

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

**IN RE: VERIZON SERVICE QUALITY IN
WESTERN MASSACHUSETTS**

DTC 09-1

INITIAL BRIEF

LOCAL 2324, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

June 18, 2010

**Charles Harak
Darlene Wong
7 Winthrop Sq.
Boston, MA 02110
617 988-0600**

TABLE OF CONTENTS

PREFACE	i
I. Introduction and Summary of the Argument	
II. Summary of the Proceedings	5
III. The Record Demonstrates That Many Towns in Western Massachusetts Suffer from Inferior and Inadequate Service	6
A. There is Extensive Evidence of Service Quality Problems, Particularly in Inclement Weather	8
B. There Is Substantial Evidence Regarding the Depth and Breadth of the Service Quality Problems	17
C. The Department Should Give Little Weight to Verizon’s Customer Surveys, Especially in Light of the Extensive Testimony from Actual Customers	25
D. Many Towns Do Not Have Competitive Suppliers or Wireless Service	27
IV. Verizon Has Not Invested Adequately in Western Massachusetts, and its Preferred Business Model Militates Against Adequate Future Investment in Wireline	31
A. Substantial Motivation for, and Evidence of, Lack of Investment	31
B. The Company’s Remedial Steps Are Insufficient and Reactive	43
V. The Department Has Full Legal Power to Order an Appropriate Remedy	44
VI. The Department Should Order a Thorough, Independent Audit of the Infrastructure in Western Massachusetts and Monitor Implementation of Needed Repairs	52
VII. The Department Should Revise the SQIs and Reporting Requirements to Ensure Adequate Service, Especially in the Small Towns of Western Massachusetts	57
VIII. Conclusion	59

PREFACE

“I believe that once this investigation was started,
that the company knew that they were going to have to do something.”

“I would believe to my core that once this is over and done with, if there is nothing left, . . . some
kind of monitoring device, that it would absolutely go back to the way it was before.”

Tr. 1: 118-119 (testimony of John Rowley, Business Manager, IBEW Local 2324)

I. Introduction and Summary of the Argument

This case presents the Department of Telecommunications and Cable (“Department”) with an unusual challenge: how to ensure that Verizon New England, Inc.,¹ the dominant provider of wireline telecommunications service in Massachusetts, provides adequate service quality in western Massachusetts, particularly in the smaller towns that are common throughout the four western counties. The Department has received a complaints from several towns and numerous individuals throughout western Massachusetts, demonstrating a consistent pattern of service problems: phones that fail to work when it rains; frequent static, clicking or humming on the lines; and difficulty being heard by, or hearing, the person on the other end of the call. Moreover, several witnesses testified to the fact that repair personnel often make repeat visits, sometimes stating that the problem cannot be fully addressed due to the age or condition of the infrastructure.² The Department’s challenge is only heightened by the fact that Verizon claims to be losing money in Massachusetts, and by corporate goals that favor investment in FiOS over investment in the copper wire infrastructure that serves western Massachusetts.

¹ Verizon New England, Inc. does business in the Commonwealth as Verizon Massachusetts and, in this brief, will be referred to simply as Verizon, unless some other Verizon corporate entity is specifically referenced.

² *See, e.g.*, Order Opening Investigation (June 1, 2009), at 6 (citing Hancock Hearing Transcript, at 6-7 & 31).

The Department³ has been receiving complaints about Verizon's service quality in western Massachusetts since at least 2006. Order to Open Investigation ("OOI"), at 1. As the OOI notes, the Department received a complaint from the Selectmen of the Town of Middlefield on January 27, 2006, and opened an investigation into service quality provided by Verizon (DTC/DTE 06-6) that resulted in a finding:

that the quality of service provided to Middlefield . . . was 'unjust, unreasonable, and inadequate . . . and that Verizon's practices and equipment [were] unsafe, improper and inadequate.'

OOI, p. 2 (quoting Middlefield Order, at 1).

Subsequently, the Selectmen of the Town of Hancock filed a formal complaint on May 14, 2007, docketed as DTC 07-2; the Selectmen of the Town of Rowe filed a formal complaint on August 31, 2007, docketed as DTC 07-5; Verizon customers in the Town of Shutesbury filed a petition alleging inadequate service quality (not docketed, pending the opening of the current docket); and the Selectmen of the Town of Egremont filed a complaint on March 5, 2009. OOI, at 2 - 4.

In the OOI, the Department preliminarily found that the monthly service quality index reports filed by Verizon appeared to "indicate higher levels of trouble reports in western Massachusetts than in other regions of the Commonwealth." OOI, at 3. The record in this docket fully supports that preliminary finding. The individual dockets opened for Hancock and Rowe contained evidence that, at least for some customers, "every time it rains or it's damp

³ Here, and throughout this brief, "Department" refers to both the current DTC, and, as to pre-2007 agency decisions and orders, the predecessor Department of Telecommunications and Energy, to the extent that it had jurisdiction over telecommunications companies prior to the agency reorganization embodied in Chapter 19 of the Acts of 2007.

weather the 911 phone system stops working in some . . . homes;” that there is frequently noise on the line including static, hums and other voices; that customers experience service outages; and that customers can wait for days to have their service restored. OOI, at 5 - 7. Similar complaints were made by residents of Shutesbury and Egremont. OOI, at 7 - 8. Thus, even before the Department formally opened the present docket and held evidentiary hearings, there was extensive evidence that “customers experience frequent line noise and service outages, particularly after wet weather, and that it may take several days before the quality of service problem is addressed by Verizon.” OOI, at 10. The subsequent public and evidentiary hearings only added that much more evidence that customers in many parts of western Massachusetts suffer from inadequate service quality.

The Department sees this present, consolidated investigation of complaints initially filed by individual towns (or customers in individual towns) as “the most efficient method of addressing multiple quality of service complaints.” OOI, at 16. There is remarkable consistency among the complaints filed,⁴ and the Department decided to consolidate its investigation of the several complaints in order to “make the best use of the Department’s limited resources” and also to accommodate the towns in western Massachusetts, most of which “are very small and lack the funding or manpower needed to pursue such a petition on their own.” OOI, at 18. The Department’s consolidation of the individual complaints was thus largely intended as a procedural device intended to facilitate the involvement of the towns in this proceeding and, similarly, to put the Department’s own limited investigatory resources to best use.

⁴ “Each case makes essentially the same allegations regarding issues with Verizon’s quality of service.” OOI, at 16.

Verizon, however, perversely argues that by consolidating the individual complaints, avowedly to assist those towns, the Department has in fact deprived itself of the ability to make town- or wire center-specific findings that would benefit individual towns.⁵ The Department must reject this cynical, logically-absurd and legally-weak argument.

As the arguments below demonstrate, the Department has before it a substantial record supporting the preliminary conclusions it reached in the OOI: many towns in western Massachusetts and many individual customers suffer from inferior and inadequate service quality (§ III. *infra*). Moreover, the evidentiary hearings demonstrated that Verizon does not have adequate incentives to invest sufficiently in the copper infrastructure that serves western Massachusetts. To the contrary, the preferred business model of Verizon Communications, Inc. (the parent company of Verizon New England, Inc.) is built on a FiOS platform, a technology that Verizon has chosen not to bring to western Massachusetts since it was first rolled out six years ago. Moreover, Verizon's strained financial circumstances place significant restraints on its willingness to provide the staffing and resources needed to properly maintain and upgrade the infrastructure in western Massachusetts (§ IV., *infra*).

The Department has adequate legal authority under G. L. ch. 159, § 16 to order an appropriate remedy that will fully address the service quality problems currently experienced by customers in western Massachusetts (§ V., *infra*). Any remedy must take a two-pronged

⁵ See, e.g., Tr. 5: 876, l. 23 to 877, l. 23, where Mr. Vasington argues that the opening of this investigation “was in effect a statement that it would not make findings relative to individual wire center level service quality.” The Department made no such statement. Similarly, despite Mr. Vasington's assertion that by being part of this docket, the towns have given up their right to have findings made specific to the wire centers that serve them (Tr. 4: 636, l. 8 - 23), the towns made no such waiver of rights.

approach. First, the Department should order an independent, third-party audit of the infrastructure in western Massachusetts to ensure that all infrastructure problems (and not just “open plant” issues) are properly identified. The audit should identify the steps that need to be taken to address any infrastructure weaknesses or deficiencies, and the Department must oversee Verizon’s work to make sure all of the identified steps are carried out. This is the only means that will ensure that the infrastructure in western Massachusetts is adequate to meet the needs of Verizon’s customers (§ VI., *infra*). Second, the Department should revise the current Service Quality Plan structure and data reporting requirements so that Verizon will have adequate incentives to maintain its infrastructure into the future and to allow for close monitoring of future performance (§ VII., *infra*).

II. Summary of the Proceedings

The Department issued a Request for Comment (“RFC”) on February 9, 2009, proposing to “open a regional investigation of the telephone service quality (‘quality of service’) of Verizon New England Inc. . . . in Berkshire, Hampden, Hampshire and Franklin counties.” OOI, at 1. The Department received comments from the Attorney General, Verizon, and town officials and residents of towns in western Massachusetts. OOI, at 8 - 10. On June 1, 2009, the Department voted to open the proposed regional investigation and consolidated the previously-opened investigations docketed as DTC 07-2 (Town of Hancock) and DTC 07-5 (Town of Rowe) and formal complaints from the towns of Shutesbury and Egremont that had not been docketed pending determination of whether the regional investigation would be opened. OOI, at 19.⁶

⁶ Notably, the Department neither dismissed these complaints nor in any way purported to

limit the rights that these four towns would have had if the Department had not consolidated them into one docket. This procedural posture of the consolidated docket completely undercuts the position of Verizon's witnesses that these towns somehow lost some of their rights when the Department opened this docket. *See, e.g.*, Tr. 3: 531, l. 1 to 533, l. 2 (Verizon witness Vasington argues that Department cannot make findings as to individual wire centers once regional investigation opened).

The Attorney General entered the case as of right. Local 2324 of the International Brotherhood of Electrical Workers (“Local 2324”), which represents approximately 570 of Verizon’s employees in western Massachusetts, was granted leave to intervene based upon its petition filed August 13, 2009. The towns of Hancock and Egremont participated in the evidentiary phase of the case, through their counsel Jeremia Pollard. The Town of Leverett participated in the evidentiary phase through one of its Selectmen, Peter D’Errico.

The Department held five public hearings in Verizon’s western Massachusetts service territory, prior to the start of the evidentiary hearings. Additionally, it set aside portions of the first two evidentiary hearing days for members of the public to speak.

Six evidentiary hearings were held, the first two in Northampton (March 31 and April 1, 2010) and the remaining four in Boston (April 6, April 12, April 13, and May 21, 2010).

In connection with the evidentiary hearings, the Attorney General presented the testimony of Susan Baldwin, an expert in telecommunications economics, regulation and public policy, and a former Director of Telecommunications at the Department of Public Utilities. Local 2324 presented the testimony of John Rowley, Business Manager of Local 2324; Myles Calvey, Business Manager of Local 2222 of the IBEW; and Scott Vega, Police Chief of the Town of Peru. Affidavits were filed by some twenty residents and officials from various towns in western Massachusetts. Of those twenty, two presented live testimony during the evidentiary hearings: Sherman Derby, Chief of Police for the Town of Hancock, and Charles Flynn, a resident of Lee and a member of the Town of Egremont Technology Study Committee. Peter D’Errico offered testimony on behalf of the Town of Leverett.

III. The Record Demonstrates That Many Towns in Western Massachusetts Suffer from Inferior and Inadequate Service

From the issuance of the initial February 9, 2009 RFC which led to the opening of this docket, the Department has made clear that it is aware of “the significant concern about Verizon’s service quality among telephone customers in many towns in Western Massachusetts.” RFC, at 1.

The Department had already issued its decision in the Middlefield case and “found that Verizon’s service quality [in Middlefield] was unreasonable and required that Verizon comply with certain directives intended to address the areas of concern raised by the town and its residents.” RFC, at

2. In announcing its intent to open a regional service quality investigation, the Department at that early stage noted that “Verizon’s service quality index reports for the past year appear to indicate that trouble reports at the local level are higher in western Massachusetts than in other regions of the state.” The number and consistency of the complaints suggested to the Department that Verizon is not “allocating adequate resources to providing reasonable, reliable service to the cities and towns of western Massachusetts.” *Id.* Thus, one of the key questions the Department must address is whether Verizon is allocating adequate resources to western Massachusetts, given the higher frequency of reported “troubles”⁷ in that region compared to the rest of the state, and in light of a business model that is focused more on building out FiOS and less on maintaining aging copper lines.

As the next sub-sections address, the record overwhelmingly demonstrates that many customers in western Massachusetts, especially those in smaller towns, suffer from inferior service compared to the rest of the state, and that these problems are sufficiently widespread to merit

⁷ “Trouble” refers to a report of a line that is out-of-service (“OOS”) or experiencing problems that affect service, such as static, hum, clicking, not being heard clearly, etc.

remedial action on the part of the Department.

A. There is Extensive Evidence of Service Quality Problems, Particularly in Inclement Weather

“When it rains, it pours” . . . and the phones don’t work in western Massachusetts.

While much more can (and will) be said about service quality in Massachusetts, not even Verizon will be able to controvert that many customers in western Massachusetts have trouble using their phones after a rain, although customers also experience a range of problems that are not explained by the existence of “open plant” that allows rain water to infiltrate the system and corrode lines.

In the initial OOI, the Department highlighted the “near uniformity” of “quality of service complaints” from officials and residents of twenty western Massachusetts towns, singling out comments that focused on the nexus between rain and service problems. OOI, at 13. Verizon witness Sordillo acknowledged that when water gets into the plant, it corrodes, and noise can appear on the lines. He also testified that this creates intermittent problems: when “it gets wet, it is noisy; it dries when the sun comes out.” Tr. 5: 792, l. 17 - 18.

Local 2324 witness Rowley offered similar testimony:

Q: Do you have any comments on the effect of rusted wire on telephone service?

A: Corroded wire could result in every possible OOS [out of service] condition (i.e., no dial tone) as well as service affecting conditions, such as static, crossed lines, intermittent dial, etc. . . .If a corroded line is not attended to for a period of time, the wire can be completely eaten away”

Ev. Exh. 3, at 11.

The parties also agree that when rain gets into the cables, it can cause repeat outages that

cannot easily be diagnosed and repaired. Mr. Sordillo explained the problem in these terms:

[W]hen the water or moisture . . . get into those terminals, they wear away some of the insulation and the connectors start to corrode. When it corrodes and you test it, you do not see a ballistic fault. Ballistic fault means it is broken, you can see it. If it is corroded, it is together, it is noisy, but you can't see it. You can't measure it. You can't go out and say how far away it is and fix it.

Tr. 5: 792, l. 7- 16.

Mr. Rowley drew a direct connection between a degraded infrastructure that allows the rain to get in, and the frequent, repeat outages of which so many customers have complained, noting that “[f]requent outages are likely a result of old cable and equipment being affected by rain.” Ev. Exh. 3, at 12. The fact that much of the cable in western Massachusetts is old and in need of repair and replacement is well known both to front-line employees and their managers, despite Verizon witness testimony during the evidentiary hearings that the age of cable is nearly irrelevant to service quality:⁸

Q: At the public evidentiary hearings, testimony was given regarding deterioration of copper cable as the cause of outages, dropped calls and static on the line. Are you aware of any information that corroborates this public testimony?

A: Yes. for the past six years I have been told by both [Local 2324 union] Members and [Verizon] managers that the copper within Western MA is old and [in] poor condition.

Ev. Exh. 3, at 10 - 11.

Witness Rowley testified that several Verizon managers have repeatedly made statements to the effect that “when the sun comes out, the troubles go away,” including from “Dispatch

⁸ Local 2324 is not suggesting that all cable beyond any specified age is so old that it is inherently defective and in need of replacement. But Local 2324 does maintain that in those instances where customers are experienced frequent, repeated outages and service problems, it is often the case that old cable (and not new cable) is the source of the problem and that Verizon needs to install new cable.

Resource Center (DRC) Area Operations Manager Mike Callahan, I/M first level manager Tony Collier, DRC Director Jack Sordillo, and I/M Director Frank Crosby.” Ev. Exh. 3, at 13. While some of Verizon’s witnesses dispute whether they made those statements, Mr. Sordillo made a statement during the evidentiary not at all inconsistent with Mr. Rowley’s testimony:

We run that test [predictor packages] when it rains. There’s no sense in running it when the sun shines. It is not wet and it won’t show to us.

Tr. 5: 801, l. 12 - 15.

The difference between the positions of Local 2324 and Verizon lies in the question of whether the company is adequately investing in repairs and replacement of corroded cable and degraded plant so as to minimize customer outages and service problems. The weight of the evidence demonstrates that Verizon’s efforts are simply not adequate, even if the Department’s decision to open the Middlefield investigation and the present docket have lit a fire under Verizon that has resulted in recently stepped-up repair efforts. What is not at all clear is whether those efforts will continue once the Department is no longer shining a bright light on the problems in western Massachusetts. Tr. 1: 118 - 119 (Rowley).

Numerous witnesses in this docket testified to the extent of the problem, including at the five public hearings that preceded the opening of evidentiary hearings on March 31 and at the evidentiary hearings. In the OOI, the Department has already summarized the essence of the tpublic hearing testimony⁹, and Local 2324 therefore focuses below on the testimony of two witnesses who filed written testimony on November 9, 2009 and testified on March 31.

⁹ See § V, *infra*, for references to relevant portions of the testimony from the five pre-March 31, 2010 public hearings.

Sherman Derby, who holds the positions of Selectman, Police Chief and Superintendent of Streets for the Town of Hancock¹⁰, noted the “serious concerns regarding the adequacy of Verizon’s service” that he has had to address as a public official. Testimony of Sherman Derby (filed Nov. 9, 2009) (“Derby Testimony”).¹¹ After the Town of Hancock raised its concerns with Verizon, the company relocated one of its mangers, William Dealicio, to work with Chief Derby to address the service quality problems.¹² While for a period of time Mr. Dealicio was meeting with Chief Derby on a weekly basis, Mr. Dealicio “eventually stated that the company had reached an end point where Verizon could do no more to repair Verizon’s equipment because the line are older lines.” Derby Testimony, at 1. Mr. Dealicio also explained to Chief Derby that the reason the 911 system does not work in certain homes after it rains is due to the fact that “the bundle of wires serving a section of Hancock . . . contain copper wires and that the connections corrode over a period of time.” Derby Testimony, at 2. Making the key point that repairs to, rather than replacement of, old and corroded copper cable will not produce a long-term solution, Chief Derby noted:

Verizon would clean the conductors, but [sic - “butt”?] them back together again, put bundles together, remove the rubber boots that were saturated with water and put them back up again. However, Verizon to date has not replaced any of the wires to my

¹⁰ Mr. Derby is the exemplar of a public-minded New Englander, living in a small town of less than 1,000, which requires many of its residents to wear multiple municipal hats simply to keep the town running.

¹¹ Mr. Derby’s testimony was admitted by agreement of the parties. Tr. 1: 31.

¹² Chief Derby described Mr. Dealicio as “a troubleshooter, and evidently he was a pretty good one because they transferred him from New York, New Jersey, wherever.” Tr. 1: 46, l. 6 - 9. Despite his apparent credentials, Mr. Dealicio could not fully resolve the Town of Hancock’s problems, as he was not given the resources to replace the old and corroded copper lines. Tr. 1: 47, l. 7 to 48, l. 5.

knowledge. **Mr. Dealicio stated that the lines need to be replaced to remedy the issues, as they had done all they could to fix the problems without replacing the wires.**

Derby Testimony, at 2 (emphasis added). The Derby testimony well-encapsulates the problems that customers in western Massachusetts have faced for years now. Verizon makes limited repairs (so-called “closing of open plant”), but leaves in place an aging and corroded cables that call for larger investment and replacement if the phones are to work reliably.

Notably, Chief Derby formally complained about the problems he describes in his testimony by letter to Verizon dated October 16, 2006, three years before submitting his written testimony in this docket. Ev. Exh. 1. As Charles Flynn, the witness who testified immediately following Chief Derby, noted, the rain-caused service problems have not been remedied:

Q: Does that problem persist today?

A: Yes, in fact, had it yesterday.

Tr. 1: 66, l. 20 - 21.

Chief Derby also described a troubling incident where noise on the Town’s 911 line affected public safety:

In September of 2007, Julie Williams . . . attempted to contact 911 to request an ambulance for her stepfather. Upon dialing the phone number, she had difficulty hearing the 911 operator over the static on the phone line. Again on September 1, 2007, she called to request an ambulance again, and upon dialing 911, the line was extremely static and she had to ask the operator to repeat himself several times.¹³

¹³ See, also, Tr. 1: 34 -35 for additional testimony from Mr. Derby regarding his concern that inadequate phone service in Hancock interferes with the ability of customers, especially elderly customers, to reach public safety personnel.

Derby Testimony, at 2. This testimony strongly reinforces a point Attorney General witness Baldwin made repeatedly in her written testimony and during her cross-examination: public safety depends on having reliable wireline telephone service. While it is certainly true that the vast majority of phone calls do not implicate public safety, it is equally true that when members of the public need the assistance of police, fire, or ambulance services, they often rely on their wireline phones. Some households do not have a cell; for others, the phone may not be charged at the time it is most needed; and for yet others, the cell phone might not have the E911 capability that allows emergency personnel to immediately identify the caller's location. It is the policy of the United States that wireline communications should promote "safety of life and property,"¹⁴ and the Department should support that public policy by ensuring wireline service in western Massachusetts remains reliable and dependable.

Mr. Flynn, a resident of the Town of Egremont, also provided telling, first-hand testimony about the quality of service in western Massachusetts, particularly in the smaller towns.

A: Whenever you have inclement weather there will be anywhere from one to two Verizon vehicles there conducting repairs at the box on the phone, and that's the best out there. . . . Weather like this , just like yesterday [referring to the heavy March rains], static on the line or a large hum.

Q: On your phone?

A: Yes.

Q: Yesterday?

A: To the point where you don't even bother calling anymore, because you wait three or four days and it will become tolerable.

¹⁴ 47 U.S.C. § 151 (the Federal Communications Commission was established, *inter alia*, "for the purpose of promoting safety of life and property through the use of wire and radio communications.")

Q: Because it dries out?

A: Yes.

Tr. 1: 57, l. 21 to 58, l. 15.

Mr. Flynn's testimony is entirely consistent with Chief Derby's, Mr. Rowley's, and with the testimony of many of the witnesses at the public hearing.s The Department can only conclude that Verizon's infrastructure is old and degraded, and that the repairs the company makes are more in the nature of temporary patches than the more serious investments and replacements that are needed to make sure customers' phones working when they need them to. As Mr. Flynn noted, the problems he describes in his testimony have "been going on since [he] moved in in 1995," and continued through the day of his testimony on the stand. Tr. 1: 66, l. 17 - 24.

There has been no improvement since he moved in 15 years ago. Tr. 1: 67, l. 3 - 7.

Mr. Flynn also provided a very personal insight into why reliable wireline service is so important:

A: [T]he other thing is that my wife is hard of hearing. I have had a child . . . serving in Iraq or Kosovo or Bosnia since 2000, overseas with the military, and there were times they would call home and because the static was so bad, or the humming so bad in the background, my wife couldn't talk to them. . . . So I had to take the conversation and then pass it on to her. That's how bad the connection would be at times.

Tr. 1: 60, l. 19 to 61, l. 5.

Like Chief Derby, Mr. Flynn was aware of at least one instance where problems with someone's phone service potentially carried serious public safety risk:

We had a neighbor across the street whose wife was terminally ill with cancer. . . She experienced complications at home. His telephone failed. And he came over to my house to use my phone to contact the emergency medical authorities.

Tr. 1: 61, l. 8 - 14.

The Department should give serious weight to Mr. Flynn’s testimony, as he has extensive technical experience with communications and technology¹⁵ and also was able to speak on behalf of many other customers in his area, through his role as Chairman of the Town of Egremont Technology Study Committee.¹⁶

The Department is well aware that scores of complaints have been brought forward over the past few years, many of those summarized in the OOI, so Local 2324 will only cite to a few additional witnesses who testified at the public hearings in Northampton.

Wendy Foxmyn, a resident of Northampton and interim town administrator for the town of Leverett, has a folder “containing dozens of complaints from our town of about 1600 residents.” Tr. 2: 249, l.9 - 10. In the opinion of Aaron Goldman, a resident of Shutesbury:

[T]he quality of service could not be worse . . . in fact, many of my neighbors with whom I’ve been organizing for over a decade now in Western Massachusetts didn’t want to spend the time to come here today. In part, because they have regular jobs, but also because we decided many years ago that it’s fruitless to try to motivate Verizon to maintain or repair its severely-degraded, turn-of-the-century, hundred-year-old cooper network.

Tr. 1: 12, l. 10 - 19.

Verizon will no doubt categorize the testimony of Chief Derby, Mr. Flynn, Ms. Foxmyn, Mr. Goldman, and the scores of others who testified at the public hearings or through written

¹⁵ Tr. 1: 64, l. 15 - 23 (“20 years in the Navy as combat officer aboard Navy destroyers, expert Navy Technical Data system...on the Naval Research Advisory Commission...one of the original architects of the technology to be used for the construction of Naval exercises...I designed and built one of the first integrated technology communication systems that was designed specifically for schools.”)

¹⁶ See “Testimony of Charles B. Flynn on Behalf of Town of Egremont Technology Study Committee,” filed Nov. 9, 2009 (with appended e-mails from 11 other Verizon customers).

submissions to the Department as nothing more than noise in the data, the inevitable result for any company that serves so many customers, and point out that the company routinely meets most of the service quality indices. But Attorney General witness Susan Baldwin, who herself served as a regulator and evaluated the meaning and import of consumer complaints, provided a contrary view, one which Local 2324 strongly urges the Department to adopt.

Ms. Baldwin noted:

[T]he fact that Verizon is passing the SQI test doesn't mean that there is adequate service quality in Western Massachusetts . . . [W]e hear endless concerns by consumers that they can't use the phone in the rain, [which] suggests there is something wrong with relying on that [the trouble rate report] as a barometer.

Tr. 2: 273, l. 5- 8 & 274, l. 14 -17.

Ms. Baldwin underscores the difficult decision the Department will have to make, in weighing the abstract data that the service quality reports provide against the real-world experience that actual customers report. Ms. Baldwin more directly addressed this in response to a question from the Bench:

Q: How would you respond to Verizon's testimony . . . 'The testimony of municipalities and individual customers do not show that Verizon's service quality is inadequate, and are not representative of the region as a whole' ?"

A: Back when I worked at the Department, it was my experience that not many people complained, because they didn't know how to. They didn't know if it would make a difference.¹⁷ They didn't want to take the time. So if there were some complaints, we took them seriously because they were often the tip of the iceberg. . . . I have been to hearings in the past; not many people show up. The 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.

¹⁷ In fact, as the testimony of Mr. Goldman notes, many customers are convinced (correctly or not) that making complaint to the Department would not result in any changes in Verizon's conduct. Tr. 1: 12, l. 11 -19.

Tr. 2: 280, l. 13 to 281, l. 9.¹⁸

Local 2324 knows that the problems in western Massachusetts have been long-standing and are sufficiently widespread that strong intervention from the Department is required. Local 2324 urges the Department to adopt Ms. Baldwin's view, based in part on her own experience as a telecommunications regulator, that the level of individual complaints the Department has seen are not the normal and expected result of a company that serves a large number of customers, but are in fact a powerful sign that the Department must act forcefully to address consumer complaints. The very fact that the Department chose to open this investigation reflects an initial presumption on the part of the Department that there are serious service quality problems in western Massachusetts, and the record in this case forms a solid basis for the Department to turn that presumption into findings of fact that will lead to a strong order, as requested below by Local 2324 and separately by the Attorney General. As Ms. Baldwin noted, what makes this case different than so many other service quality proceedings is "the real life, [that] there are people that are really affected . . . people who really have problems, and where there are elderly and emergencies." Tr. 1: 165 - 166. Local 2324 hopes that the Department keeps those customers in mind as it weighs the evidence in this case.

B. There Is Substantial Evidence Regarding the Depth and Breadth of the Service Quality Problems

As just discussed, the Department will need to reach conclusions about the depth and

¹⁸ Mr. Rowley in his rebuttal testimony offered a similar "tip of the iceberg" view, Ev. Exh. 4, at 5 - 6. He noted that it "is highly unlikely that all customers with complaints and problems have been heard from" and that "[m]any customers would not have known about the hearings, and surely many who did know . . . did not attend." In addition, "some people may have believed their attendance would not have led to any service quality improvements."

breadth of the service quality problems that individual customer complaints have brought forward.

Local 2324 witness Rowley, who works in western Massachusetts every day, interacts frequently with Verizon's western Massachusetts managers, and must deal with the complaints of his members that management is not providing them the support and resources they need to get the job done properly, offered this conclusion:

Verizon is not giving its customers in Western MA the same level of service that Eastern MA customers receive. Western MA customers are routinely subject to delayed response, and unresolved problems, including outages lasting for several days. The customers are frustrated and IBEW members are also frustrated at not being able to get managerial approval to complete jobs and buy tools.

Ev. Exh. 3, at 14, l. 13 - 17. Similarly, Ms. Baldwin directly rebutted Verizon's position that there are "relatively few people" served by the "few wire centers" that have service quality problems, and testified that there are in fact "region-wide service quality problems." Tr. 1: 137, l. 1 - 4. Apart from the extent of those problems, Ms. Baldwin added that for "consumers residing in the most remote and most isolated parts of the state, reliable telecommunications service is particularly important to the public safety and welfare." Tr. 1: 137, l. 13 -17.

Much of the concern raised by Mr. Rowley and Ms. Baldwin derives from the fact that western Massachusetts suffers from much higher rates of Reports per Hundred Lines ("RPHL") than other regions of the state. A "trouble" includes service problems such as "no dial tone, intermittent dial tone, static, hum, calls when one party can hear but cannot be heard and vice-versa, cross-talk, and inability to make a call." Ev. Exh. 3 (Rowley), at 15, l. 20 - 23. Verizon itself maintains that RPHL "is the best indicator of the overall health of Verizon Mass.'s network." Tr. 3: 490, l. 9 - 14.¹⁹ Clearly, it is in the best interest of customers that RPHL be

¹⁹ See, also, Tr. 4: 595, l. 10 - 15 (RPHL "is the fundamental barometer of the health of

minimized.

But as Mr. Rowley testified, Verizon's own data, provided in response to IBEW-VZ 2-5, show that the Threshold - 4.0 RPHL level is exceeded far more frequently in western Massachusetts wire centers than elsewhere in the state." For example, for the cumulative period January to November 2008,²⁰ the Boston region reported no instances of wire centers exceeding 4.0 RPHL, and the Metro North region experienced one such instance, yet the Springfield area reported 67 instances of RPHL exceeding 4.0, followed by the Southeast region as a distant second with 26 instances. The Springfield region similarly topped the list in December 2007 [36 instances of RPHL exceeding 4.0; Southeast second at 25 instances; Boston, 3 instances; and Metro North, none] and in December 2006 [Springfield, 48 instances; Southeast, 34; Boston and Metro North, none]. Ev. Exh. 3, at 14, l. 19 to 15, l. 16.

the network").

²⁰ As Mr. Rowley explained in his rebuttal testimony (Ev. Exh. 4, at 4), the wire center data that he reported in his initial testimony (Ev. Exh. 3, at 15) are cumulative from January of each year listed, e.g., the "December 2006" data on lines 3 to 6 of Ev. Exh. 3, page 15 are for the period January through December 2006, and the "November 2008" data on page 15, lines 13 to 16 are for the period January through November 2008. Once Verizon provide Mr. Rowley with data for December 2008, he included that month's data in his rebuttal testimony (Ev. Exh. 4, at 5, l. 3), and these data should be added to the data previously reported in Ev. Exh. 3, at 15, l. 15-16.

Moreover, while Verizon makes much of the fact that it cannot easily report troubles by town, due to the lack of complete alignment between its wire centers and municipal boundaries, Mr. Rowley was able to determine the RPHL data for the wire center (or centers) for many of the towns whose complaints formed the basis for the present investigation. Thus, Mr. Rowley was able to determine that the wire center for Great Barrington (which serves Egremont, and other towns) experienced RPHL rates higher than the statewide average in 34 of the 35 months from January 2006 through November 2008. Ev. Exh. 3, at 17 - 18. In seven of those months, the Great Barrington RPHL rate (which, again, includes troubles in Egremont) was more than double — in one instance, well more than triple — the statewide average RPHL rate.²¹

Mr. Rowley performed similar analyses comparing the RPHL rates for the Williamstown and Pittsfield wire centers (each of which serves a portion of the Town of Hancock) to the statewide average RPHL rates, demonstrating that the Williamstown wire center consistently has much higher RPHLs than the statewide average, although the Pittsfield wire center does not show a consistently worse pattern when compared to the statewide RPHL average. Ev. Exh. 3, at 21 -22. Mr. Rowley's data analysis is thus entirely consistent with the testimony of Chief Derby that only one of the two Verizon exchanges in Hancock (458) experiences serious service quality problems (Tr. 1: 33, l. 16 to 34, l. 2).

Without going into as much detail, Local 2324 simply notes that Mr. Rowley's analyses for the wire centers serving the towns of Leverett (Ev. Exh. 3, at 24 - 26), Rowe (*id.* at 26 - 29), and Shutesbury (*id.* at 29 - 30) showed comparable results. As with Egremont and Hancock, the

²¹ When Mr. Rowley compared the Great Barrington RPHL rate to RPHL rates in various Boston wire centers, the Great Barrington rate was often 5 to 7 times greater.

RPHLs for these three complainant towns were consistently, and sometimes quite substantially, higher than the statewide average RPHLs. Verizon makes the arithmetically correct point that for any average, the individual data points contributing to that average will often fall above or below, and only occasionally precisely on, the average. But against a backdrop where the town officials and residents of the towns of Hancock, Egremont, Leverett, Shutesbury and Rowe have filed numerous and consistent complaints with the Department, the Department should pay close heed to Mr. Rowley's analysis, as it corroborates from a statistical perspective the compelling first-hand reports the Department has received from actual customers.

There has been a long history of service quality problems coming from western Massachusetts. As early as the decision in DPU 89-300, the Department of Public Utilities noted:

As measured by many indicators of service quality, the western region, which consists of the Springfield and Worcester districts, is receiving lower quality service than the rest of the state . . . [T]he Department finds that the quality of service . . . in the western region is inadequate.”

In Re New England Telephone and Telegraph Company, DPU 89-300 (June 29, 1990), at 343, 346. Twenty years later, consumers in western Massachusetts still confront the same problem of inferior service.

While Verizon urges the Department to conclude that service quality problems are few in number and not meriting action by the Department, Attorney General witness Baldwin concluded that “service quality problems are pervasive and persistent.” Ev. Exh. 5 (Baldwin direct), at 91.²²

²² Because the pagination of the confidential and redacted versions of Ms. Baldwin's testimony vary, Local 2324 notes that its page citations to Ms. Baldwin's testimony are to the confidential version. However, Local 2324 has not cited in this any confidential portions of that testimony.

Moreover, Ms. Baldwin found that on some measures, Verizon's Massachusetts operations compare poorly with those of other states, based on ARMIS (Automated Reporting Management Information Systems) reports filed with the Federal Communications Commission. For example, for the period 2005 to 2008:

Massachusetts residential customers consistently have more Repeat Out of Service troubles per hundred lines than residential customers in Connecticut, Illinois (except for 2008), and Washington.

In 2008, the average initial out-of-service interval for consumers served by AT&T Illinois was 22.0 hours in comparison with the average wait of 34.1 hours for Verizon Massachusetts . . .

Ev. Exh. 6 (Baldwin Rebuttal), at 47. Thus, Mr. Rowley's testimony, summarized above, shows that many customers in western Massachusetts reside in towns with significantly worse RPHL than the statewide average, and Ms. Baldwin's just-described testimony implies that Massachusetts customers fare worse than those elsewhere.

There was quite substantial and additional evidence about poor service quality in western Massachusetts. As Ms. Baldwin testified regarding the standard of clearing 70% of troubles in 24 hours, "Verizon MA never meets the standard, let alone the target, for clearing residential troubles within 24 hours. . . ." Ev. Exh. 5, at 50. The actual data from Verizon's own service quality report is attached to Ms. Baldwin's direct testimony as Exhibit SMB-9, and those data show that Verizon generally clears only 50% of troubles in 24 hours (+ or - 2%).

Ms. Baldwin also focused particularly on the clearance rate for customers experiencing Out of Service ("OOS") troubles, and found that in 2009 only 51% of OOS troubles were cleared in 24 hours, leaving almost 14,000 customers waiting more than 24 hours to have their phones restored to working order during that year. Ev. Exh. 6 (Baldwin rebuttal), at 31 & Table 8.

Almost 1 in 4 OOS customers waited more than 48 hours to have dial tone restored in 2008. Ev. Exh. 6, at 32, Table 9. Verizon openly acknowledges that it “often struggles to meet the metric for troubles cleared within 24 hours.” Tr. 3: 488. But that does not lead the company, as it does the Attorney General and Local 2324, to support appropriate remedial actions such as an independent audit of the company’s infrastructure and revisions to the service quality plan.²³

As a corollary to Mr. Rowley’s testimony that many of the small towns in western Massachusetts have significantly higher RPHL than the statewide average, Ms. Baldwin noted that the average RPHL statistics for all of western Massachusetts mask serious problems in particular towns. Tr. 2: 281, l. 21 to 282, l. 9. Ms. Baldwin noted that there is reason for concern when there are so many “hot spots” in western Massachusetts. She identified 27 wire centers serving 57 communities “where service seems to be particularly inadequate,” calling for high-priority remedial action, as an important first step towards a “comprehensive audit of the entire network infrastructure in Western Massachusetts.” Ev. Exh. 6, at 2.

The Department’s own Competition Status Report, Ev. Exh. 12, Figure 20, fully supports the position of Local 2324 and the Attorney General that western Massachusetts customers experience more troubles than other parts of the state. In 2008, the Berkshire region experienced 24.8 trouble calls per hundred lines, an approximately 15% higher rate than the second-highest region (Central, at 21.5), and the worst result reported for any of the 7 reporting regions for the period 2005 to 2008, with the sole exception of Cape and Islands in 2005. Moreover,

²³ Ms. Baldwin provided a useful table summarizing “Trouble Report Clearance Metrics in Selected States,” Ev. Exh. 6, at 76, Table 18. While those 15 jurisdictions have various exclusions (e.g., “none” or “customer request” or “weekends and holidays”), seven of those jurisdictions require at least 79% of troubles to be cleared within 24 hours.

Berkshire's 2006 rate of 26.7 trouble calls per hundred lines is the highest rate reported by any region in any of the four years displayed. As the Department itself noted, "the Berkshire region reported the highest Trouble Call frequency rate for 3 or the 4 years." Ev. Exh. 12, at 29. Not surprisingly, most of the complaints in this case come from the Berkshire region.

Ms. Baldwin appropriately urges the Department not only to focus on RPHL, but also to especially focus on OOS troubles. An out-of-service phone can create additional burdens for customers in more rural areas, because customers in those areas frequently live further from emergency services and often experience longer power outages when storms hit. Ev. Exh. 5, at 38. Elderly customers living alone also may be entirely dependent on their wireline phones as they are the least likely age group to have, or use, cell phones. *Id.* at 39.

Yet from "September 2008 through August 2009, Verizon succeeded in restoring service in under 24 hours to residential customers in Western Massachusetts only 50% of the time," Ev. Exh. 5, at 39. In three of those twelve months, "fewer than 40% of service outages were remedied in 24 hours." *Id.* at 39 - 40. Ms. Baldwin concluded, "Customers are waiting too long to have their basic dial tone repaired. With respect to this metric, Verizon's performance is inadequate." Ev. Exh. 5, at 41.

While the facts about RPHL and OOS restoration times are largely not in dispute among the parties, what remains in serious contention is whether any remedy is called for — Verizon says "no" — and what the nature of that remedy should be. Verizon takes the position that the Department should not, and even that the Department legally cannot, take remedial action regarding specific towns, and that its hands are tied unless it finds that service quality throughout

western Massachusetts is inadequate.²⁴ While the testimony and other evidence in this docket, especially the testimony of Ms. Baldwin, fully demonstrates that there are in fact region-wide problems in western Massachusetts, it is important that the Department not conclude that it is constrained from considering evidence and making conclusions about specific towns.

When Ms. Baldwin was asked what she made of Verizon's argument "that because this is a regional investigation, the Department should not be looking at specific wire center RPHL data and making finding[s] as to those wire centers," she replied:

I didn't find that very persuasive at all ; it didn't make sense to me. There are a lot of municipalities that have complaints. They bring them in. If there are problems with particular wire centers, I'm not a lawyer, but I can't imagine the Department doesn't have the authority to say, as it has done in other proceedings, certainly when I worked with the Department in 89-300, it was an investigation of service quality throughout the . . . state. Yet the Department found the legal authority to say there are problems in Roxbury and the Springfield District. . . . But speaking as a public policy economic witness . . . I hope they [the Department] do make findings both about specific communities and the entire region.

Tr. 1: 174, l. 6 -22.

The Department no doubt recognizes that customers in western Massachusetts are swimming against an economic tide that sweeps companies like Verizon in the direction of making large investments in FIOS while cutting back on investments in less populated areas that appear unlikely to provide comparable (if any) profits. It is the role of the Department, under G. L. ch. 159, § 16, to make sure that service quality is "just, reasonable, safe [and] adequate," even in less urban areas that are swimming against this powerful economic tide. As a first step in so protecting the customers of western Massachusetts, it should find that there are substantial service

²⁴ Local 2324 finds the company's logic on this question almost incomprehensible, and therefore simply refers the Department to Tr. 4: 636, l. 8 to 639, l. 12 for one of the many instances in which Verizon's witnesses attempted to articulate the logic.

quality problems in western Massachusetts.

C. The Department Should Give Little Weight to Verizon’s Customer Surveys, Especially in Light of the Extensive Testimony from Actual Customers

Verizon urges the Department to place great weight on its in-house customer satisfaction surveys. *See, e.g.*, Verizon Direct Testimony, Ev. Exh. 22, at 16 -19. The Department should give the surveys little weight. First, they are effectively a “black box” that other parties were not allowed to fully explore. Second, the results of those surveys do not conclusively establish that customers are all that satisfied with their service. Most importantly, the extensive testimony of actual consumers in this case clearly must be given greater weight than the purported (but impossible-to-examine) opinions of the few score of surveyed customers.

On the first point, “the Attorney General did ask for the raw data responses [,] for the actual customer responses that correspond with their data, and Verizon did not provide the information.” Tr. 2: 360, l. 18 - 21.²⁵ In fact, Verizon takes the legal position that questions regarding who performed the survey for it, and asking Verizon to produce a copy of the contract with that survey firm, are “neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.” IBEW-VZ 10-11.²⁶ If Verizon believes that it need not answer questions from the Attorney General which would allow the Department to determine whether the survey conducted by Verizon’s contractor resulted in

²⁵ *See, also*, Tr. 3: 549, l. 24 to 550, l. 8 (Sordillo agrees that Verizon did not provide the “response to those questions, that is, the things the customers would have filled out.”)

²⁶ *See, also*, Ev. Exh. 44 (AG-VZ 8-4).

unbiased, representative and reliable data, then the Department should give that study no weight.

On the second point, apparently only a small number of customers are surveyed — 350 statewide, and possibly only 50 customers in western Massachusetts. Tr. 3: 545, l. 7 - 11. That is comparable to the number of customers who testified either in person at the public hearings or through written submissions in this case. Such a small sample should not be given much weight. Verizon could not provide any information on which towns had customers who participated in the survey, and the Department thus does not if any of the complainant towns were even represented in the sample. Tr. 3: 548, l. 5 -17. Only customers who had recently received repair or installation service were surveyed, Tr. 4: 717, l. 5 - 9, and only asked “transactional” questions about the quality of the repair or installation service itself. The survey does not ask customers whether they are generally satisfied with the quality of their wireline service. Tr. 4: 719, l. 11 to 720, l. 20. This introduces a systematic bias into the survey, as a customer who reports that he or she is “satisfied” with a recent repair is not saying anything about whether the phone is out of service too frequently, or whether there is too much static on the line. Even if the Department believes that the survey produced valid data, it is important to note that for the years 2004 through 2008, 18% to 19% of the customers who received repair service were not satisfied with that service. AG-VZ 3-37. Local 2324 certainly does not see this as strong evidence that customers are overwhelmingly satisfied with the repair service they receive, and as almost no evidence of the overall service quality in western Massachusetts. Another built-in survey reporting bias is Verizon counts a customer as “satisfied” if the service is rated in any of the highest 3 of the 5 total rating categories. Arguably, that middle category, which many would

equate with “mediocre”, should not have been counted as a passing grade.²⁷

As Ms. Baldwin concluded, “As to the surveys, satisfaction for repair work performed does not necessarily mean that consumers are satisfied with the quality and reliability of their service.” Tr. 1: 142, l. 14 -17. The Department should conclude the same.

D. Many Towns Do Not Have Competitive Suppliers or Wireless Service

Verizon premises much of its case on the proposition that sufficient competition has arrived in western Massachusetts to obviate the need for regulatory remedies for any of the problems identified in this docket. Yet Verizon consistently refused to provide relevant information about the prices offered by the alleged competitors, nor would it provide virtually any hard or credible information about the actual availability of such alternatives as wireless service or cable voice. Contrary to Verizon’s broad assertions, there was substantial evidence showing that while wireless and other alternative services are more now more widely available than five or ten years ago, there is not sufficient competition that actually impels Verizon to provide high-quality service throughout western Massachusetts. If anything, the growing competition has shrunk Verizon’s profits so that it is less willing to invest in needed replacement of aging cable and other degraded infrastructure, while making it more interested in focusing its limited resources on the build out and selling of FiOS in eastern Massachusetts. Local 2324 both challenges Verizon’s factual assertions regarding the extent of competition as well as its asserted beneficial effects on service quality in western Massachusetts.

The Department’s own Competition Status Report, Ev. Exh. 12, provides some sobering

²⁷ See Tr. 2: 279, l. 24 to 280, l. 2 (Baldwin: “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.”)

pictures about the actual state of competition in the Commonwealth, particularly in western Massachusetts. The very first such picture, Figure 1 on page iv, shows that Verizon is the incumbent local exchange carrier (“ILEC”) in 347 of the 351 cities and towns in Massachusetts. Only the small towns of Hancock, Richmond, Granby and Gosnold are served, in whole or in part, by other incumbent carriers. At the level of ILECs, Verizon serves almost every customer in the state and faces no competition. In terms of competitive local exchange carriers, the Competition Status report notes that “as a result of changes in federal regulation in 2005 which made it more expensive to serve the residential market, relatively few CLECs actively market services to residential customers.” Ev. Exh. 12, at vi.

The second such picture, Figure 2 on page v, notes that there are 50 towns which have no cable voice service providers. In the color copies provided by Local 2324, those towns appear in white, and 44 of them are located in either the Berkshire or Pioneer Valley regions that correspond with the four western Massachusetts counties that are the subject of the current investigation. “Many rural customers that live in the 50 communities in Massachusetts that lack any Cable Voice provider have little or no competitive options for Wireline Voice service.” Ev. Exh. 12, at vi. Moreover, “[m]oderate to low-income consumers, including elderly consumers, or consumers who simply want a no-frills, low-cost voice product essentially have only one provider option - Verizon” because those “[c]able providers do not offer basic plans” or do not do so at a competitive price. The Competition Status Report also notes that customers who obtain their voice service from cable providers may lose important consumer protections “such as safeguards from unreasonable disconnection of service and fair resolution of billing disputes.” Ev. Exh. 12, at vi. For all of the reasons just noted, cable voice service should not be considered

to provide a significant enough competitor to Verizon's wireline service so as to discipline Verizon's conduct.

Similarly, wireless service is the least available in western Massachusetts in comparison to other regions of the state. As Figure 4 on page ix of the Competition Status Report shows, almost all of the towns that are without wireless service (shown in white in the color copies provided by Local 2324) are located either in the four counties of western Massachusetts, or in nearby Worcester County towns. (The same is true for towns which have only 1 wireless carrier.) "The zero coverage areas are prevalent across the Berkshire and Pioneer Valley regions."

Ev. Exh. 12, at x. Thus, while 14,600 households "cannot access a signal from any of the five Wireless Voice carriers," Ev. Exh. 12, at viii, almost all of those households reside in the western four counties. A not insignificant and additional number of households in western Massachusetts who have cell phones would suffer from problems of weak signal strength or dropped calls, due to hilly terrain and low tower densities. Ev. Exh. 12, at ix - x. These facts makes it far more likely that residents in western Massachusetts do not own cell phones, because they would derive limited benefit from having one, or might not be able to use it in case or emergency because there is no signal at the time of the emergency.

Attorney General witness Baldwin's testimony is entirely consistent with the Competition Status Report. As she noted, there are parts of western Massachusetts where wireless service simply is not available. Moreover, the elderly, who may more often be in need of voice service to contact emergency personnel, are the least likely to have cell phones and the most likely to "rely on wire lines." Tr. 2: 288, l. 11 to 289, l. 21. She concluded that the "vast majority of households in . . . Western Massachusetts rely on Verizon's landline," Tr. 2: 291, l. 10 - 12, and

urged the Department to rely on its own Competition Status Report and her analyses to find that there is “significant overlap between pockets of poor service quality, and lack of competitive alternatives.” Tr. 2: 290, l. 5 - 14.²⁸

As both Ms. Baldwin and the Department’s Competition Status Report note, “Verizon continues clearly to be the dominant provider in Western Massachusetts.” Tr. 1: 176, l. 14 -15; Ev. Exh. 12, at v. The Department should find that there is not yet sufficient competition in the four western counties that would obviate the need for aggressive regulatory responses to the service quality problems that have been identified in this docket.

IV. Verizon Has Not Invested Adequately in Western Massachusetts, and its Preferred Business Model Militates Against Adequate Future Investment in Wireline

A. Substantial Motivation for, and Evidence of, Lack of Investment

The strongest evidence that Verizon is not interested in investing sufficiently in wireline infrastructure, especially in less densely populated areas such as western Massachusetts, comes from no less an authority than Ivan Seidenberg, Chairman and Chief Executive Officer of Verizon Communications Inc., the parent company for all of the Verizon operating companies.

In speaking to a “Goldman Sachs Communicopia Conference” in September 2009, Mr. Seidenberg responded to a question about his “high-level positioning of the Company.” Ev. Exh. 57 (AG-VZ 4-17), at 1. He responded, in part:

²⁸ In her rebuttal testimony, Ms. Baldwin provided an extensive, cogently-argued and well-documented counter to Verizon’s unsupported assertions that there is sufficient competition in western Massachusetts so as to obviate the need for any remedial action by the Department. Ev. Exh. 6, at 51 - 69. *See, also*, Ev. Exh. 6, attached Exhibit SMB-Reb-C-5 (showing that pockets of service quality problems correspond with areas of little competition.)

On the wireline side . . . We wanted to take a lot of steps to shed the Company of good assets, but they weren't strategic to our long-run view of the business. So you have seen us do that over the last five years . . . Once we finish with that, we will be in a position **where a vast majority of the lines will be covered by what we consider to be the preferred platform, which is FiOS** and what that enables us to do is develop a business model that **has high penetration of video, with video being the anchor product in the bundle.** . . .

When you look at the FiOS architecture, our network doesn't look much different than any over-the-top player that would come into our footprint. **So we can begin thinking about eliminating central offices, eliminating call centers, eliminating garages and doing all sorts of things that change the entire footprint of the company.**

Ev. Exh. 57, at 1 - 2 (Emphasis added). In short, the Seidenberg's corporate vision is based on a FiOS infrastructure that delivers video as its lead product, with the video perhaps bundled with voice services and Internet access. There is nothing in Mr. Seidenberg's vision that should give the Department any comfort that he is interested in maintaining adequate service quality in Massachusetts, or even maintaining garages and call centers. In fact, in response to a question about the "wireline side of the business," *id.* at 7, Mr. Seidenberg replied that "our focus has been fewer lines on a much higher potency platform," referring to the company's "capability" to deliver "high-definition [television] channels" to customers. *Id.*, at 8. To make the point perfectly clear, Mr. Seidenberg stated that "video is going to be the core product in the fixed line business." *Id.* at 9. Nothing in Mr. Seidenberg's Wall Street conference call even hints at a corporate interest in maintaining high service quality in places like western Massachusetts.

The testimony of Mr. Rowley, who sees Verizon's corporate investment policies translated into day-to-day operational practices in western Massachusetts, well-demonstrates the threats that those corporate policies pose to customers expecting reliable and high-quality wireline service. Mr. Rowley noted:

With the onset of FIOS in MA (and New England) , the Company began building its new

technology in areas identified by the Company marketing department as ‘viable.’ . . . Almost immediately, the Company began transferring SSTs and OPT[s]²⁹ to other parts of MA to help build FIOS. Approximately 8 OPTs out of 32 for my entire local were assigned on long term transfers. As many as approximately 35 of 270 SSTs were similarly situated. Until recent months³⁰, this was business as usual in western Massachussts.

Ev. Exh. 3, at 39, l. 12. Thus, Mr. Seidenberg’s corporate goals are writ large in western Massachusetts.

²⁹ “SSTs” are “splice service technicians” and “OPTs” are outside plant technicians.” Mr. Rowley described their duties in Ev. Exh. 3, at 3.

³⁰ Mr. Rowley was no doubt referring to the opening of this docket, which occurred five months before he filed his testimony.

While FiOS was introduced in Massachusetts in 2004,³¹ it has not yet reached the western four counties, and may never do so. At first, managers with whom Mr. Rowley spoke were unsure whether FiOS would extend to western Massachusetts. By 2006, it became clear that it would not. As FiOS continued to roll out in eastern Massachusetts:

everything from hand tools to classroom training were allocated primarily to FiOS areas and to employees permanently assigned to work in FiOS areas.³² Areas such as Western MA that rely on basic telephone service and do not have FiOS suffered as a consequence.

Ev. Exh. 3, at 40, l. 9 - 12. Recently, even the smallest purchases have required the approval of Verizon V.P. Bucciarelli. *Id.*, l. 19 - 21.

Mr. Rowley, and also Locla 2324 witness Calvey (whose testimony is discussed below), offered extensive testimony about Verizon managers who acknowledged the funding constraints arising from the company's focus on FiOS, and the particular limitations it places on investment in western Massachusetts infrastructure.

I have been told directly by current Construction ("CXM") Department director John Puopolo and retired CXM Directors Mary Ann Ryan and Bruce Bader that there was very minimal or no funding for Western MA. . . . They said that [the] Company is heading in the direction of building a fiber network for FiOS . . . [T]hese directors also stated they realized there was need for replacing the copper cable. . . . Because the funding was allocated to FiOS, this was why so many SSTs and OPTs were transferred to work in FiOS areas, and diverted from work in Western MA where the work needed is

³¹ Tr. 2: 400, l. 1.

³² Tr. 2: 405, l. 19 -21 (68 technicians are trained only in FiOS work).

on copper cable. . . .

This policy of directing investment outside of Western MA rather than into Western MA has been the status quo for the past four to five years.³³ During a recent meeting within the last two to four months at the Brookdale garage in Springfield, MA, Vice President Bucciarelli stated that no money is coming to Western Massachusetts and that all available funding was going to continue to be targeted toward FIOS. Mr. Bucciarelli further stated that FIOS would never come to Western MA.

Ev. Exh. 3, at 41, l. 10 to 42, l. 8.

Myles Calvey, Business Manager for Local 222 of the International Brotherhood of Electrical Workers and Chairman of the System Council T-6 that represents the six IBEW Local chapters in Massachusetts, offered very consistent testimony at the hearings (although in more vernacular style) regarding Verizon's Massachusetts investment policies:

The joke in the company has always been that everything but 413 area code. The experience, both as a technician in the company, was always the focus was on Boston, where I usually worked. More so when you [sic - "I"?] became the business manager and integrated with the western part of the state...[a prior 2324 business manager's] favorite statement to the company was, 'They'll get it in northern Maine and other parts of the world before they get it in Springfield . . .' And through the experience of that it has always been true.

Tr 1: 71, l. 7 - 20.

³³ That is, since the rollout of FiOS.

In his written testimony, Mr. Calvey succinctly stated that “there is a difference in investment decisions for the western part of the state versus the eastern part. . . .” Ev. Exh. 2, at 3, l. 13 -14. Those differences in investment policies were reflected in meetings Mr. Calvey has had with business managers going back to as early as 1988, including with a past president and a past vice president at Verizon. *Id.*, at 3, l. 20 to 4, l. 4. Mr. Calvey also fully corroborated Mr. Rowley’s testimony that with the rollout of FiOs the company began transferring employees from western to eastern Massachusetts. “I know that two employees quit because they could not make the commute.” *Id.*, at 4, l. 8. Mr. Calvey had heard manager Bruce Bader, a construction manager, state “that there was going to be no need for those two people in Western Massachusetts and that the Company had no interest in doing business there.” *Id.*, at 4, l. 9 - 11.³⁴

While Verizon may attempt to contradict Local 2324’s position regarding Verizon’s investment commitments to western Massachusetts, it cannot debate that new products and services reach the four western counties last, or not at all, which the Department can take as an important indicator of those investment policies. Western Massachusetts was the last place in the state to receive touch tone dial service, arriving there some 20 years after it first served eastern Massachusetts customers. Tr. 1: 85, l. 15 - 19; 88, l. 12 - 15. Customers at the public hearings complained, at times bitterly, about the lack of FiOS³⁵ and DSL service. *E.g.*, Tr. 1: 12, l. 23 -24

³⁴ Mr. Bader’s statement to Mr. Calvey bears remarkable resemblance to the Bader statement reported by Mr. Rowley on page 41 of his written testimony (Rowley told by Bader “that there was very minimal or no funding for Western MA.”) The Department should have no doubt that corporate policy disfavors investment in western Massachusetts.

³⁵ Verizon does not provide FiOS anywhere in western Massachusetts. Tr. 4: 658, l. 4 - 9.

(Goldman: “we are still waiting for the last generation of technology); Tr. 2: 248, l. 13 - 21
(Foxmyn: “. . .despite dozens of flyers, inserts, e-mail notice from Verizon, inviting me to
subscribe to their DSL service, this service remains unavailable to me.”). DSL service only began
reaching the Springfield region about two years ago, more than a decade after it reached eastern
Massachusetts. Tr. 1: 89, l. 7 - 11.

Unlike Verizon’s overall business in the state, which it claims has been losing money for
years, “FiOS is accretive,” Tr. 6: 1005, l. 14, Mr. Vasington’s pointedly evasive way of answering
the question of whether FiOS yields a profit. The Florida Public Service Commission recently
concluded that investment in FiOS (called “FTTP”, for fiber-to-the-premises, in Florida) can
hinder investment in the copper network, and that investing in FiOS “is not a justifiable reason for
Verizon’s failure to maintain and support its copper network, which currently serves the vast
majority of Verizon’s customers.” *In Re Verizon Florida LLC*, Docket No. 080278-TL, Order
No. PSC-09-0015-SC-TL, Fla. PSC (Jan. 5, 2009), at 3, *cited in* Ev. Exh. 5 (Baldwin), at 90.
As in Florida, Verizon in Massachusetts is focused on increasing the penetration of FiOS, one of
its products that drive up “ARPU” - Average revenue per unit. Tr. 2: 402, l. 13 to 403, l. 19.
Unfortunately, preserving high-quality wireline service in western Massachusetts consequently
falls by the wayside.

Verizon repeatedly argues that the increasing level of competition forces it to try harder
and do better in western Massachusetts, but the exact opposite may be true. As FiOS and
bundled “Triple Play”³⁶ become the company’s preferred platform, investment migrates towards

³⁶ For Verizon’s current “Triple Play” offering, go to:
<http://www22.verizon.com/residential/bundles/overview#fios>.

FiOS and away from POTS - “plain old telephone service”. Ms. Baldwin voiced her concern that competition is increasing the pressure on Verizon’s finances, and that this decreases the company’s incentives to continue to invest in wireline, particularly in less populated and less urban areas. Tr. 6: 993, l. 4 -20. In her rebuttal, she similarly noted:

Competition for “one-stop shopping” customers forces Verizon MA to focus its resources on those services and customers and there is little in the way of “market forces” that protect the consumer who simply wants a basic telephone line and those customers with no competitive alternatives where they live.

Ev. Exh. 62, at 16, l. 16 to 63, l. 1. As a result of competition, Verizon has economic incentives to invest disproportionately in eastern Massachusetts versus western Massachusetts, relative to the repair and upgrade needs of customers in these two regions. Ev. Exh. 11 (IBEW-AG 9-9). In response to questions from the Bench, Mr. Vasington made it clear that the current economic environment creates pressure “to reduce the number of people” who are employed to make repairs. Tr. 5: 923, l. 4 - 17.

During her testimony, Ms. Baldwin highlighted the tension between Verizon’s desire to earn a profit in the state and the relatively lower profits (or even losses) of serving wireline customers, particularly in more rural areas such western Massachusetts, as “one of the most challenging themes that crop up again and again in this proceeding,” Tr. 1: 159, l. 7 - 9. These are issues that regulators in West Virginia, Florida and other states have all been wrestling with. Verizon still has an obligation to serve wireline customers in western Massachusetts with high-quality, dependable service, yet the evidence leads Ms. Baldwin to conclude that there is “a pattern of under investment and under resources in Western Mass.” Tr. 1: 204, l. 12 -13. In response, the Department must step forward and make sure that proper investments are made and high-quality service maintained.

One result of under-investment is that Verizon may choose to repair an old cable or other equipment when replacement is clearly needed to ensure that problems will not re-occur.³⁷ But as with many companies, capital investments in replacements must pass some form of return-of-investment test. Ev. Exh. 5 (Baldwin, at 72 - 73); Tr. 2: 414, l. 9 - 18; Tr. 3: 476, l. 2 - 10 (capital projects must be “proven” financially; must meet a rate-of-return analysis). Police Chief Derby’s first-hand experience with the repair work overseen by Mr. Dealicio in the Town of Hancock well-illustrates the nature of the problem. According to Chief Derby, Mr. Dealicio was an experienced Verizon manager who met with Derby weekly to discuss the Town’s problems, and who did what he could to repair the infrastructure problems that were interfering with phone service in the town. But after six or eight months, Mr. Dealicio said to Chief Derby, “I did all I could do. I could not do any more. If you want any better service than this, you have to replace the lines.” At that point, Mr. Dealicio “disappeared” and Chief Derby has not seen him since. Tr. 1: 36 - 37. Wendy Foxmyn, Interim Town Administrator for the Town of Leverett reported that Verizon technicians made statements to her similar to those made by Mr. Dealicio to Chief Derby:

This folder is filled with sad tales of residents calling Verizon’s repair over and over to deal with extreme static, disruption and regular outages, and this is almost every letter, “every time it rains,” only to be told by technicians, “It’s not your fault, it’s ours. **The lines are old and there is nothing we can do.**”

Tr. 2: 250, l. 2 - 9 (emphasis added). The Derby and Foxmyn testimonies are too consistent and compelling to be ignored. Verizon may be willing to make certain repairs, but critically-needed replacements are being avoided.

³⁷ The Bench explored this issue of repair versus replacement during its cross-examination of Mr. Sordillo. Tr. 5: 800, l. 21 to 801, l. 24.

There is a cautionary tale here for the Department, in light of Verizon's position that the surveys it is now conducting of western Massachusetts plant will address all outstanding repair needs and obviate the need for any action by the Department. Even if Verizon does in fact identify every piece of "open plant" that needs closing (a point that Local 2324 certainly does not concede), repairs that temporarily obscure the underlying need for cable replacement,³⁸ or that ignore the need for more staff being available in western Massachusetts, or that do not address any shortages of equipment and supplies that are need to maintain reliable service in the future, will only result in similar complaints again being filed by towns and residents of western Massachusetts, re-creating the need for a proceeding similar to the present one to be opened in the future.

Verizon's investment in FiOS in eastern Massachusetts has had a deleterious affect on staffing in western Massachusetts, depleting the workforce that is available to do inspections, maintenance, repairs and replacement. While Verizon alleges that it does transfer employees from east to west on a seasonal basis in anticipation of each summer's influx of vacationers, it failed to provide documentation requested by Local 2324 that would "allow any party . . . to determine the extent to which technicians from eastern Massachusetts have been transferred to do work in Western Massachusetts." Ev. Exh. 4 (Rowley rebuttal), at 11, l. 11 - 14. Even assuming that this seasonal transfers have occurred, there is no evidence, apart from those seasonal transfers, that at any time prior to the opening of the *Middlefield* and present investigations Verizon ever sent employees from east to west in order to catch up with needed

³⁸ Ms. Baldwin explained that certain repairs are like putting "a Band-Aid" on the problem because in some cases the cable is old, degraded and in need of replacement. Tr. 1: 120, l. 5 - 17.

repairs, or complete critically-needed cable replacements, or to address any of the other problems that have caused so many towns and residents in western Massachusetts to file complaints. Quite to the contrary, there is only compelling evidence that large numbers of employees have been transferred from west to east to build out FiOS³⁹ or to “backfill” for employees transferred from the central region to eastern Massachusetts to do FiOS work.

Mr. Rowley, citing to a Verizon information response acknowledging transfers from western to central Massachusetts, explained:

This is the FiOS backfill issue. Backfill is the term used by managers to describe the process of assigning technicians to perform work for others while they have been placed on another assignment. For example, Springfield SSTs will be transferred to Central MA locations to do core work because the Central MA technicians are assigned FIOS related duties or jobs. Western MA technicians (as many as 35-40 at a time) have been transferred out of my Local for the past 5 years to do core work outside of Western MA . . . The reason for these transfers is due to the fact that Central MA technicians have been assigned to FIOS operations.

³⁹ Tr. 1: 78, l. 1 - 6 (Calvey: When the company rolled out FiOS, “they forced a whole bunch of technicians out of Western Mass. and into many areas, and some of them, they are up in Woburn, Mass. seven days a week. They had to quit the company. They don’t want to do it.”)

Ev. Exh. 3, at 42, l. 21 to 43, l. 7.⁴⁰ *See, also*, Tr. 1: 121, l. 15 to 123, l. 2 (starting in 2005, with the advent of FiOS, Local 2324 workers were sent to the eastern part of the state for three or even six months at a time). Quite simply, Verizon CEO Seidenberg’s focus on FiOS as his “preferred platform” trickles down to western Massachusetts in the form of a depleted workforce.

⁴⁰ *See, also*, Tr. 2: 405, l. 22 to 406, l. 17 (Sordillo agrees that there have been transfers from west to east, and backfilling).

Recently, and unquestionably in response to the Department's decision to open this investigation, Verizon has been assigning employees from other parts of the state to work on survey and repair work in western Massachusetts. Such non-seasonal transfers to western Massachusetts are unprecedented in the experience of Mr. Calvey, who has worked for Verizon or Local 2222 for over 40 years, Ex. Exh. 2, at 2, l. 1 - 6, and for Mr. Rowley, Tr. 1: 113, l. 4 to 114, l. 3.⁴¹ Apart from this recent influx of workers, staffing levels in western Massachusetts have been declining for at least the past three years. Tr. 2: 418, l. 2 - 5.⁴² Transfers from western to eastern Massachusetts in connection with the build out of FiOS may further deplete the western Massachusetts workforce. Ev. Exh. 3, at 39.

Ms. Baldwin urged the Department to pay heed to what has been transpiring with staffing levels:

Staffing levels can affect the ability to properly maintain infrastructure and can affect the ability to respond to out of service and service affecting problems . . . [Verizon's] staffing levels should be reviewed as part of this proceeding to determine whether they are adequate to maintain Verizon MA's vast and aged infrastructure in Western Massachusetts and whether staffing is contributing to delays in addressing out of service and other service calls.

Ev. Exh. 5, at 63, l. 12 - 17.

⁴¹ Verizon's own witnesses generally confirmed that prior east-to-west transfers were solely done to deal with the seasonal influx of customers in the Berkshires. Tr. 5: 913, l. 15 to 914, l. 23; Tr. 3: 443, l. 4 - 17 (prior to transfer of employees while this case was pending, Mr. Conroy unaware of any instance where Verizon has sent employees to western Massachusetts to close open plant).

⁴² The confidential transcript details the precise numbers. Tr. 2: 421, l. 2 - 5. The confidential response to RR 6 provides additional staffing level detail for 2010.

Exacerbating the problem that FiOS investments have caused a drain of technicians from the western to eastern part of the state, Verizon also assigns technicians in western Massachusetts significantly more lines than it does for technicians in the eastern part of the state. Tr. 1: 151, l. 2 - 24. Considering the lower-density population in western Massachusetts (and, therefore, fewer lines per square per square mile), the hillier western Massachusetts terrain, and the greater driving distances from company garages to work sites, all of these factors would imply that Verizon should assign fewer lines per technician in the western part of the state. Ev. Exh. 8 (IBEW-AG 9-3); Tr. 1: 150- 152. Yet Verizon does the opposite.⁴³ When Ms. Baldwin was asked if she could think of any reason why more lines are assigned per technician in western Massachusetts, she replied:

I think there is an underlying theme to this entire proceeding, which has to do with cost cutting. . . But sometimes the goal of cost cutting, as the Department has recognized in the past, can run contrary to the goal of service quality.⁴⁴

Tr. 1: 151, l. 16 -23.

Like the Department, the West Virginia Public Service Commission has been wrestling with large numbers of complaints about declining service quality and allegations that Verizon's lack of investment and inadequate staffing levels are at the root cause of the problems. As Verizon does here, Verizon West Virginia defended itself by noting that "customers have

⁴³ The actual ratios of lines per technician is contained in confidential testimony and documents. See Ev. Exh. 5 (Baldwin), at 61 , l. 7, and related information about density of lines pre region at 62, Table 8.

⁴⁴ In connection with Ms. Baldwin's testimony about the effect of cost-cutting goals and staffing levels, Local 2324 urges the Department to review confidential Ev. Exh. 26, reflecting that "Verizon issued a surplus declaration on or about February 26, 2010 that affects a large number of employees in western Massachusetts." Tr. 3: 445, l. 18 - 21 (non-confidential transcript). The potential impact on staffing levels is detailed in confidential Tr. 3: 451 - 462.

expanded choices and telecommunications companies use different tools to provide services.” *In Re Verizon West Virginia Inc.*, Case No. 08-0761-T-GI (May 10, 2010), at 2. However, in that state Verizon agreed to a Retail Service Quality Plan that included supplementing its installation and maintenance force by 49 technicians.⁴⁵ *Id.*, at 3. Clearly, addressing deficiencies in service quality and making needed repairs requires adequate staffing levels.⁴⁶

⁴⁵ In 2007, Verizon Maryland agreed to move 50 technicians from building out FiOS to focus on repairing basic copper, in order to alleviate Commission concerns about missed repair appointments and long repair intervals. Ev. Exh. 9 (IBEW-AG 9-4(b)).

⁴⁶ While the additional technicians “helped to improve service call scheduling,” it became clear to the Commission that “more maintenance and plant construction personnel are needed on the ground” in light of the continuing stream of complaints received by the Commission even after the Retail Service Quality Plan was implemented. *Id.*, at 6. As a remedy, the Commission ordered the establishment of a \$72.4 million irrevocable Escrow Account, from which funds could be disbursed solely for local exchange service system improvements. *Id.*, at 12.

Recently, and unquestionably in response to the spotlight that the Department has been shining on customer complaints from western Massachusetts, Verizon decided to send 25 to 30 technicians to western Massachusetts from the eastern part of the state. It is expected that they will remain through the end of June and focus on closing open plant.⁴⁷ Tr. 3: 441, l. 12 to 442, l. 19. In a similar vein, Mr. Rowley noted that while transfers from his local to the rest of Massachusetts or Rhode Island were routine for years, starting around June 2009 (the date the OOI was issued), he does not recall having anyone transferred out of his local. Tr. 1: 100, l. 3 - 9.

These measures appear all too reactive and defensive on the part of Verizon. They do not hold out the promise that from this date forward Verizon will devote adequate resources to maintaining reliable, high-quality service in western Massachusetts. While the recent steps the company has taken are important and a step in the right direction, they are insufficient.

B. The Company's Remedial Steps Are Insufficient and Reactive

The measures that Verizon alleges will address customer complaints and underlying service quality problems have only been adopted since issuance of the OOI, or during the pendency of the preceding *Middlefield* case. For example, the much-trumpeted predictor packages came into use in 2007, but the amount of work being done and the number of technicians assigned to this work picked up substantially in the second half of 2009. Tr. 1: 97, l. 21 to 99, l. 7. Cable replacement has also picked up recently, and, according to Mr. Rowley, "due to the investigation." Tr. 1: 99, l. 17.⁴⁸ More broadly, Mr. Rowley testified:

⁴⁷ While these employees will be making repairs, it is not clear the extent to which they will be replacing cable.

⁴⁸ The monthly rate of capital projects appears to have gone up approximately 5 fold since November 2009, the month the Attorney General and Local 2324 filed testimony in this case. Tr.

3: 524, l. 8 to 525, l. 13. While increased investment in capital projects is generally good for western Massachusetts customers, the timing again seems highly reactive to this investigation.

People who have been on for a long time, they haven't seen anything like this with the amount of new copper that has been brought in Western Massachusetts and the number of jobs that the Company has provided in their testimony as well. . . . I believe that once this investigation was started, that the company knew that they were going to have to do something. . . . I think it is absolutely reactionary to this investigation.

Tr. 1: 118, l. 3 to 119, l. 1. Mr. Rowley's concern, however, is that "once this [case] is over and done with, if there is nothing left, this [sic - "there"?] is some kind of monitoring device, that it would absolutely go back to the way it was before." Tr. 1: 119, l. 13 - 17.

As Ms. Baldwin sees it, the recent staff transfers and increased investments in western Massachusetts may reflect nothing more than a "short-term presence in Western Mass. to seek to demonstrate to the Department that Verizon is taking care of troubles," and may not demonstrate "a long-term commitment to improving and sustaining improvement." Tr. 1: 211, l. 2 - 6. The recent activity may be nothing more than Verizon building Potemkin villages.⁴⁹

The Department opened this docket "because consumers got fed up and they complained, and municipalities complained," Tr. 1: 168, l. 16 - 18, and Verizon no doubt has been ramping up its staffing levels and investments in western Massachusetts in an attempt to assuage the Department's concerns and dissuade it from taking aggressive, pro-consumer actions. In this context, Ms. Baldwin asserts that "[t]he challenge for the Department is to come up with some kind of regulatory oversight that gives Verizon the flexibility that they need to achieve certain end results, but that makes sure they actually do." Tr. 1: 168, l. 23 to 169, l. 3.

Local 2324 argues below (§ VI.) that in order to meet this challenge the Department must order a thorough and independent audit of the company's infrastructure in western

⁴⁹ See http://en.wikipedia.org/wiki/Potemkin_village for the interesting etymology of this phrase.

Massachusetts, as well as make changes to the current service quality plan and reporting requirement (§ VII.) First, however, Local 2324 addresses the Department's legal authority to order appropriate remedies.

V. The Department has Full Legal Power to Order an Appropriate Remedy

The Massachusetts legislature has expressly charged the Department with enforcing the

teleco
mmuni
cations
provisi
ons of
Chapte
r 159
of the
Genera
l Laws.
Chapte
r 159
directly
authori
zes the
Depart

ment
to
prescri
be and
enforce
regulati
ons
and
practic
es
concer
ning
regulat
ed
commo
n
carriers
such as
Verizo
n.⁵⁰

⁵⁰ G. L. ch. 159, § 16. Note that the responsibilities previously delegated by the legislature to the Department of Telecommunications and Energy are now vested in the Department of Telecommunications and Cable. Acts of 2007, ch.19, § 52.

Specifi
cally,
the
legislat
ion
provid
es:

[I]f the department is of the opinion, after a hearing . . . that the regulations, practices, equipment, appliances, or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed and the equipment, appliances and service thereafter to be used and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. . . . Before making such order, the Department shall consider the relative importance and necessity of the changes . . . 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. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all of its officers, agents, and employees.

G.L. ch. 159, § 16 (emphasis added). This legislative mandate has been interpreted broadly by the Department's predecessor agency, the Department of Telecommunications and Energy ("DTE"), and provides the Department with " broad general supervisory power over the provision of telecommunications service."⁵¹ The Department, as successor to the DTE, assumes the DTE's

⁵¹ *In Re Verizon New England Inc.*, DTE 01-31 Phase II, 223 P.U.R.4th 361 (Apr. 11, 2003) (noting the Department's discretion in conducting a comprehensive investigation into

broad authority over wireline telephone service.⁵²

Verizon's service quality and delivery throughout the state).

⁵² G. L. Ch. 159, §§ 10, 12(d).

The Department’s standard for determining whether telephone service is inadequate is “where the current services . . . substantially impair the ability of a community to undertake commonly required economic, social and public health and safety functions.”⁵³ In this case, the evidentiary record is filled with numerous customer complaints of inadequate service quality.⁵⁴ These complaints of inadequate service by Verizon to customers and towns in western Massachusetts have been supported, *inter alia*, by the testimony of public safety officials; by Susan Baldwin, the expert witness for the Massachusetts Attorney General;⁵⁵ and through Local 2324’s several witnesses.⁵⁶ The evidence produced in this case shows that unresolved and recurring problems of telephone outages and excessive static have caused substantial inconvenience to customers. Customers have had to drive to locations outside of their homes in order to find a working telephone connection.⁵⁷ Customers are unable to contact emergency services, including local police departments, because of the poor quality of the telecommunications service provided to them by Verizon.⁵⁸ There is no viable or reliable

⁵³ See *In Re Bd. of Selectmen of the Town of Middlefield, Massachusetts, pursuant to G.L. ch. 159, § 24 regarding the quality of Verizon Massachusetts’ telephone service*, DTC/DTE 06-6 (Apr. 30, 2008) (“*Middlefield*”), at 5 (citations omitted).

⁵⁴ See § III., *supra*.

⁵⁵ See Ev. Exhs. 5 and 6.

⁵⁶ See Ev. Exhs. 2, 3, and 4.

⁵⁷ See, e.g., Tr. C: 26 (elderly man drove to Alford highway department to report chest pains when his home phone had no dial tone); Tr. A: 13-14 (during outage, customer must drive to the village in order to call-in trouble report to Verizon); Tr. E: 20 (calls must be made after a 45 minute drive to work; home phone service is unreliable).

⁵⁸ Ev. Exh. 13 (Police Chief Scott Vega); Tr. E: 26 (customer with minor heart attack needs reliable phone service when cellular is unavailable); Tr. C: 9 (elderly require a working landline phone); Tr. E: 22 (copper line is a “lifeline” and must be reliable).

substitute for landline service in these communities.⁵⁹ The Department should find that there is no question that Verizon’s failure to provide adequate service to its customers has posed significant economic, social, and public safety impediments to communities in western Massachusetts. “Public utility companies in Massachusetts have an obligation to provide safe and reliable service.” *Fitchburg Gas and Electric Light Company*, DPU 09-01-A (Nov. 2, 2009), at 6 (citing *Commonwealth Electric Co. v. Dep’t of Pub. Util.*, 397 Mass. 361, at 368 n. 4 (1986)). The record supports findings that Verizon’s failure to provide continuous and reliable service has caused frequent and substantial inconvenience to its customers, and that this failure implicates serious health and safety concerns. The Department therefore has full legal authority to order appropriate remedies that Verizon must promptly implement to address the service and safety issues raised.

⁵⁹ Tr. A: 13 (no cell tower or cable service available); Tr. A: 21 (little access to wireless in a landline-based community); Tr. A: 22 (no Internet-based phone or other alternative is available to Verizon landline); Tr. C: 9 (limited cellular service in Hancock).

The Department has jurisdiction and can make specific findings and order appropriate remedies not only on a regional basis (which authority Verizon appears not to challenge), but also on a town-specific basis and order appropriate remedies (which Verizon apparently does challenge, on the basis that consolidation of the individual dockets limits the Department's jurisdiction and remedial powers). *See Middlefield*, DTC/DTE 06-6 (Apr. 30, 2008), at 18-19. In *Middlefield*, the Department ordered Verizon not only to conduct a comprehensive analysis of the service quality issues raised by the residents of the Town of Middlefield, but also to report troubles (i.e. RPHL) at a town-specific level pursuant to the goal of reducing the individual town's trouble report rate.⁶⁰ In this case, it is similarly within the Department's authority to order Verizon to address trouble reports at a town-specific level, as part of a town-specific remedy,⁶¹ and apart from any regional findings and remedies the Department may adopt. Such local remedies are feasible and have been done in the past by Verizon.⁶² In this case, Local 2324 witness John D. Rowley recommended that the Department order Verizon to report number of

⁶⁰ *Middlefield*, at 10-11 (Department reviews town's trouble report rate and complaints, then addresses practices and procedures necessary to correct the issues identified).

⁶¹ *Town of Royalston*, DTE 99-92, 2000 Mass. PUC LEXIS 43, *10-11 (Nov. 27, 2000) (ordering expanded toll-free calling for the town of Royalston).

⁶² *See* Tr. 5: 936-40 (Sordillo and Conroy describing process used for Middlefield's municipal-specific RPHL and admitting that such reporting is possible and can be achieved). *See, also*, Ev. Exh. 3 at 16-33 and Tr. 5: 931-32 (Rowley and Vasington agree that service quality for a town can be approximated by referencing RPHL data for the wire center associated with the town). In Florida, Verizon Florida LLC is required to identify and report out-of-service access lines on a per-exchange monthly basis. While this is not a town-specific basis for reporting troubles, it demonstrates the feasibility of reporting on a variety of scales. *See In Re Verizon Florida LLC*, Docket No. 080278-TL, 2009 WL 692300 at *6, Fla. PSC (Jan. 5, 2009).

customer troubles at the town or municipal level in western Massachusetts.⁶³ The Department should grant this request.

An additional remedy that Local 2324 has requested is that the Department order an independent audit of the infrastructure in western Massachusetts. This would address Verizon's demonstrated failure to adequately invest in the staff and resources needed to resolve the ongoing outages, static, and other service quality issues in western Massachusetts.⁶⁴ To address the problem of unduly extended outages and other problems that customers in the Fitchburg area faced after the winter 2008 ice storm, the DPU recently ordered the local electric distribution company to complete a comprehensive independent audit at the utility's expense. *See Fitchburg Gas and Electric Light Company*, DPU 09-01-A, at 10-15, 192-94 (Nov. 2, 2009) ("*Fitchburg*"). The comprehensive audit will address, among other things, the utility's decisions regarding resource allocation and staffing. *Id.* In *Fitchburg*, the DPU determined that in the context of concerns that the parent company management practices "including planning, staffing, and resource allocation decisions" contributed to inability of its subsidiary utility to meet its service obligations, the utility's ratepayers "would benefit from a comprehensive independent management audit of the Company's management practices." *Fitchburg*, at 193. As in *Fitchburg*, there are serious questions in this case whether the parent company, Verizon Communications Inc., is willing to commit the necessary staff and resources to maintaining reliable, high-quality wireline service in western Massachusetts. Verizon's ratepayers in the present case would benefit from the comprehensive, independent infrastructure audit which Local 2324 and the

⁶³ Ev. Exh. 3 at 44.

⁶⁴ Ev. Exh. 3 at 44.

Attorney General have recommended. Verizon has so far demonstrated an inability to timely or adequately resolve those complaints on its own. See § III., *supra*.

As in *Fitchburg*, the evidence presented here demonstrates inadequate or inappropriate allocation of resources and staffing which has similarly given rise to health and safety concerns. *Id.* Just as the DPU in *Fitchburg* properly ordered an audit when it found serious deficiencies in an electric utility company's provision of an essential public good, it would be proper and appropriate for the Department to require an audit if it finds serious deficiencies in the ability of Verizon to provide reliable basic telephone service.⁶⁵

While the Department is not obligated to follow the precedents set in other jurisdictions, the conclusions of other Commissions in dealing with similar issues offer an informed perspective and potential guidance. As detailed in § III. A, *supra*, numerous residents of towns in western Massachusetts have testified that although their Verizon landline service is unreliable and subject to excessive static and frequent outages, there is no viable alternative to landline service in their communities for geographic or other reasons. In a case similarly involving local, geographic constraints on customers' calling options, the West Virginia Commission concluded that reliable landline service, or "plain old telephone service," was essential to the public health and safety, and therefore that the local Verizon company must make substantial investment in that system. *In Re Verizon West Virginia Inc.*, Case No. 08—0761-T-GI, at 6-7, W. Va. PSC (May 10, 2010). The West Virginia Commission concluded that additional full-time maintenance technicians and plant construction personnel were needed and that Verizon must commit funds to the purchase of wire,

⁶⁵*Fitchburg* at xiii, 192-94. See also *Fitchburg*, Letter of DPU (Mar. 4, 2010) (ordering utility to revise unacceptable portions of utility's draft RFP for an independent audit).

cable and equipment to upgrade or replace copper plant in order to close the gap in reduced service quality that West Virginia customers had been experiencing for years. *In Re Verizon West Virginia Inc.*, at 6, 10-12 (ordering Verizon West Virginia to establish an irrevocable Escrow Account of \$72.4 million to be reduced only for the utility's expenditures directed toward improving service quality for basic telephone service).

The Department has jurisdiction to remedy discriminatory service if it finds that Verizon provides inferior service to one class of customers compared to another class of customers, as the DPU found in an earlier case involving Verizon's predecessor company: "The Department is not convinced that residential customers should be subjected to lower service quality merely because of the Company's determination that business customers expect higher levels of service."⁶⁶ The same principle of equity should apply to customers in western Massachusetts who complain that their service is being neglected while Verizon allocates a disproportionate amount of resources to the eastern part of the state. The Department has previously held that "telephone service is inappropriate if some parts of the state receive different levels of service quality than other parts of the state."⁶⁷ Here, the record shows that many customers and towns in western Massachusetts have longer and more frequent outages, more trouble reports, and longer delays in resolving

⁶⁶ *In Re New England Telephone and Telegraph Company*, DPU 91-30, 127 P.U.R. 4th 129, 161 (Sept. 9, 1991). The DPU stated that where Verizon's residential customers received inferior service compared to business customers, "the Company shall immediately begin to equalize service levels and thresholds for RSCs [Residence Service Centers] and BSCs [Business Service Centers]. The Department will monitor this trend in its review of the Company's monthly quality of service reports and the Company's future transitional filings to ensure that the Company meets this goal." *Id.*, 127 P.U.R.4th, at 161.

⁶⁷ *Middlefield*, at 14-16 (finding overall quality of service provided by Verizon to Middlefield failed to meet statutory standards where Middlefield's RPHL was excessive compared to other urban and suburban exchanges in the state).

service-affecting problems compared to customers and towns in eastern Massachusetts. The Department should find that an equitable remedy is required to close that gap in service quality.

Adequate service under chapter 159 does not require perfection, but it does require reliable 911 and access to emergency services, two-way calling, limited length of outages, no excessive static, phones that work when it rains and a reasonably low level of trouble and out of service problems. Verizon customers and towns in western Massachusetts have consistently higher levels of outages and trouble rates than their eastern counterparts, and have unreliable access to emergency service and frequent problems with two-way calling. The record in this case fully supports a Department holding that Verizon's service is "unreasonable, unsafe, improper or inadequate," in violation of Section 16 of Chapter 159 of the General Laws. The Department is obligated to ensure that adequate service is finally provided by Verizon to its customers in the towns of western Massachusetts, such that their residential phone service is continuous, reliable, proper and convenient for customer use. The remedies required to achieve adequate service should start with appropriate investment in infrastructure and proper allocation of staff and other resources, as would be identified by the independent infrastructure audit that Local 2324 recommends.⁶⁸

⁶⁸Once the Department determines service is inadequate, the Department "must consider the cost of any remedy and its impact on the Company's financial ability to provide service to the public. *Middlefield* at 4. To the extent that the Department has questions regarding the costs of implementing remedial measures that may be recommended in an audit report, Local 2324 recommends that the Department's consideration of those costs not be addressed at this stage of the case, but be stayed pending the outcome of an independent audit. The independent audit that Local and the Attorney General have requested could be designed to provide specific recommendations and estimated costs for those long-term improvements that may be implemented beyond the more immediate remedies which the Department may direct Verizon to promptly undertake.

VI. The Department Should Order a Thorough, Independent Audit of the Infrastructure in Western Massachusetts and Monitor Implementation of Needed Repairs

Both the Attorney General and Local 2324 include as one of their most urgent recommendations that the Department “require a comprehensive audit of the telecommunications infrastructure and resources available in Western Massachusetts,” Ev. Exh. 5 (Baldwin), at 91, l. 6 -7, and that the Department oversee implementation of any repair, replacement, investment or resource allocation recommendations emerging from that audit.⁶⁹ Mr. Rowley, making a similar recommendation, stated:

[T]he DTC should order Verizon Ma to conduct an analysis of the service quality and infrastructure for Western MA. Verizon MA should report on same to the DTC, with a proposed timeline for corrective action. The report should include the extent of proactive maintenance and be submitted to the DTC within 60 days of an Order in this case. . . .

Additionally, I recommend that an independent source evaluate all parts that make up the infrastructure within western Massachusetts. The independent party should issue a report that includes an analysis of the condition of infrastructure in Western MA and provide[] recommendations that will improve the infrastructure and alleviate the customer complaints that include no dial tone, dropped calls, humming, static, and one-way calling.

Ev. Exh. 3, at 43, l. 21 to 44, l. 14.

⁶⁹ Ev. Exh. 5, at 74, l. 19 - 20 (timetable for follow-through on recommendations).

In supporting her call for an independent infrastructure audit, Ms. Baldwin cited the existence of the many “consumer complaints, the age of the outside plant, the disproportionate number of trouble reports and Verizon MA’s delay in repairing troubles [as] all point[ing] to fundamental problems with the level of resources being assigned to Western Massachusetts and the state of the infrastructure.” Ev. Exh. 5, at 92, l. 4 - 6. Ms. Baldwin stressed the need for the Department to obtain “detailed information from an objective third party.” *Id.*, l. 7 - 8. Elsewhere, she stressed the problem of “information asymmetry,” the inherent problem that Verizon possesses vastly more information about its infrastructure and operations than the Department itself or any other party in this case. Tr. 6: 988, l. 14 to 999, l. 21. “The eternal challenge for the regulator is to make sure that the regulators are sufficiently informed so as to exercise the appropriate level of oversight.” Tr. 6: 990, l. 13 - 16.⁷⁰

In her rebuttal testimony, continues to recommend that the Department require a comprehensive audit of outside plant in western Massachusetts. She additionally recommends:

As a first critical component of such an audit . . . Verizon MA should survey and remedy as needed the outside plant serving the 27 wire centers and 57 municipalities that I identify, where consumers likely are receiving particularly inadequate service, have negligible competitive options, may have unreliable service, and because they may be served by relatively few public safety agencies (police and fire stations), depend on a reliable dial tone line connection to protect their health, safety, and welfare.

Ev. Exh. 6, at 71, l. 1 -8. Local 2324 fully supports this recommendation as an important corollary of any thorough, independent system audit. Both Ms. Baldwin’s and Mr. Rowley’s analyses of RPHL rates and service restoration times point to particularly serious service quality problems in many of the smaller towns in western Massachusetts. The Department should make

⁷⁰ In rebuttal testimony, Ms. Baldwin described how the Maryland PSC has tried to address the problem of information asymmetry with Verizon Maryland. Ev. Exh. 6, at 77 - 78.

sure these “hot spots” receive prompt attention and relief.

While Verizon is already conducting plant surveys in wire centers and towns it considers to be experiencing higher levels of service problems, the record does not make clear the extent of those surveys nor of the follow-up work that is being implemented, particularly whether that follow-up work is limited to repairs of defective cable and excludes (or limits) replacement of cable and other equipment that will again fail if only temporary repairs are instituted.⁷¹

Local 2324 feels quite strongly that any independent audit must include interviews with the front-line employees who do the work and who see first-hand the level of investment and resources that are devoted to maintaining service quality. Ms. Baldwin concurred, stating that any independent audit entity should speak with “union members who may be aware of particular problems.” Tr. 2: 362, l. 1 - 4.⁷²

It is important that the Department not see changes to the existing service quality plan as a substitute for requiring an independent audit, or vice versa. Each addresses different problems. The audit identifies measures the company must take in the near and intermediate term to inspect, maintain, repair and upgrade the infrastructure so that customers are provided with reliable, high-quality service. The service quality plan is intended to provide a set of metrics by which the

⁷¹ See Tr. 6: 1009, l. 6 to 1012, l. 10 (Mr. Conroy cannot describe which categories of equipment are included in the surveys, e.g., whether leaning poles and controlled environmental vaults are being looked at, nor whether trucks are properly stocked). It is also reasonably clear that Verizon is not reviewing whether its staffing or investment levels in western Massachusetts are adequate to maintain a high level of service quality over the long term.

⁷² Ms. Baldwin’s rebuttal testimony contains a detailed description of what should be included in the scope of an audit, including “capital investment, maintenance requirements, staffing requirement, management support, vehicles . . .” Ev. Exh. 6, at 80 & attached Exhibit SMB-Reb-7.

Department and the public can monitor whether Verizon is in fact delivering high-quality service, and to provide proper economic incentives for the company to continue to provide high-quality service so into the future. Service quality plans and independent audits simply are not substitutes for each other. Tr. 2: 362, l. 14 to 363, l. 15.

Verizon will argue that conducting an independent audit, and then implementing the work recommended by the audit, will be far too costly. Local 2324 suggests that the Department implement its (and the Attorney General's) recommendation to require an audit by breaking it into discrete steps so that more can be learned about ultimate costs before substantial commitments to making repairs are made. As a first step, the Department should direct Verizon to solicit proposals from reputable firms that could conduct the audit, with those proposals specifying the precise scope of audit work being offered and the price for carrying out that audit work. The Department should oversee this process to make sure a highly qualified entity is chosen, and that the price is reasonable. Moreover, the Department should maximize the extent to which all Verizon employees (including management) fully cooperate with conducting the audit so that outside costs are minimized.

The independent entity should be required to submit an audit report that includes a thorough discussion of the repairs, investments, resource allocations and other steps Verizon will have to take to address the service quality issues identified in any order in this docket, and that also includes a range of estimated costs for carrying out that work. At that point, the Department can determine whether the work outlined in the audit report should be undertaken, weighing the estimated costs, expected benefits and impacts on the company's financial ability to serve the public. *See Middlefield*, at 4. The Department could decide to hold additional

hearings on those questions once the audit report is filed, if deemed desirable. Through this approach, the Department can make sure that dollars are spent wisely on high-priority and essential system repairs.⁷³ In evaluating arguments that conducting an audit will unquestionably result in Verizon incurring non-trivial costs, the Department should take heed of the fact that Verizon's annual revenues in Massachusetts are approximately \$1.2 billion. Ev. Exh. 60. Thus, expenditures at the level of even \$1 million - \$2 million represent only 1/10 to 2/10 of 1% of its revenues.⁷⁴

The Department should require Verizon to conduct an independent audit of its infrastructure in western Massachusetts.

VII. The Department Should Revise the SQIs and Reporting Requirements to Ensure Adequate Service, Especially in the Small Towns of Western Massachusetts

Based on the preceding sections of the brief, the Department should conclude that service quality in western Massachusetts is inadequate and inferior to service being provided in the rest of the state, and that an independent audit is required for the Department to determine the remedial measures that Verizon should be directed to undertake in order to restore adequate and reliable

⁷³ Note that this approach is far more cautious than the one taken by the West Virginia PSC, which recently ordered the Verizon affiliate in that state to set aside \$72.4 million for system repairs and upgrades based on what appears to be a fairly limited factual record. *In Re Verizon West Virginia Inc.*, Case No. 08-0761-T-GI (May 10, 2010), at 1.

⁷⁴ Local 2324 is not suggesting that the cost of an audit and implementation of any recommended repairs would reach \$2 million, particularly given the recent survey work and repairs that Verizon has completed, or is in the process of completing. The cost of Local 2324's recommended audit would likely be well less than that amount, and, as discussed above, the Department could then separately decide which recommended repairs and investments should be undertaken.

voice service. Both the Attorney General and the Bench have also raised questions about whether the existing service quality (“SQ”) plan should be revised and whether Verizon should be required to file additional SQ information.

Local 2324 witness Rowley recommends that Verizon “report on the number of customer troubles, at town or municipal level in Western MA, and compare their trouble reports per hundred lines (‘RPHL’) with regional and statewide average each month.” Ev. Exh. 3, at 44, l. 3 - 6. As Mr. Rowley’s testimony demonstrates, it is possible, but difficult and time-consuming, for parties other than Verizon, to develop reasonable proxies for municipal-level RPHL by extracting from existing Verizon filings the RPHL data for wire centers that serve either the whole or parts of a specific town. This process is cumbersome and inexact, and Verizon should be directed to propose, within 60 days of any order, a plan for providing RPHL data by municipality.⁷⁵ Given the serious problems that have been reported by some of the smaller towns in western Massachusetts, it is vital that Verizon provide accurate and transparent data to the Department, also made available to the public, regarding RPHL at the municipal level.

The Attorney General makes the proposal that the “Department direct Verizon to disaggregate the Bay Path SBU portion of its monthly report between Eastern and Western Massachusetts” to “monitor the impact of any regulatory remedies that it may direct in this proceeding.” Ev. Exh. 6 (Baldwin Rebuttal), at 43, l. 2 to 44, l. 10. Local 2324 fully supports this recommendation, for the same reasons it urges reporting of RPHL data at the municipal level.

⁷⁵ To the extent Verizon believes such an exercise will be difficult or costly, it should be required to report on the alleged costs that would be involved and also on any less-expensive alternatives that would provide a reasonable approximation of RPHL by town along with comparisons to statewide and 413 averages.

Unless Verizon reports data that is specific to western Massachusetts, and to towns within that region, the Department and those towns cannot easily determine the scope of any service quality problems nor evaluate if remedial actions are having the desired effect.

Local 2324 supports Ms. Baldwin's recommendation "that the Department direct Verizon MA to submit OOS-based data for Western Massachusetts on a monthly basis so that the Department can monitor the duration of residential customers' lack of dial tone." Ev. Exh. 5, at 79, l. 16 to 80, l. 1. While service affecting troubles cause customers annoyance and inconvenience, out-of-service troubles mean that customers cannot use their phones, even to contact police or fire departments in the event of an emergency. It is therefore critical that Verizon report separately on OOS troubles.

Ms. Baldwin testified that she "strongly believe[s] that the evidence shows that the Service Quality Plan is not adequately protecting consumers." Tr. 1: 214, l. 5 - 7. "[T]he fact that VZ is passing the SQI test doesn't mean that there is adequate service quality." Tr. 2: 273, l. 5 - 7. The Bench itself introduced an entire "Hypothetical Service Quality Plan for Western Massachusetts," Ev. Exh. 16, and elicited extensive comment on this plan from the Attorney General (response to Record Requests 3 - 5) and from Verizon (supplemental testimony filed April 23, 2010).

Local 2324 sees great value in establishing SQ measures at the Central Office level, as included in the Bench's Hypothetical for response to out-of-service and service affecting troubles.⁷⁶ However, Local 2324's highest priority is for the Department to order the

⁷⁶ "[T]here has got to be a component of the SQI that deals with small towns. Because if you go strictly by the numbers, Worthington is going to get lost in the shuffle every time, as is Egremont. So there needs to be some kind of separate diagnosis, you know, accountability for the rural area." Tr. 2: 282, l. 23 to 283 l. 5. *See, also*, Tr. 2: 328, l. 6 -14.

independent infrastructure audit discussed section VI., *supra*. Therefore, Local 2324, like the Attorney General, believes that if “the Department determines that the overall Service Quality Plan merits investigation, the Department could decide to open a subsequent and separate investigation.” Ev. Exh. 6, at 42 l. 4 - 6.⁷⁷

VIII. Conclusion

There is overwhelming evidence that Verizon’s western Massachusetts customers suffer from inadequate wireline service, ranging from extended service outages to static and humming on the lines, as demonstrated by the witnesses presented by Local 2324, the Attorney General, and the towns, as well as by the dozens of individuals from across Verizon service territory who testified at the public hearings or submitted written statements. Moreover, those service quality problems appear to result not from mere inattention or from transitory problems, but rather can be explained by the lack of economic incentives for Verizon to invest adequately in western Massachusetts. Alleged competitive forces do not discipline Verizon into providing high-quality service; to the contrary, they give the company every incentive to focus its resources on its FiOS network in eastern Massachusetts and to reallocate staff and resources from western Massachusetts to the eastern part of the state.

The Department has full legal authority to address any service quality problems identified in this case, whether at the region-wide or individual-town level. As a key first step, the Department should order an independent audit of the infrastructure in western Massachusetts and

⁷⁷ However, Local 2324 does not object to the Department adopting changes to the SQI matrix as part of the initial order in this docket.

of the resources Verizon devotes to maintaining and upgrading that infrastructure. Once the Department receives the audit report, it should order that all feasible recommendations be implemented within a reasonable time and oversee that implementation.

The Department should also require greater detail in Verizon's service quality reports, requiring that RPHL be reported on the municipal level, and that data now reported at the Bay Path SBU level be disaggregated so that data specific to western Massachusetts (413 area) be reported separately. Local 2324 also supports revisions to the current service quality plan, particularly the addition of measures specific to Central Offices.

Respectfully submitted,

Charles Harak
Darlene Wong
7 Winthrop Sq.
Boston, MA 02110
617 988-0600