



THE COMMONWEALTH OF MASSACHUSETTS
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August 10, 2009

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station, 4th Floor
Boston, Massachusetts 02110

RE: DTC 08-12, Form 500 Petition

Dear Ms. Williams:

Attached please find the Attorney General's Reply Brief in the above referenced matter. The Attorney General appreciates the opportunity to provide comments in this matter.

Respectfully Submitted,

/s/

Sandy Callahan Merrick
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Petition of Verizon New England Inc. For)	
Amendment of the Cable Division's Form)	
500 "Cable Operator's Annual Report of)	D.T.C. 08-12
Consumer Complaints")	
)	

**REPLY BRIEF OF
THE ATTORNEY GENERAL**

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

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I. INTRODUCTION

The Attorney General submits this Reply Brief to the Department of Telecommunications and Cable (“Department”) in response to the Initial Briefs submitted on July 27, 2009 by Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon MA”), the Towns of Watertown and Tyngsborough (“Watertown/Tyngsborough”) and the Joint Commenting Parties,^a and the letter in place of a brief filed by the New England Cable and Telecommunications Association, Inc. (“NECTA”). The Attorney General supports the arguments made by the Joint Commenting Parties concerning the Department’s legal authority to require community-specific subscriber count data and the usefulness of reporting subscriber numbers. Specifically, the Attorney General agrees that the reporting of subscriber totals improves the remediation of customer service complaints and other consumer issues. Joint Commenting Parties Initial Brief, p. 5.

II. THE DEPARTMENT HAS THE AUTHORITY TO REQUIRE MUNICIPAL SUBSCRIBER COUNTS

The Attorney General agrees with the Joint Commenting Parties that the Department has broad rulemaking authority as shown by the clear language of G.L. c. 166A, § 16. Joint Commenting Parties Initial Brief, p. 6. Further, under section 10 of G.L. c. 166A, the Department shall proscribe forms which describe the complaints of subscribers “received during the reporting period and the manner in which they have been met, including the time required to make any necessary repairs or adjustments.” G.L. c. 166A, §10. This language provides clear legislative intent that the Department will assist with consumer protection and complaint

^a The Joint Commenting Parties include the Towns of Andover, Brimfield, Brookline, Canton, Dedham, Grafton, Lexington, Mansfield, Mendon, North Attleboro, Orange, Sandwich and Wellesley, the Cities of Chelsea, Easthampton, Fitchburg, New Bedford, Newton, Revere, and Springfield, Massachusetts Municipal Association, Arlington Community Media, Belmont Community Television, Inc., Boston Community Access and Programming Foundation, Inc., Braintree Community Access and Media, Inc., Cambridge Public Access Corporation, Lexington Community Media Center, Lowell Telecommunications Corporation, Somerville Community Access Television, Inc., Wellesley Access Corporation, Watertown Community Access Center, Worcester Community Cable Access, Inc. and MassAccess. Joint Commenters Initial Brief.

reporting matters. Joint Commenters Initial Brief, p. 7. Verizon MA asserts that G.L. c. 166A, §10 does not give the Department sufficient authority to require the submission of municipality-based subscriber information. Verizon MA Initial Brief, pp. 3-4. However, in order to assess the significance of the number of complaints that are filed annually with the Department, it is essential to know the quantity of subscribers. Knowing that three complaints were filed in a given town would mean very different things if there were 30 subscribers or 3,000 subscribers.

The Attorney General concurs with Watertown/Tyngsborough that “[t]he collection of subscriber numbers is an essential element of evaluating and digesting the meaning of complaint information, and its collection and dissemination is therefore reasonably implied by the powers granted to the DTC by c.166A, §10.” Watertown/Tyngsborough Initial Brief, p. 4. The Attorney General also concurs with Watertown/Tyngsborough that “even though G.L. c.166A, §10 does not expressly authorize the reporting of subscriber numbers, such power is necessary and reasonably implied within the overall statutory scheme of G.L. c.166A.”

Watertown/Tyngsborough Initial Brief, p. 6. Furthermore, the Department’s interpretation of its authority and the current Form 500 requirements as promulgated in 1999 should be given great deference. Watertown/Tyngsborough Initial Brief, p. 7, citing *Norwood Hosp. v.*

Commission of Public Welfare, 417 Mass. 54, 58 (1994).

III. Verizon MA Has Not Provided Evidence that the Reporting of Subscriber Counts on the Form 500 Impedes its Ability to Compete in Massachusetts or will Otherwise Negatively Impact Competition

Verizon MA claims both that it has successfully brought competitive cable television services to Massachusetts and that its efforts to compete are frustrated by the Form 500 requirement of subscribership data. Verizon Initial Brief, p. 2 and p. 4. At the outset it is important to recognize when Verizon chose to enter Massachusetts, it did so presumably with

full knowledge of the existing regulations and requirements, including the long-standing Form 500 requirement.

Almost ten years after the promulgation of these rules, Verizon raises several concerns regarding the Form 500 and its potential impact on its business in Massachusetts as well as its impact generally on cable competition. According to Verizon MA, the Department is the only regulatory body that requires the public disclosure of the quantity of subscribers. Verizon MA Initial Brief, p. 5. That distinction does not in and of itself make such disclosure poor policy. Different states have different policies and regulate cable television in vastly different ways. The Form 500 requirement should be considered in the context of the Massachusetts statutory scheme for the licensing and regulation of cable television services which involve both the Department and local cities and towns. *See* G.L. c 166A. Importantly, the cities and towns have indicated that the information is important to meeting their licensing obligations for their communities. Indeed, the Joint Commenters point out that subscriber count data assists local issuing authorities with other functions. Joint Commenters Initial Brief, p. 9. Those functions include determining cable company PEG Access payments and calculating franchise related costs. *Id.*^b

Verizon MA next asserts that “subscriber data becomes extremely valuable to incumbent operators that seek to frustrate Verizon’s efforts to gain a foothold in the cable television market.” Verizon Initial Brief, p. 4. Verizon MA also raises the concern that the data enables “monopolist incumbents” to better target marketing activities and impede competition. Verizon Initial Brief, p.12. These concerns are disputed by the NECTA in its comments, where the organization states:

Second, NECTA's silence on the merits should not be taken to imply acceptance of Verizon’s claims that it has experienced significant competitive harms associated with the current Form 500 process. In a dynamic competitive marketplace where participants can pay close attention to sales and disconnection

^b Subscriber counts, at a minimum, must be provided to local issuing authorities for these purposes.

figures, deployment of marketing resources and promotional pricing strategies, disclosure of subscriber numbers up to a year following the launch of competitive services in a given area has little if any value to an incumbent operator seeking to devise strategies to defend its core business.

NECTA Letter in Place of Initial Brief, p. 2

Verizon's FIOS markets are known and its advertising presence can be discerned. One can reasonably deduce that wherever Verizon MA has established a FIOS presence and wherever it is marketing its FIOS product, presumably Verizon MA seeks to attract customers. It is not a competitive secret that, given the choice, Verizon MA would prefer to attract a new customer or to retain an existing customer than to forego such a business opportunity. The information in dispute does not disclose where Verizon MA may be planning next to deploy FIOS facilities, nor the specific addresses, identities, or expenditures of its FIOS subscribers. The disputed data simply provide the quantity of subscribers in a municipality *as of the previous year*. One can reasonably assume that in any town in which Verizon has a franchise, it seeks to increase its subscribership, whether that be from one customer to two customers or from 50 customers to 5,000 customers.

In addition, targeted marketing could well enhance (rather than impede) competition by raising consumers' general awareness of the prices, terms, and conditions for competitors' services, thereby leading to more informed decision-making and potentially more robust competition among suppliers. Verizon has not demonstrated in this proceeding that marketing by the incumbent cable company would thwart competition. Instead, if the result of the availability of data is that Verizon MA needs to compete more aggressively, that would further not hamper competition.

Furthermore, the Attorney General agrees with the Joint Commenters that access to subscriber count data is essential to determine the extent of competition in Massachusetts

communities. Joint Commenters Initial Brief, p. 8. Without subscriber counts, it will be difficult for the Department to determine the level of competition in the Massachusetts market. *See id.*

Finally, Verizon MA is concerned that public stock analysts use the Massachusetts data “in an effort to divine inevitably inaccurate conclusions about Verizon’s performance elsewhere.” Verizon MA Initial Brief, p. 6. Verizon MA does not suggest the Form 500 data is inaccurate or difficult to decipher but rather that it may be misinterpreted and used by Wall Street to paint an unfair or unfavorable picture of Verizon’s performance. The Attorney General is not aware of any prohibition on Verizon MA educating stock analysts about the potential limitations of the Massachusetts data. The solution to this concern is more discourse and discussion regarding the data, not, as Verizon MA suggests, making less information available. The fact that some may misinterpret information is not a reason to prevent the disclosure of such information.

IV. CONCLUSION

The Attorney General welcomes the diversity and expanded offerings that the presence of multiple suppliers brings to consumers. *See* Verizon Initial Brief, p. 2. The Attorney General, however, is not persuaded that the emerging cable competition in Massachusetts is any less robust than in other Verizon-served states as a result of the Department’s reporting requirements. Verizon MA has its own incumbency advantages by virtue of its ubiquitous telecommunications network and customer relationship with the majority of households in Massachusetts. Indeed, the Attorney General is hopeful that cable companies and Verizon MA market not only to each other’s customers but also to the underserved and unserved customers in Massachusetts in pursuit of customers throughout the Commonwealth.

Consumer protection continues to be of paramount importance to state regulators, and access to reliable and timely data is essential to enable regulators and interested parties to ensure that consumer protection goals are met. The Form 500 subscriber data is also important to the municipal licensing authorities to meet their obligations to their communities and can inform state regulators and policy makers of the level of competition in Massachusetts. In addition to the benefits of publicly available subscriber data, Verizon MA as the moving party in this proceeding has not sufficiently demonstrated the potential harm to its interests or to the competitive marketplace as a whole. Therefore, Verizon MA's petition should be denied.

DATED August 10, 2009

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

FORM 500 PETITION

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D.T.C. 08-12

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, dated at Boston this 10th day of August, 2009.

/s/

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