

October 20, 2015

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

Re: Regulation Review Pursuant to Executive Order No. 562 To Reduce Unnecessary Regulatory Burden¹ for 207 CMR 2.00, 3.00,4.00, 6.00 and 10.00

Dear Madam Secretary:

I. Introduction

The City of Boston² (“Boston”) respectfully submits these comments for the consideration of the Department of Telecommunications and Cable (“Department”) in its “Regulation Review” project identified above. Specifically, Boston files these brief comments in response to the Hearing Officer’s Recommendations for changes, pursuant to the Executive Order, in 207 CMR Sections 2.00, 3.00,4.00, 6.00 and 10.00 .

The Mayor of the City of Boston is responsible for cable television licensing in Boston and therefore has a substantial and direct interest in the Department’s review of, and potential amendments to, the licensing process, the regulations governing cable licensing, and the consumer protection standards for cable service operations in the Commonwealth. Moreover, Mayor Martin J. Walsh, from the start of his term as Boston’s 54th mayor, has made it clear: “My administration will work hard to improve the speed and reliability of broadband in Boston.”³

Like Governor Baker, and the Department, the City of Boston is prepared to engage in regulatory streamlining that will bring more and faster broadband to all Bostonians. The City will only do so, however, and hopes that the Governor and the Department will

¹ See Office of the Governor, Commonwealth of Massachusetts, Executive Order No. 562 (Mar. 31, 2015) (“Executive Order”).

² The City, incorporated as a town in 1630 and as a city in 1822, exists under Chapter 486 of the Acts of 1909 and Chapter 452 of the Acts of 1948 of The Commonwealth of Massachusetts which, as amended, constitute the City’s Charter. Martin J. “Marty” Walsh is the City’s fifty-fourth mayor. The Mayor is the chief executive officer of the City and the Issuing Authority for all cable licenses. He has general supervision of, and control over, the City’s boards, commissions, officers, and departments. The City’s budget for all departments and operations, except the School Department and the Boston Public Health Commission, is prepared under the Mayor’s direction

³ *Walsh seeks faster Internet for Boston*, Boston Globe, February 14, 2014 . Available at <https://www.bostonglobe.com/business/2014/02/14/walsh-promises-faster-internet-boston-maybe-even-fiber/7U1xhpp7GimxrJZjK49aAP/story.html> <https://www.bostonglobe.com/business/2014/02/14/walsh-promises-faster-internet-boston-maybe-even-fiber/7U1xhpp7GimxrJZjK49aAP/story.html> (last visited October 19, 2015).

follow suit, when such streamlining results in consumer benefits in terms of services available, and results in the increased protections that are to be found in a competitive marketplace for broadband prices and services.

Boston offers its experience as being illustrative when it comes to removing regulatory protections based on the promise of illusory competitive offerings.⁴ Such swaps have for too long been standard operating procedure. We hope that the Department will not repeat that oft made mistake.

II. Benchmark for Change

Boston fully supports the goal of the Executive Order that government must on a regular and ongoing basis examine its regulations to ensure that regulatory burdens do not "... impose[d] unnecessary cost(s), burden(s) and complexity...."⁵

Boston suggests that there be a second prong to this test, otherwise change for the sake of change alone could be justified. Boston suggests that all change must be measured against the threshold benchmark that the regulatory relief far outdistances any potential deterrent to consumers, and that the benefit of the change be shared between the regulated entity and that entity's consumers. The presumption must always be to preserve consumer's benefit. This is especially true when Boston and the Department are the only entities in a position to protect consumers. It is a role that the City of Boston takes seriously. Our experience with the Department, as reaffirmed by the Hearing Officer's recommendations, is that the Department shares this view.⁶

III. Please Accept Late Filed Comments

Boston also calls on the Department to leave open the record for other local governments in Massachusetts to add their thoughts. While Boston appreciates the speed with which the Department seeks to respond to the Executive Order, the Department must appreciate that many local governments cannot respond in such shortened periods of time as the two week comment period in the instant matter. Two weeks is just too short for the majority of the Commonwealth's local government to notice citizen advisory committee members,

⁴Boston takes great issue with the numerous industry comments that there is meaningful competition in the relevant marketplaces. Boston, as confirmed in 2012 by the FCC, like most of the larger cities in the Commonwealth, has bit a single broadband provider. *See e.g.* In 2001, the Federal Communications Commission concluded from press statements issued by a new competitor as to its planned service area, statements that would never be honored, that the incumbent cable system in Boston, was "subject to effective competition" and revoked the certification of the local franchising authority to regulate the basic service tier rates. (*Cablevision of Boston, Inc.*, 16 FCC Rcd 14056 (2001) ("Bureau Order"), *application for review denied*, 17 FCC Rcd 4772 (2002)) On April 6, 2012 following years of litigation the FCC found that the reasons for the 2001 revocation no longer pertain and overturned its findings and granted the City's petition. *See Petition of the City of Boston, Massachusetts, For Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC (CUID MA0182)*, 27 FCC Rcd 3763 (2012) available at <https://www.fcc.gov/document/boston-petition-recertification> (last visited October 19, 2015).

⁵ *See* Executive Order.

⁶ As explained in greater details *infra*, in the instant case, much of the Department's commitment to consumer protection can be found in its refusal to adopt wholesale the deregulatory proposals of the various industry commenters and to maintain that those that seek to remove a regulatory consumer protection have the burden of showing its removal will enhance broadband deployment and competition that in tandem with the remaining regulations provide both regulatory and marketplace protections for consumers.

place the item on their monthly agendas, and solicit policy input from volunteer citizen activists.

IV. Current Regime Does Not Impose Unnecessary Costs, Burdens or Complexity.

The most important recommendation of the Hearing Officer that may be lost on some, but not the City of Boston is that the current regulatory regime in the Commonwealth works to the consumer's benefit without imposing undue burdens on providers such that only nominal recommended changes are suggested. Boston agrees with this assessment so long as our support is not read to imply that the regulatory environment, either locally or nationally, is working.⁷

With the appreciation that the federal government has preempted much of the Department's authority⁸, the City of Boston has found that the existing Massachusetts cable television licensing and regulatory framework work reasonably well. Boston therefore opposes any weakening or abbreviation of the regulations as urged by some of the commenting parties absent a definitive showing of consumer benefit.⁹ In summary:

Given the growing importance of cable and telecommunications services to the public:

1. The Department should not streamline or weaken the existing and very simple regulations for billing and termination;
2. The Department should not streamline or weaken consumer protections for other cable and telecom customer service.

Given the complex, important and time-consuming nature of initial and renewal cable franchising:

1. The Department should not streamline, abbreviate or weaken any of the existing licensing timetables or procedural regulations.

What follows are the City's specific reactions to the proposed changes proffered by the Hearing Officer.

V. Section 2.00 – Quarterly Complaint Forms Are Not a Burden

⁷ See e.g. discussion of basic cable rates in Boston following an erroneous finding of effective competitive *infra*.

⁸ Boston would suggest that as part of determining what in the Commonwealth's regulatory structure imposes unnecessary costs, burdens and complexity on operators, that the Department might also offer an assessment of what at the federal level imposes those same burdens on consumers. The Department could then by means of petition to the FCC, supported by the Department's fellow state regulators, local government and consumer advocates seek to reduce such burdens.

⁹ For example, Boston strongly disagrees with Verizon's claim that "Competition Has Rendered Many Department Rules Obsolete and Counterproductive And The Department Should Eliminate Them." Comments of Verizon, New England, Inc. (filed Aug. 24, 2015) at p. 3. Research performed for the City of Boston by Front Range Consulting documented that Comcast, on being freed from the FCC rate regulation process by the FCC has collected from Basic Service customers approximately \$24 Million more than it charged neighboring Basic Service customers over the time period of 2008 through 2011. A copy of the study may be found at <http://apps.fcc.gov/ecfs/document/view?id=7021903701> (Last reviewed on Oct. 19, 2015). While Verizon might cite that the percentages for CATV competition is higher today in the Commonwealth than ever in no small part due to the company's expanding its FiOS TV service to 113 communities today, it should not be lost on the Department that the Commonwealth's capital and most populated city, Boston, is not one of those communities.

The changes proposed in Section 2.00 are for the most part simply amendments to have the regulations reflect the change in the name of the Department. Boston has no difficulty with these changes either here or in Section 3.00, Section 6.00 or elsewhere in the project.

A. Annual versus Quarterly Reports

In Section 2.00, the Hearing Officer recommends that a cable licensee file its Complaint reports with the Department on an annual, as opposed to quarterly basis. (*See* proposed section 2.03). Notwithstanding DTC policy changes allowing annual reporting of complaints pursuant to DTC policy orders, Boston opposes regulatory amendments that would further establish annual complaint reporting. While individual consumer complaints are often addressed on a one-on-one basis, or through the intervention of cable offices such as the Boston Cable and Broadband Office, or technology responses such as BOS:311, systemic issues with billing or service complaints can only be seen in system wide consumer complaint forms. For this reason, Boston questions whether an annual report is sufficient.

As proposed, a systemic consumer complaint issue, the type that is often identified in such reports, might go unaddressed for upwards of 15 months before local franchising authorities or the Department are put on notice. The duration comes from a combination of the report being annual and the report not typically filed until 30 to 60 days following the last quarter for which statistics are offered.

Because of this potential for delay in addressing systemic complaints, Boston would oppose the reports being delayed from a quarterly to annual basis. Boston is open to the employment of alternative electronic means to share these reports with the Department and Issuing Authorities, but Boston is convinced that such quarterly reports do not impose an unreasonable burden on the licensee. Most cable licensees' software is already designed to provide franchise payments on a quarterly basis, and bills on a monthly basis. If we are serious in our commitment to protect consumers, why would we ensure that the licensee can bill on a monthly basis, pay their franchise fee on a quarterly basis, but report on consumer complaints on an annual basis?

Boston is also convinced that most operators want to address consumer complaints and that no one can address consumer complaints better than the licensee. Still, the licensee can address complaints only if it has notice of such issues. If the licensee is required to file a Complaint report on a quarterly basis, the licensee is on notice. The licensee can address the issue, or by ensuring they are on notice, provide the consumer with one of two options to ensure compliance: regulation or litigation.

Finally, the record is barren of documentation that quarterly complaint forms impose an unnecessary cost, burden and complexity or that shifting the reporting period from quarterly to annual basis will remove or reduce such a burden.

VI. Section 3.0 – Public Solicitation Ensures Transparency and Should be Maintained.

The Hearing Officer recommends name changes in Section 3.0 to make the rules consistent. As mentioned before, Boston has no issue with these recommendations.

The Hearing Officer also recommends the removal of a publication requirement for initial licensing solicitation of applications¹⁰ and to empower Issuing Authorities to employ electronic filing¹¹. Boston very much endorses electronic filings, however, Boston does not see a benefit from not informing the public, through local advertising, of the solicitation of initial license applications. Issuing Authorities represent their community in dealing with cable licensees, but that does not mean that every effort should not be made to ensure that the process is as transparent as possible and that the community is aware of the Issuing Authorities' actions on their behalf.

Much like the Complaint reports, Boston is not opposed to updating the requirement for publication in the instant matter to capture the benefits of the new electronic data age in which we live. But to be consistent with the benchmark Boston proposed above, the shift away from publication must show it is to the consumers benefit. Boston does not believe that any such test is met here. Boston does not believe the burden and expense of publication is so great that its removal is warranted when measured against the potential for loss of transparency and community involvement.

VII. Section 6.0

The City has no objections to the name and title changes outlined in the Hearing Officers' recommendation.

VIII. Section 10.8 – Interest Rates Serve as Deterrent to Unwarranted Security Amounts

The Hearing Officer in Section 10.8 proposes a reduction in interest paid on cable consumers security deposits. Boston does not agree with the suggested changes. The reduction in interest rates is not consumer friendly and is a reaction to current economic times that may not be reflected in the future.

There is no justification in the record to reduce the interest rates paid on security deposits, but there is clearly a justification to have interest paid at a higher rate than the commercial marketplace. The higher the interest rate, the greater the deterrence in having cable operators require too large a security deposit. It is one of the few marketplace safeguards that the Department can maintain as a means to protect consumers.

Parties such as Verizon argue "...there is no need for rules regarding late charges, termination notices, return check charges or security deposits in the CATV...[for in] a competitive market, retaining customers is ample incentive for service providers to adopt fair and reasonable policies." Since Boston does not have the benefit of such a fully competitive marketplace, such a claim is misplaced. Even were Boston the subject of a

¹⁰ The deleted language reads: "License applications shall be solicited by publication of a notice in a newspaper of general circulation in the city or town soliciting the applications at least once in each of two successive weeks, the first publication being not less than 60 days before the filing deadline for receipt of applications. Such notice shall also be published not less than 60 days before the filing deadline in one trade journal selected from a listing on file with the Commission. No applications may be filed after the issuing authority's final deadline for applications has passed.

¹¹ See proposed changed in Section 304.5 and Section 306 2.

fully competitive marketplace, the change does not meet our test that all changes must clearly document that they are removing an unnecessary cost, burden and complexity and that such removal does not come at the expense of the Commonwealth's consumer. Since in the instant matter, the claimed burden of the interest rate is self-regulated by the amount of deposit required by the operator, but the consumer protection standard would otherwise be fleeting, the proposed change has not met its burden.

Conclusion

Boston fully supports the goal of the Executive Order that government must on a regular and ongoing basis examine its regulations to ensure they impose no unnecessary cost, burden and complexity. Boston further believes that in making any such change, the threshold benchmark must be that the benefit for such change must far outdistance any potential detriment to consumers. Protecting consumers while promoting broadband deployment and choice are roles that the City of Boston takes seriously. Our experience with the Department, as reaffirmed by the Hearing Officer's recommendations, is that the Department views its role similarly. We look forward to working with the Department on these and other issues in the years to come.

Please do not hesitate to contact me should you have any questions regarding this submission.

Yours truly,

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