Department should direct Verizon MA to submit annual reports to the Department and the Attorney General that include a detailed description of its outside plant surveys and plans for follow-up work in Western Massachusetts.

3. The Department Should Require an Independent Audit of the Infrastructure in Western Massachusetts

The Department should order an independent audit of the condition of the network and resources that Verizon MA currently allocates to Western Massachusetts and direct Verizon MA to implement the major recommendations. The Attorney General urges the Department to require an independent, third-party audit to be conducted of the network and resources in Western Massachusetts as they relate to the ability of Verizon MA to provide adequate basic

local exchange service and to meet the standards and objectives incorporated in the Service Quality Index, as well as to provide more timely repair of residential dial tone lines.

As the Attorney General explained:

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. In order to fulfill its regulatory oversight role, the Department requires detailed information from an objective third party. I am not persuaded that the interests of Verizon MA and consumers in Western Massachusetts are fully aligned. Network expenditures may not yield reasonable returns on investment but may be necessary all the same to ensure adequate service quality. Monies not spent on and resources not allocated to the copper plant in Western Massachusetts are then available for regions in the Commonwealth where Verizon may confront relatively greater competition.

Attorney General Direct Testimony, p. 88.

Because it is difficult to ascertain precisely which aspects of Verizon MA's network and operations require attention, the Department should direct a comprehensive audit of the entire Western Massachusetts region to be completed within six months after an Order in this matter is issued. Ms. Baldwin testified, "I think somebody who doesn't, who is interested in cost cutting, a third party that would say what the menu of things are that should be done in order to provide reliable service, would be helpful so that the communities that are here today complaining don't get lost in the shuffle." Tr. Vol. 2, p. 293.

The Attorney General's detailed analysis of "pockets" of inadequate service quality in 57 municipalities served by 27 wire centers was necessarily limited by the evidence produced by the Company in this proceeding. Attorney General Rebuttal Testimony, pp. 12-25. Therefore, a more comprehensive audit is necessary. As stated previously by the Department, "[s]uch an independent audit could free the results from the kind of biases inherent in the Company's own data." *New England Telephone & Telegraph Company*, D.P.U. 86-33-G (1989), p. 140 (finding

an independent management audit of New England Telephone's affiliated transactions necessary).

The purpose of a comprehensive audit would be to ensure that all relevant information is considered in determining which portions of Verizon MA's outside plant require remedial attention, where additional resources may be necessary for the Company to meet the Department's service quality standards, and generally to counterbalance the information asymmetry that now exists where Verizon MA possesses substantially greater information about the condition of the network and resources that it has allocated to Western Massachusetts than does the Department. Attorney General Rebuttal, pp. 11-12; Exh. DTC-AG 2-20; Tr. Vol. 1, pp. 149-150; 170-171, 182-184; 219-223; Tr. Vol. 6, pp. 988-992. "Verizon MA should be a step ahead of problems rather than in a reactive mode. Waiting until problems surface to address them dis-serves consumers. Instead the goal should be to prevent them from occurring in the first place." Attorney General Direct Testimony, p. 87. Because Verizon has been unable to get a step ahead of the problems in Western Massachusetts, the Department should require Verizon to supply it the information necessary to prevent problems from occurring in the first place.

A network infrastructure audit could include cataloging and analyzing the age and condition of Verizon's infrastructure in Western Massachusetts. Service quality problems could be mapped to the infrastructure where they occur (including the entire path from the customer's telephone to the central office serving that customer), and the result would be examined to identify the underlying causes of these problems. Service outages reported to the Department and to the FCC could be examined. The maintenance and replacement of outside plant could be compared to any industry standards that may exist. The audit could also examine those specific communities and addresses that are associated with consumer complaints. The audit could identify specific areas that merit particular attention.

Attorney General Rebuttal, Exhibit SMB-Reb-7; Exh. DTC-AG 2-20.

An audit should also encompass an assessment of the resources necessary for Verizon MA to provide timely repair of residential local exchange lines. Ms. Baldwin testified,

it's important to have, for the Department to have access to an objective comprehensive audit of the status of the outside plant, and what it would take for Verizon to meet, at a minimum, the standards, if not the targets, that are incorporated in the Service Quality Index. And I don't mean to pass the 33 point score, but actually to meet the 60% clearance, which I think you know from my testimony, is too lenient.

Tr. Vol. 1, p. 170.

The Department should require a comprehensive audit of the entire network infrastructure in Western Massachusetts, as well as the resources available to provide basic local service, and require Verizon to follow through on the audit's recommendations with a comprehensive plan filed with the Department. Attorney General Rebuttal Testimony, p. 2. The comprehensive network infrastructure audit (combined with a requirement that Verizon MA implement the audit's recommendations in a timely manner) would ensure that Verizon MA meets its obligation to provide adequate service quality. *Id.*, p. 19.

Verizon MA estimates that a field investigation of the infrastructure in the entire 413 area (*i.e.*, the entire Western Massachusetts region) would take on average two Verizon MA managers three to four days for rural municipalities and ten to fifteen days for suburban and urban municipalities. Verizon MA estimates a total cost of approximately \$500,000 (requiring approximately 8,500 person-hours) for such a comprehensive infrastructure evaluation. Attorney General Direct Testimony, p. 93, *citing* Exh. AG-VZ 6-5; Attorney General Direct Testimony, Exhibit SMB-13. Verizon MA did not specify the total calendar time required for such an audit.

It is not clear how much of the \$500,000 infrastructure evaluation Verizon MA has done already or would do as part of its normal business operations. According to Verizon MA, “[i]nfrastructure evaluations are constantly under way, including in Western Massachusetts.” Exh. AG-VZ 12-26. It is not readily evident what the difference is between the analytic and fact-finding work that would occur for a comprehensive infrastructure evaluation and the evaluations that “are constantly under way.” Also, it is not clear what the work is that would

distinguish a comprehensive infrastructure evaluation and the level of work conducted to produce the Middlefield Report. The Attorney General's Information Request, AG-VZ 12-23, sought the differences between the work described in Sections I through III of the Middlefield Report and the work described at Pages 53 through 58 of the Panel's testimony, but Verizon MA did not respond to this portion of the question in its response. Attorney General Rebuttal, pp. 79-80. Furthermore, the Company's estimate of \$500,000 does not encompass an assessment of the resources necessary to provide timely repair of basic residential local service.

The Department could adopt the model that it set forth in D.P.U. 86-33-G, when it required an independent audit of NET's transactions with its affiliates. Specifically, the Department required NET to submit to the Department for its approval within 45 days of the Department's order, a draft request for proposals ("RFP") as well as an outline of the proposed means of publicizing the RFP for approval by the Department. *Investigation by the Department into the Propriety of the Cost Studies filed by New England Telephone and Telegraph Company on April 18, 1986, pursuant to the Department's Orders in D.P.U. 1731, March 21, 1989, D.P.U. 86-33-G*, p. 141. The Department also directed the Company to submit the RFP responses to the Department and recommend no fewer than three firms that the Company would propose to perform the audit. *Id.* The Department indicated that it would then select the firm or firms to perform the audit at the Company's expense. *Id.*, pp. 141-142. NET was then required to enter into a contract with the firm or firms chosen to perform the audit and submit the proposed contract to the Department. *Id.*, p. 142; *see also*, Tr. 2, Vol. 2, 304-307. Unlike the management audit directed in D.P.U. 86-33-G, this audit--to ensure adequate service quality--would require a firm or firms with engineering, outside plant, and local carrier operations expertise.

Although the Attorney General's primary recommendation is for a comprehensive audit of Verizon MA's network and operations as they relate to the Company's ability to provide

adequate service quality, the Attorney General is aware that other alternatives exist. As the Attorney General explained, other states confronting inadequate service quality have sought to meet the challenge of inadequate information about the condition of Verizon's network. Attorney General Rebuttal, pp. 77-78. The Maryland Public Service Commission addressed the challenge of lack of information about the resources that would be necessary for Verizon Maryland to provide adequate service quality as follows:

If we knew with certainty what set of actions would bring about the necessary improvement in Verizon's service quality, we would have ordered them long ago. Because we do not, we can and will do the two next best things. *First*, with the modifications we have made above, the Service Quality Plan will establish the levels of performance we expect Verizon to attain, and will impose serious, ongoing sanctions (in the form of credits to customers) until Verizon actually achieves them. *Second*, whether or not *we* could formulate an operational plan designed to achieve these improvements, *Verizon* must do so if it is to have any hope of achieving them. Accordingly, as part of the ongoing reporting we will require as part of this Order, we direct Verizon to file annually an Operational Plan detailing the steps it will take to meet the service quality metrics. We will not prescribe a particular plan, nor will we substitute our judgment for Verizon's as to what operational steps will best accomplish its service quality goals. But we will review the Plan to determine whether it contains sufficient detail to allow us to monitor Verizon's progress, we will require monthly reporting against the Plan, and we will take appropriate action if the Plan fails to improve service quality after a reasonable period of time. Verizon shall confer with Staff and the other parties to determine the timing of Verizon's Plan, as well as the specifics of the monthly reporting required to show Verizon's operational progress.¹⁰

However, an independent third party audit would be preferable to the submission of an operational plan by Verizon MA.

Also, in April 2008, the Department ordered Verizon MA to "undertake a comprehensive analysis of service quality and infrastructure issues in Middlefield in order to determine whether

¹⁰ In the Matters of Request of Verizon Maryland Inc. to Reclassify Certain Retail Bundled Services to the Competitive Service Basket as Provided by the Commission's Price Cap Plan; Commission's Investigation of Verizon Maryland Inc.'s Service Performance and Service Quality Standards; Commission's Investigation Into Verizon Maryland Inc.'s Affiliate Relationships; Commission's Investigations into Local Calling Area Boundaries and Related Issues; Appropriate Forms of Regulating Telephone Companies; Maryland Public Service Commission Case Nos. 9072; 9114; 9120; 9121; and 9133, *Order No. 83137*, February 2, 2010 ("Maryland Order"), at 46 (emphasis in original).

Verizon's policies, practices, and procedures for inspecting its infrastructure and equipment would require modification.”¹¹ Although an objective, third-party audit conducted externally of the entire Western Massachusetts region would best address service quality concerns evident in this proceeding, the Middlefield example provides an alternative, albeit less comprehensive, approach for the Department to consider. Attorney General Rebuttal, pp. 78-79. Also the Middlefield model is not directly responsive to this proceeding because it does not address other service quality issues such as the timeliness of repair.

4. The Department Should Consider Changes to the Current Service Quality Plan and Modify the SQI for Western Massachusetts.

In past orders, the Department has carefully and comprehensively considered the role of service quality plans as Verizon MA confronts differing levels of competition for its various services. In 2003, in D.T.E. 01-31- Phase II, the Department approved an alternative regulation plan for Verizon Massachusetts that included a Service Quality Plan that had been modified to reflect the fact the Verizon was no longer operating under an indexed price cap formula. As noted above, under the old price cap plan, if Verizon Massachusetts failed to meet a threshold number of SQI performance points, the productivity offset was increased by one-twelfth of one percent for each month that the SQI was not met. So, in a given year, the productivity offset could be increased by 1%, thus reducing by 1% the total percent by which Verizon Massachusetts could raise prices (or even requiring a *rate reduction*).

¹¹ *Middlefield*, , D.T.E./D.T.C.06-6, *Order on Motion for Reconsideration, Motion to Reopen the Record, and Motion for Stay Filed by Verizon Massachusetts*, September 18, 2008, at 1. Verizon MA submitted a Quality of Service Report and Infrastructure Analysis on June 30, 2008. In its comments submitted to the Department regarding the proposed service quality investigation, Verizon stated: “Verizon MA’s comprehensive analysis of the service quality and status of infrastructure in Middlefield, performed at the direction of the Department, showed no significant infrastructure deficiencies in the Town and identified only minor physical disrepair conditions, which Verizon MA promptly fixed.” Comments of Verizon New England Inc. re: Proposed Regional Service Quality Investigation, February 23, 2009, at 3.

The 2003 Service Quality Plan replaced the Q factor with a service quality rebate, or credit. The plan includes a financial penalty that is paid as a one-time credit to *all* residence and business lines on an annual basis. In adopting the plan, the Department stated:

As an initial matter, we disagree with Verizon's position that continuation of the Department's monitoring of Verizon's retail service quality is unnecessary and discriminatory. In the Price Cap Order, the Department concluded that because price cap regulation introduces a financial incentive for the regulated firm to reduce costs, a well-designed price cap plan must also include some form of protection against reduction in service quality . . . The Department's adoption of a price cap form of regulation for Verizon therefore included a service quality plan designed to evaluate the overall level of service provided by Verizon to its retail customers.

The Department also stated:

Although Verizon is no longer subject to price cap regulation, competition for some customers may introduce a financial incentive for the regulated entity to reduce costs by reducing service quality to other customers, so we conclude that there should continue to be some form of protection against a reduction in service quality. Therefore, given that Verizon's residential retail services will be regulated under the alternative form of regulation we have established in this proceeding, the Department finds it reasonable and appropriate to continue a retail service quality plan and penalty mechanism for these services.

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts. DTE 01-31-Phase II Order.

The Department also ruled that monitoring Verizon MA's service quality without monitoring other carriers' service quality was not discriminatory because "Verizon continues to be classified as a dominant provider of telecommunications services in Massachusetts for both business and residential services." *Id.* at pp. 99-100. Attorney General Direct Testimony, pp. 15-16 (footnotes omitted).

The concerns that the Department raised in its Order issued in 2003 continue to be germane today. Among other things, the Department previously determined that “[A]lthough Verizon is no longer subject to price cap regulation, competition for some customers may introduce a financial incentive for the regulated entity to reduce costs by reducing service quality to other customers, so we conclude that there should continue to be some form of protection against a reduction in service quality.” *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon new England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts*. DTE 01-31-Phase II Order, pp. 98-99. As the record in this proceeding has shown, the Department’s concern was prescient: competition for DSL, FiOS customers and for customers in Eastern Massachusetts among other regions has created a financial incentive for Verizon MA to reduce costs in its provision of services to other customers. Tr. Vol. 2, p. 312. The consequence is that residential customers in rural areas are particularly vulnerable to Verizon MA’s cost-cutting efforts.

The SQI that was originally established in 1995 and that continues to apply today is long overdue for review. A comprehensive investigation of the SQI is warranted. As the Attorney General also noted:

In its DTE 01-31-Phase II Order in April 2003, the Department indicated that it would consider whether it should conduct a “comprehensive review of Verizon’s retail service quality and service delivery throughout the state.” In the interim, the Department stated, it would continue Verizon MA’s then current Service Quality Plan to “ensure that retail customers continue to receive customary levels of service quality while the Department conducts its review.

Attorney General Direct Testimony, p. 17, *citing* D.T.E. 01-31 Phase II Order, pp. 100-101.

The Department should open an investigation into the SQI to determine whether it adequately protects consumers throughout Massachusetts. Attorney General Rebuttal, p. 4.

However, such an investigation should not delay relief to consumers in Western Massachusetts.

The existing service quality index fails to establish sufficient incentives and accountability to cause Verizon MA to provide adequate service quality to consumers in Western Massachusetts.

Tr. Vol. 2, pp. 274-275. As also explained by Ms. Baldwin:

For example, by my calculations, Verizon MA could fail to meet the standard threshold (let alone the target threshold) for both the network trouble report rate and percent of trouble cleared within 24 hours – residence in every month for years on end and never pay a penalty. Likewise, Verizon Massachusetts can fail to meet the standard threshold for all seven of the disaggregated metrics in one of the three geographic regions and still meet the SQI 33 point requirement and not run afoul of the standard miss criteria.

Attorney General Direct, p. 72.

“My calculations indicate that scoring a zero in all three geographies for two metrics would still only result in two standard misses and an SQI of 40 even the Company scored a 2 on every other metric.”

Id., Footnote 154.

Because the SQI is failing to protect Western Massachusetts consumers, immediate remedies are essential. The Department should direct Verizon MA to improve the timeliness of its repair of basic residential service and disaggregate data between out-of-service and service-affecting troubles in Western Massachusetts.

Verizon MA consistently fails to meet the Department’s standard, let alone the target, for clearing residential troubles within 24 hours. Verizon MA “acknowledge[s] that Verizon MA often struggles to meet the metric for Troubles Cleared Within 24 Hours – Residential in the Service Quality Plan.” Verizon MA Panel Testimony, p. 5. As the Attorney General understands the Panel Testimony’s reasoning, Verizon MA claims that because it meets the Department’s standards for the eleven other metrics in the Service Quality Plan, it is inappropriate for the Department to focus on “this lone shortcoming.” Attorney General

Rebuttal, p. 29. The Attorney General disagrees with the Company, and has demonstrated instead the importance of timely repair of dial tones to the safety and welfare of consumers in Western Massachusetts.

The status quo, whereby Verizon MA can seemingly choose the timeliness of its repair is untenable. Verizon MA could repair 40%, 30%, 20% or less of its residential troubles within 24 hours without any regulatory repercussion and without any marketplace repercussion. Ms. Baldwin testified as follows: “[s]o how far could they cut costs? The clearing 60% metric which they are not meeting, it’s a sole metric, but by their logic why not just meet 50%, 40%, 30%, 20%? They would still satisfy the Service Quality Plan. They would be cutting cost; be very productive.” Tr. Vol. 2, pp. 313-314. Not only is the timeliness of Verizon MA’s repair unlikely to improve without regulatory intervention, it is likely to deteriorate as Verizon MA pursues cost-cutting efforts. The Attorney General urges the Department to address this market imperfection by establishing a service quality metric applicable to the Springfield District of the BayPath SBU. Without such a metric, the elderly, those in rural, isolated areas, and communities throughout Western Massachusetts are likely to be directly harmed. Also, accountability for meeting the Department-established metrics is essential to counteract Verizon MA’s cost-cutting incentives. Ms. Baldwin continued in her testimony to state, “The best metrics in the world ultimately are meaningless if there is no accountability or incentive for Verizon to actually comply with the metrics that the Department considers best protects consumers in Massachusetts.” Tr. Vol. 2, p. 276.

Verizon MA explains that its ability to respond to out-of-service and service-affecting troubles “within a certain time period is largely a function of the personnel available.” Verizon MA Supplemental Testimony, p. 37. Verizon MA asserts that it would require substantial resources to improve the timeliness of its repair. *Id.*, pp. 37-40. However, Verizon MA’s

testimony on this topic is misleading, because it fails to account for the fact that as a result of the Company's efforts to close open plant (which reduces the volume of troubles reported), the Company is freeing up resources which can be re-allocated to speedier repair where troubles still persist. The problem for consumers, though, is that if Verizon MA were left to its own business judgment, the Company likely would eliminate those "freed up" resources to increase shareholder profit. Indeed, without the Department's oversight and Department-established remedies, it is improbable that Verizon MA will re-allocate resources to improve the timeliness of the repair of households' basic local lines in Western Massachusetts.

The Attorney General does not seek the Department's "micromanagement" of the Company's operations. However, it is evident that if Verizon MA is allowed to decide entirely on its own whether to keep the savings from the lower volume of trouble reports or to reallocate the savings to improve the timeliness of repair, the Company likely will choose the former so as to increase shareholder profit. *Id.*, p. 17. It 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. In no event should the Company be allowed to turn its back on rural customers and on basic local exchange service simply because we as a society may be on a transition away from the basic network. Instead, it is important that the Commonwealth ensure that such a transition does not harm those who are most vulnerable to Verizon MA's shift in its corporate priorities.

Another New England state has determined that it is necessary to impose sanctions on one of its incumbent local exchange carriers for failure to meet established standards for the repair of basic dial tone. In Connecticut, incumbent carriers must repair 90% of out-of-service lines within 24 hours. Attorney General Rebuttal Testimony, Table 18. However, AT&T has

repeatedly failed to meet that standard, and recently, the Connecticut Department of Public Utility Control fined AT&T \$1.12 million for that persistent failure.¹²

The evidence in this proceeding unambiguously demonstrates that Verizon MA lacks the incentive and readiness to meet the Department's standard of 60 percent and objective of 70 percent for clearing residential troubles within 24 hours. Ms. Baldwin testified: "Maybe they passed the SQI, but they are not coming close to fixing 60% of troubles within 24 hours. They are unilaterally just not doing it." Tr. Vol. 1, p. 184. As noted previously, Western Massachusetts consumers are harmed by unreliable access to the public switched telephone network. Verizon cannot be allowed to remain lackadaisical until a worst-case emergency scenario occurs. Police Chief Sherman Derby testified, "[S]o we wanted it taken care of before someone was a fatality." Tr. Vol. 1, p. 35. Ms. Baldwin testified, "[T]o protect consumers, would be to ensure that whatever metric you set, Verizon actually meets it and it doesn't have the opportunity to not meet it, and still have a passing score" Tr. Vol. 2, p. 216.

Therefore, the Department should consider establishing a pilot program in Western Massachusetts by which Verizon MA must continue to attempt to meet the Department-established residential metrics of 60 percent (the existing standard) and 70 percent (the existing target) of service-affecting and out-of-service troubles within 24 hours, with an appropriate penalty based on the monthly results applicable to the Springfield District of the BayPath SBU. Verizon should report its results to the Department monthly with its Quality of Service ("QOS") Report for a minimum of twelve months.

The Department should also require Verizon MA to disaggregate troubles between Out of

¹² Connecticut Department of Public Utility Control Docket No. 10-04-12, Notice of Violation and Assessment of Civil Penalty in the Amount of One Million One-hundred and Twenty Thousand Dollars (\$1,120,000), DPUC Proceeding Pursuant to Section 16-41 of the General Statutes of Connecticut to Determine Whether the Southern New England Telephone Company d/b/a AT&T Connecticut Should Be Fined for Failure to Comply with Quality of Service Standards for the Provision of Telecommunications Services, May 20, 2010.

Service and Service Affecting, and also to raise the standards that apply. Internally, Verizon separates the OOS and SA troubles and appears to agree that separation of the two would be of value. Mr. Sordillo testified, “[O]ur out of service of cleared in 24 hours is a better measure than when you put the two together.” Tr., Vol. 4, p. 614. Therefore these metrics comport with Verizon’s existing practices. Furthermore, as Verizon continues to reduce the total volume of troubles, resources will be freed up for improving the timeliness of repair. It is reasonable to expect Verizon’s timeliness of repair to improve. Attorney General Direct Testimony, pp. 84-91; Attorney General Rebuttal Testimony, pp. 75-76. Mr. Sordillo further testified as follows:

Q. If your internal objectives are based on out of service and service-affecting, do you have an internal objective percentage, a number of what you want to see cleared in that 24 hours for out of service and 48 hours for service-affecting?

A. Yes.

Q. What are those?

A. I told you once, about 60 percent for out of service cleared in 24 hours. As far as cleared in 48, we used 70 percent. . . . Our object is to be better yesterday than we have been cumulative every month. That means we are executing better.

Q. Those internal objectives are independent of the service quality metric?

A. Yes.

Tr. Vol. 4, pp. 614-615.

Specifically, the Attorney General recommends the OOS standard should be set relative to a 24-hour period and begin at 80 percent, and then be increased gradually to 95 percent by 2012. The SA standard should be set relative to a 48-hour period, begin at 80 percent then be increased gradually to 90 percent by 2012. Record Request 5.

Although, at this time, the Attorney General does not propose that a standard be established for the residential repair interval, as Ms. Baldwin explains in her direct and rebuttal testimony, the metrics that correspond with the percent of troubles cleared within 24 hours do not shed light on the duration of the wait time—yet a customer who waits 96 hours for the repair of a

basic dial tone is clearly worse off than is a customer who waits 25 hours. Therefore, information about repair intervals provides valuable information to the Department and to interested parties. *Id.* Furthermore, Verizon has the capability of providing this data, as is evidenced by the ARMIS reports that Verizon submits to the FCC and that Ms. Baldwin analyzed in her direct and rebuttal testimony. Attorney General Direct Testimony, pp. 25-34; Attorney General Rebuttal Testimony, pp. 45-49. Finally, Verizon indicates that the second of the top three reasons for customers' dissatisfaction with repairs is the duration of the wait for the repair. Tr. Vol. 4, p. 718. Accordingly, as is discussed in more detail *infra* Verizon MA should submit data on repair intervals to the Department.

5. The Hypothetical Service Quality Index Is a Reasonable Way to Establish Economic Incentives for Adequate Service Quality in Western Massachusetts

During the course of the hearings, the Department introduced and sought comment by the Attorney General's witness on a Hypothetical Service Quality Index ("HSQI") that Department staff designed. Tr. Vol. 2, pp. 320-351. In addition to responding to cross examination on the HSQI, the Attorney General's witness also assisted in the preparation of responses to three record requests that pertained to the HSQI. Record Requests 3, 4, and 5.

In response to Verizon MA's concerns that only the Attorney General would be afforded the opportunity to address the merits of the HSQI, the Department gave Verizon MA the same opportunity to opine on the merits of the HSQI, with the Company's submission to be due on the same date as that of the Attorney General. Tr. Vol. 2, p. 339 (Record Request 3), p. 343 (Record Request 4), and p. 351 (Record Request 5). However, subsequently, Verizon MA sought a different opportunity, specifically to be able to respond to the Attorney General's response with testimony. The Department granted this request. As a result, the record on the HSQI includes

cross-examination that occurred on April 1, 2010 and May 21, 2010. Tr. Vol. 2, pp. 320-352; Tr. Vol. 6, pp. 965-1049; Attorney General's responses to Record Requests 3, 4, and 5; Verizon's Supplemental Testimony, pp. 1-45 (April 23, 2010); Exhs. AG-VZ 15-1 through AG-VZ 15-47.

The Attorney General reiterates her view that although a well-designed SQI would assist the Department in protecting consumers in Western Massachusetts from service quality deterioration and inadequate service quality, the SQI would not, as a single metric, be sufficient to yield adequate service quality in Western Massachusetts. Tr. Vol. 2, pp. 362-363; Record Request 5. As Ms. Baldwin testified, many states have sought to implement diverse service quality plans to establish economic incentives that encourage incumbent local exchange carriers to provide adequate service quality. Tr. Vol. 2, pp. 362-363. Despite regulators' best efforts, however, this has been a challenge and state regulators continue to seek the "right" plan. *Id.*

The Attorney General recommends that the Department adopt the HSQI, with the modifications discussed in detail in response to Record Request 5. The adoption of such a plan, however, should not be in lieu of the other remedies that the Attorney General discusses throughout this brief.

Briefly, the Attorney General reiterates that portion of her testimony pertaining to the costs of the HSQI.

For one, I don't believe we have sufficient data on the cost to Verizon to jump to the conclusion that the hypothetical plan is not financially sustainable by Verizon. We have clear testimony from Mr. Sordillo and from the responses to data requests that, as they complete the open plant, which they indicate they're planning to do by June 30th, that the volume of trouble reports will go down. If the volume of trouble reports go down, then they have fewer troubles to fix.

And therefore, as I see their cost analysis, they're not taking into account the fact that the total number of troubles is going down. In response to that kind of a question which we raised with them, the response is, "Well, we're racing for profitability..."

“Really, the hypothetical service-quality plan is just keeping them accountable to specific metrics, and if it costs too much, it may be because there’s been a long period of underinvestment, such as the West Virginia Public Service Commission found. If they had been investing properly all along, it would not be as costly.

Tr. Vol. 6, pp. 998-999.

6. The Department Should Direct Verizon MA to Improve the Information That It Submits Regarding Service Quality

Verizon MA submitted substantial data regarding its service quality performance in Western Massachusetts. However, Verizon MA does not routinely report service quality data to the Department for Western Massachusetts separately from other regions in the state, except for the data that it includes in its monthly quality of service report that shows reports per hundred lines on a wire center basis, grouped among six districts (Boston, Southeast, MetroNorth, Northeast, Springfield, and Marlboro). The SQI does not measure Western Massachusetts performance separately, but rather measures performance for seven metrics separately for three different geographic areas, called Strategic Business Units (SBU) as well as five metrics on a statewide basis. The three SBUs that Verizon MA uses for reporting purposes are BayPath, MassBay, and North/Northeast. Attorney General Direct Testimony, Exhibit SMB-9. The BayPath SBU includes the Springfield and Marlboro districts. *Id.* Therefore, the SQI data for Western Massachusetts are averaged in with the SQI data for Marlboro. Because, as Table 1 below shows, Western Massachusetts accounts for only 37 percent of the BayPath district, the Department is not receiving useful information about service quality performance in Western Massachusetts. The Springfield District corresponds with the “413” Western Massachusetts region. Record Request 11.

Table 1

Western Massachusetts Accounts for Only 37% of the BayPath Strategic Business Unit

District	Strategic Business Unit	Number of Lines	District as % of Region	District as % of State
Boston	MassBay	360,445	47%	17%
Southeast		405,426	53%	19%
		765,871		
Metro North	North/Northeast	280,532	41%	13%
Northeast		408,682	59%	19%
		689,214		
Marlboro	BayPath	444,321	63%	21%
Springfield		257,750	37%	12%
		702,071		
	State Total	2,157,156		

Source: Attorney General Direct Testimony, Exhibit 1; Evidentiary Exhibit 17

*** This table uses linecounts as reported in the December 2009 Quality of Service Report.**

The result is 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. As Ms. Baldwin explained:

Because right now you get data from Verizon on a monthly basis for BayPath, but you got the 1.2 for Marlboro and Eastern Mass. being combined with the 1.4 for Springfield. And because Marlboro has many more lines when you do the weighted average, you are going to be seeing more of Marlboro in your results then you are going to see of Western Massachusetts.

Tr. Vol. 2, pp. 277-278.

The Department should direct Verizon MA to disaggregate the BayPath SBU in its monthly quality of service reports to separate the Springfield district (*i.e.*, Western Massachusetts) from the Marlboro district (a portion of Eastern Massachusetts). This would be

feasible and reasonable. Record Request 3. Furthermore, such disaggregation would assist the Department in ensuring that Verizon MA does not allow “backsliding” to occur, that is, to allow service quality to deteriorate after the conclusion of this proceeding. In response to follow-up discovery regarding the expense of such disaggregation, Verizon MA indicated that in order to “refine the existing system queries to report a ‘Western Massachusetts’ entity would require an additional \$15,000 in one-time IT expense” and would require \$1,000 per month in recurring expenses to produce the report. AG-VZ 13-16. Attorney General Rebuttal Testimony, p. 45. This is a modest sum if it will help the Department maintain oversight into a region of the Commonwealth with a history of service quality problems over an extended period of time. *See generally Middlefield, D.T.C./D.T.E. 06-6 (2009); New England Telephone and Telegraph Company, D.P.U. 89-300 (1990).*

Also, Verizon MA should submit ARMIS reports to the Department even if the FCC does not reverse its “forbearance” order in which it eliminated carriers’ ARMIS reporting requirements as of September 2010.¹³ ARMIS provides useful information not otherwise provided to Department, such as regarding Verizon MA’s average installation period and average repair interval. Record Request 5; Attorney General Rebuttal Testimony, pp. 45-49. Verizon MA currently submits the data, and therefore has the ability to do so. Notwithstanding the FCC’s decision not to require Verizon to submit the reports to the FCC, the Attorney General urges the Department to require Verizon MA to submit these reports *to the Department* in order to improve the breadth of service quality data that it receives and thereby to improve the

¹³ / In the Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, WC Docket No. 08-190; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, WC Docket No. 07-139, Petition of Qwest Corporation for Forbearance from Enforcement of the Commission’s ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c), Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements, WC Docket No. 07-204; Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements, WC Docket No. 07-273; Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission’s Cost Assignment Rules, WC Docket No. 07-21, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, rel. September 6, 2008.

Department's ability to exercise its regulatory oversight. The ARMIS data, which the FCC collects from incumbent local exchange carriers and reports on its web site, allow one to examine, among other things, historic trends, and, in some instances, different metrics than are reported to state regulators. Attorney General Rebuttal, p. 49.

In the future, the Department should consider the following to address service quality concerns in Massachusetts:

- Improve the SQI to create more accountability by Verizon MA to its consumers.
- Establish a "best practices" OOS standard.
- Weight the OOS standard appropriately.
- Weight the repair standard appropriately.
- Publish the monthly SQI on the Department's website.

Attorney General Direct Testimony, p. 76.

The Department should open an investigation into the SQI and whether it protects consumers throughout Massachusetts adequately. Attorney General Rebuttal Testimony, p. 4. The Department's investigation of Verizon MA's statewide service quality is important, because lengthy individual proceedings with discovery, testimony/comments, briefs, and evidentiary hearings in lieu of the proper incentives for Verizon to provide adequate service quality to *all* consumers are inefficient and harm those communities with the least resources. Attorney General Direct Testimony, p. 77.

E. Verizon MA's Statements of Financial Condition Should Be Given No Weight And Are Subject to Alternative Analyses

1. The Department Should Afford No Weight to Verizon MA's Allegations of Lack of Profitability of its Intrastate Regulated Operations

In rendering a decision in this proceeding, the Department must consider Verizon MA's financial ability to comply with any directives that the Department sets forth. In pertinent part, G.L. c. 159, § 16 reads:

Before making such order, the department shall consider... the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. . . .

The relevant question is not the profitability of Verizon MA's overall operations in Massachusetts, but rather the profitability of its intrastate operations. However, Verizon MA has provided skeletal cost and revenue information, and its witnesses were unable to answer basic questions that go to this issue. *See* Tr. Vol. 6, pp. 1004-1005 (whether FiOS business yields a profit in Massachusetts); *Id.*, p. 1015 (whether other management cost accounting or record tracking exists); *id.*, p. 1028 (whether FiOS investment, FiOS revenue and FiOS/DSL accounting is available by operating company), *id.*, p. 1038 (whether Verizon has analyzed the impact on its intrastate costs of the state members of the separations joint board proposal for changes to cost accounting). The evidence in this proceeding is too scant to conclude that Verizon MA is failing to earn a reasonable return on its intrastate investment. Mr. Vasington testified "[y]ou don't need to do a rate case to show that unfortunately we've been losing money for a significant period of time." Tr. Vol. 6, p. 1021. The Attorney General disagrees, but, at a minimum, the Department would require a significantly better record than Verizon has provided in this proceeding to determine the accuracy of Verizon's assertions regarding its profitability or lack thereof.

Verizon MA asserts that “operating net income has been negative at least from 2004 through 2008.” Tr. Vol. 4, p. 751. Verizon MA could have petitioned the Department for a review of its rates at any time during the last several years. The fact that it has not done so undermines the credibility of the Company’s claims.

In any event, the Company chose the panel that it put forth to testify in this case and chose not to provide a witness who could competently address regulated and unregulated revenues and expenses and management, and operational financial information. Tr. Vol. 4, pp. 735-747; Tr. Vol. 6, p. 1014, p. 1026. The record in this proceeding is insufficient to determine that the Company lacks the financial wherewithal to undertake any remedies in Western Massachusetts. In fact, Verizon MA has already committed to spending \$2.0 million in the thirty-one wire centers most seriously affected with poor service quality. In addition, the financial information that Verizon MA now puts forth has not undergone any serious regulatory scrutiny. The Department should not, by virtue of Verizon MA’s repeated but inadequately substantiated assertions regarding its financial situation, equate Verizon’s claims with proof.

It is highly likely that the financial numbers that Verizon MA has presented in this investigation would not survive regulatory scrutiny. After utilities present data on costs and revenues to regulators (which companies typically support with voluminous documentation), it is common for regulators to render decisions that require the utilities to make numerous adjustments to the as-filed numbers regarding accounts such as depreciation, advertising, marketing, overhead, plant in service and so on.¹⁴ It is entirely possible, and more likely

¹⁴ See *Investigation by the Department into the propriety of the cost studies filed by New England Telephone and Telegraph Company on April 18, 1986 pursuant to the Department’s Orders in D.P.U. 1731*. D.P.U. 86-33-G (1989) (“NET”)(reducing company’s rate base by \$3,745,385 to reflect the undepreciated value of un reusable Centrex systems and amortizing the expense over a three year period), p. 44. (allowing some and disallowing other changes to rate base as a result of FCC separation rules), pp. 60-62; (requiring the Company to reduce its cost of service by \$7,726,00 to eliminate advertising associated with non-competitive services), pp. 84-85; (disallowing charitable contributions as an expense to non-competitive service customers), pp. 95-96; (excluding \$573,000 of salary and

probable, that if the data submitted by Verizon in Evidentiary Exhibit 60 were subject to similar scrutiny, the resulting return on investment would be very different from that posited by Verizon MA in this investigation.

According to Verizon, examination of costs and revenues are vestiges of the past: arcane exercises no longer relevant in today's purportedly competitive market: "Ms. Baldwin's testimony boils down to a nostalgia for a government-created and regulated landline monopoly that no longer exists. . . ." Verizon Rebuttal Testimony, p. 38. This statement makes assumptions that have not yet been tested by the Department, because Verizon has failed to file a petition requesting that basic telephone service be declared a fully competitive service in Massachusetts not subject to regulation. As Ms. Baldwin testified, "[i]f Verizon at some future point wants to come in and triple the rate for basic local exchange service because it says it's competitive, then that's a different proceeding." Tr. Vol. 1, p. 177. Yet, Verizon, in support of its claim of purportedly unprofitable intrastate operations, submitted data on investment, revenues, expenses, which are the very trappings of rate of return regulation.¹⁵ Due to the lack of investigated financial information in this proceeding, the data are so meaningless as to be irrelevant and the Department should therefore afford them no weight in its deliberations. Verizon cannot implicitly require all parties and the Department to accept the data as indicative of its intrastate

benefits associated with lobbying from the Company's cost of service) p. 104; (disallowing \$4,046,000 of test year public relations expenses), p. 113; (accepting NYNEX Material Enterprise Company expenses in the cost of service), p. 155; (reducing the Company's cost of service by \$1,840,000 associated with compensated absences), p. 212; (allowing a downward adjustment in revenues of \$1,136,815), p. 213; (reducing cost of service by \$1,841,000 for costs associated with Hurricane Gloria), p. 216. Additional modifications were made in *NET, Order on Motions for Recalculation and Reconsideration*, D.P.U. 86-33-J (1989) and *NET, Order on Revenue Requirement Filing*, D.P.U. 86-33-M (1989).

¹⁵ A Maine Supreme Judicial Court decision in 2005 provides further evidence of the need for cost studies, even when carriers are governed by alternative forms of regulation ("AFOR"). The Court remanded a Public Utilities Commission decision adopting a new AFOR because the "Commission failed to undertake even a cursory comparison of the local rates that would be set under an ordinary ROR proceeding" to the rates that would result from the AFOR plan as required by the legislature. *Office of Public Advocate, et al. v. Pub. Utils Comm'n.*, 866 A. 2d 851 (2005), at para. 9. The Court decision also addressed the Maine PUC's incorporation of a local rate increase to offset decreases in Verizon's access charges. *Id.*, at para. 39-43, fn 8.

regulated financial condition as the Department would find it when the Company submitted negligible supporting documentation.

Verizon MA also cannot expect the Department to accept the financial portrait that Verizon MA has submitted or to rely on the alleged negative income in determining appropriate remedies in this proceeding when it failed to provide a witness panel able to testify to relevant inquiries. Absent a more thorough and impartial analysis of Verizon's intrastate, regulated business, the Company's claims are mere unsupported assertions that must not be afforded any weight. In addition, the way that Verizon MA assigns and allocates costs between regulated and unregulated operations and between intrastate and interstate jurisdictions directly affects the profitability of its intrastate operations. Questions surrounding Verizon MA's allocation and separation of costs between intrastate and interstate jurisdictions arose during the hearing on May 21, 2010. *See* Tr. Vol. 6, pp. 1017, 1024 (FCC accounting rules), pp. 1036-1038 (proposal of the state members of the Federal-State Joint Board on Separations). Cost accounting and separations are complex topics that should not be resolved within this proceeding. For the purpose of this proceeding, however, it would be grossly unfair to Western Massachusetts consumers for the Department to accept Verizon MA's numbers at face value. Regulators' thorough and careful examination of companies' investment, expenses, and revenues typically results in numerous adjustments, which in the aggregate could cause a claim of negative net income to reveal a positive income, or a claimed poor return on investment to reveal a healthy return on investment. For these reasons, the Department should give no weight to Verizon's alleged lack of profitability in determining appropriate remedies.

2. The Department's In-Depth Analysis Could Show Verizon MA's Intrastate Regulated Operations Are Profitable

Until and unless the Department conducts a complete investigation of Verizon's costs and revenues, the Department should not take Verizon's numbers as shown in Evidentiary Exhibit 60 at face

value. Among other things, demand for the network has been changing during the time period since the Department last examined Verizon's costs and revenues. *See* Record Request 16 (demand for FiOS), Record Request 32 (demand for DSL). The process of jurisdictional separations affects the costs allocated to Verizon's intrastate regulated operations. Tr. Vol. 6, pp. 1037-1038. As discussed during the evidentiary hearing on May 21, 2010, the State Members of the Federal State Joint Board on Separations recently submitted a proposal to the FCC on March 5, 2010 for interim adjustments to the separations factors to correct, among other things, the allocation of special access investment pending more comprehensive reform by the FCC, as well as the allocation of the local loop investment.¹⁶ *Id.* Evidentiary Exhibit 60 does not represent the Department's assessment of the validity of the numbers contained therein and so it should be afforded no weight. If any of the DSL and FiOS costs are improperly assigned and allocated to intrastate regulated operations, this factor, among others, would cause the results contained in Evidentiary Exhibit 60 to be unreliable.

Since the Department last investigated Verizon MA's (or its legacy companies') revenue requirements, enormous changes have occurred in telecommunications markets affecting the way in which Verizon MA uses its network to deliver regulated and unregulated services. In addition to basic telephone service, Verizon MA's common telephone plant supports many other diverse services, such as special access services, FiOS, digital subscriber line ("DSL") service, voice services, and bundled "Freedom" offerings – which have been growing rapidly. Also, there has been substantial growth in special access lines.¹⁷

For the last nine years, however, Verizon MA has assigned these substantial interstate special access *revenues* to the interstate jurisdiction, but has not assigned a corresponding portion of Verizon

¹⁶ 80-286, Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, Secretary FCC (March 5, 2010) ("State Members letter" and "State Members Proposal").

¹⁷ For example, from 2004 to 2007 (2007 is the last year for which Verizon MA filed publicly available data with the FCC through its ARMIS database), demand for total switched access lines decreased by 22% while demand for special access lines grew 365%. Federal Communications Commission, ARMIS Report 43-08, Table II, data accessed June 1, 2010.

MA's *costs* to the interstate jurisdiction. Similarly, Verizon MA has not been allocating cost of the local loop to correspond with unregulated services. These disparate allocations of costs and revenue artificially decrease profitability on the regulated intrastate operation.

Nationally, and within individual state jurisdictions, regulators are considering the impact of changing consumer demand and technology on the validity of carriers' assignment and allocation of costs between regulated and unregulated operations, and between the intrastate and interstate jurisdiction. Verizon MA's panel was not aware of the State Members proposal to the FCC, nor of Verizon MA's position regarding the proposal. Tr. Vol. 6, pp. 1036-1037. The witnesses' lack of familiarity with these regulatory developments does not render the developments irrelevant; it simply undermines Verizon's ability to testify to profitability with any degree of accuracy or credibility.

The State Members estimate that their proposed methodology for correcting the treatment of carriers' special access investment would directly assign 21 percent of total regulated investment to the interstate jurisdiction rather than the current 10 percent.¹⁸ The State Members do not provide an estimate of the result of their proposed methodology for allocating the cost of the local loop. In any event, this is not an issue to be determined unilaterally by Verizon MA, but rather one that should be determined by the Department. Shifting investment to the interstate jurisdiction to account for increased demand for interstate special access services and to account for the increased use of the local loop for unregulated operations would raise the profitability of intrastate operations over which the Department has regulatory authority.

As illustration of the impact of adopting one of the two elements of the State Members' Proposal, the Vermont Public Service Board adopted the recommendation of the Vermont

¹⁸ Under the State Members' Interim Proposal, carriers could alternatively make a one-time adjustment to their separations factors based on direct assignments. Proposal at p. 9.

Department of Public Service to require Verizon to remove just under \$4.0 million in investments and annual expenses associated with special access services from the company's *intrastate* cost of service. In reaching its decision, the Board found that Verizon had failed to heed FCC's instructions to update annually investments, expenses, and revenues. Instead, Verizon had assigned 70 percent of the costs relating to special access services to the intrastate jurisdiction, while it assigned the majority of the associated revenues to the interstate jurisdiction.¹⁹ If the Department were to examine Verizon MA's assignment of its special access investment, the Department similarly could direct re-assignment and re-allocation of Verizon MA's common investment in telephone plant and related expenses to align more closely the revenues and the cost of special access services. The result of such a directive would be an increase to the Company's return on its intrastate regulated operations. State public utility commissions have unequivocal jurisdiction regarding the way that carriers allocate and assign costs to their regulated intrastate operations.²⁰

Therefore, it is possible to posit an alternative to Verizon MA's potentially confusing representations about the health of its intrastate operations. Incorporating one of the two elements of the State Members' Proposal, specifically the allocation of the local loop investment, could render Verizon's regulated operations profitable. The second element requires relevant data for special access revenues and investment. If the Department were to adopt the second element of the State Members' Proposal, the net income result would be even higher. The

¹⁹ *Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., d/b/a Verizon Vermont*, State of Vermont Public Service Board Docket No. 6959, Order, Order entered 9/26/2005, at Section 53.

²⁰ The FCC stated: "[a]lthough not required to do so, many state commissions followed these [FCC's cost assignment] rules for intrastate ratemaking purposes." See *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 0721; *Petition of BellSouth Telecommunications, Inc. for Forbearance under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342, *Memorandum Opinion and Order* released April 24, 2008 (FCC 08120), para. 17 (emphasis added).

Attorney General offers this analysis to present an alternative to Verizon MA's depiction of the profitability of its intrastate regulated operations, to demonstrate that Verizon MA is likely earning a positive return on its intrastate investment if costs are allocated appropriately, and to counter the Company's assertions that adequate remedies for Western Massachusetts should be limited because of its financial condition. Verizon must offer much more financial detail for the Department to reach that conclusion.

V. CONCLUSION

The Department, pursuant to the factual determinations and legal conclusions urged herein by the Attorney General, should 1) require Verizon to complete repairs to open plant in 31 wire centers by October 31, 2010; 2) require annual reports by Verizon to ensure a continued focus on closing open plant; 3) require an independent audit of the condition of the network and resources that Verizon MA allocates to Western Massachusetts; 4) consider changes to the current service quality plan and modify the SQI for Western Massachusetts; 5) adopt recommendations presented in the Department's hypothetical service quality index to establish economic incentives; 6) direct Verizon MA to improve the information that it submits regarding service quality; and (7) adopt all other Attorney General recommendations in this brief as they are in the best interests of Verizon's customers.

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