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December 19, 2019

VIA ELECTRONIC AND FIRST-CLASS MAIL

Shonda D. Green, Secretary
Department of Telecommunications & Cable
1000 Washington St., Suite 600
Boston, MA 02118-6500

RE: D.T.C. 18-3 – Telecommunications Carrier Accounting Practices and
Recordkeeping

Dear Ms. Green:

On October 22, 2019, the Department of Telecommunications and Cable (“DTC”) issued a further request for comment in Investigation into Telecommunications Carrier Accounting Practices and Recordkeeping, D.T.C. 18-3. On November 21, 2019, Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon”), the New England Cable & Telecommunications Association, Inc. (“NECTA”), and the Department of Public Utilities (“DPU”) submitted comments on the DTC’s further request. DPU offers the following reply comments.

Verizon declares that as of year-end 2017, it has “opted out” of the Uniform System of Accounts (“USOA”) and adopted generally accepted accounting principles (“GAAP”) for accounting purposes (Verizon Further Comments at 4-5). Verizon states that while it retained two sets of books for 2018 (USOA and GAAP), it no longer keeps its accounts pursuant to USOA as of 2019 (Verizon Further Comments at 5 & n.7). In other words, Verizon has

unilaterally and inappropriately eliminated the essential inputs required to calculate pole¹ attachment rates in Massachusetts.

Verizon's unilateral decision to replace USOA with GAAP for regulatory accounting purposes in Massachusetts conflicts with both state and federal regulatory requirements for pole attachments. Verizon's obligations as a utility that owns poles in Massachusetts are well-established (see DPU Further Comments at 2 (citations omitted)). As the DPU has previously noted, Massachusetts has certified to the Federal Communications Commission ("FCC") that the state regulates the rates, terms, and conditions for pole attachments. Pursuant to its state regulatory authority over pole attachments, Massachusetts has established a formula for calculating pole attachment rates (i.e., the "Massachusetts Formula") that relies on inputs derived from USOA-based account data (DPU Comments at 4; DPU Reply Comments at 1-2). Accordingly, any modifications to federal pole attachment regulations do not apply to Massachusetts, a reverse-preemption state. The FCC itself has recognized that changes to regulatory accounting practices and recordkeeping at the federal level do not apply in a reverse-preemption state that may adopt or maintain its own reporting requirements. See In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, 28 FCC Rcd. 7627, 7676 (2013); In re Petition of Qwest Corp. for Forbearance from Enforcement of the Comm'n's ARMIS & 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), 23 FCC Rcd. 18483, 18491 (2008).

The calculation of aerial pole attachment rates using the Massachusetts Formula involves three steps: (1) placing an average value on a utility's investment in poles (i.e., costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing costs of poles (i.e., a utility's costs of capital, depreciation, taxes, operation and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and facilities. See Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82, at 16, 19 (1998); A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52, at 8 (1998); see also Comcast of Mass. v. Peabody Municipal Light Plant et al., D.T.C. 14-2, at 4 (2014). The data provided by Verizon in the instant proceeding clearly shows that the inputs for various elements of the Massachusetts Formula and, therefore, Massachusetts pole attachment rates, would vary depending on whether they are USOA- or GAAP-based (Verizon Further Comments, Exhs. 1 & 4, Line J; Exhs. 2 & 5, Line MM; Exhs. 7 & 9, Line JJ).

Fortunately, Verizon has not yet sought to change its pole attachment rates in Massachusetts, and it continues to charge rates that were derived using USOA-based inputs (Verizon Further Comments at 3). However, to the extent that Verizon intends to unilaterally update its pole attachment rates based on GAAP inputs, then its actions would ignore the Commonwealth's regulatory authority over pole attachments in contravention of both state and federal requirements. DPU, therefore, urges DTC to clarify for Verizon and other incumbent

¹ All references to "poles" in these comments include ducts, conduits and rights-of-way, where applicable.

local exchange carriers subject to DTC's jurisdiction that the regulatory reporting requirements in Massachusetts for pole attachments remain USOA-based. While this means that Verizon will need to continue to maintain a second set of books under USOA for Massachusetts, Verizon did just that for many years through calendar year 2018 (Verizon Further Comments at 5). Accordingly, DTC should unequivocally and immediately direct Verizon to maintain and continue to report USOA-based regulatory accounting data for Massachusetts.²

As DTC is aware, under the terms of the Memorandum of Agreement ("MOA") between DTC and DPU involving our shared authority under G.L. c. 164, § 34B and G.L. c. 166, § 25A, any changes to the regulations, policies, or procedures applicable to pole attachments must be jointly developed and promulgated by DTC and DPU. MOA, ¶ 6. Therefore, any revision to the longstanding Massachusetts Formula, including revision to regulatory accounting or reporting requirements that affect the qualifying inputs to the formula, would require joint action by both agencies. Moreover, because the Massachusetts Formula applies not only to Verizon, but also to DPU-regulated entities that own poles in Massachusetts, any change to the Massachusetts Formula would require input from a more comprehensive pool of stakeholders than was reached in the instant proceeding.³

As pole-owners, electric distribution companies and municipal light plants in Massachusetts conform to USOA-based reporting requirements to calculate pole attachment rates. Additionally, for electric distribution companies, any accounting-related changes to inputs in the Massachusetts Formula would have implications that go far beyond the calculation of pole attachment rates. Importantly, the USOA-based inputs these companies use in calculating the Massachusetts Formula (e.g., book value of poles, depreciation, income taxes) also are used to establish rates under a broader set of DPU-jurisdictional regulatory requirements and ratemaking precedent.⁴ More specifically, electric distribution rates are based on costs that are developed

² DPU notes that until Verizon confirmed its use of GAAP-based inputs as of its most recent FCC Form 43-01 filing, DPU and attaching parties were unaware of the change (see NECTA Further Comments at 4). This highlights the need for clear, unambiguous directives by DTC to preserve the reporting of USOA-based data for Massachusetts.

³ DTC's service list for its Further Request for Comments includes the Attorney General of the Commonwealth, Verizon, NECTA, and CenturyLink, Inc. DTC did not seek comment from other pole owners or attachers, including the electric distribution companies or municipal light plants.

⁴ See, e.g., Western Massachusetts Electric Company, D.P.U. 10-70, at 69 (2011) ("any company seeking to recover its capital additions, including pole replacements associated with a major storm, needs to maintain a complete record of those additions"), citing 220 CMR 51.01(1); 18 C.F.R. Pt. 101, Uniform System of Accounts Prescribed for Public Utilities and Licenses Subject to the Provisions of the Federal Power Act, General Instructions, Sec. 2A.

using USOA as the standardized system of accounts for all entities subject to DPU jurisdiction.⁵ It is well established that, notwithstanding the provisions of GAAP, neither financial nor tax accounting standards automatically dictate ratemaking treatment.⁶ Continued USOA-based data reporting is necessary to ensure that DPU has the data necessary to fulfill its regulatory obligations.

Because the Massachusetts Formula calculates attachment rates based on pole costs, it is expected that rates will vary among pole owners as costs vary. However, it is not appropriate to have a pole attachment regulatory scheme where DTC-regulated and DPU-regulated entities calculate different pole attachment rates using different methods to establish pole costs, particularly where Verizon and the electric distribution companies often jointly own the poles. In this regard, Verizon claims that the use of GAAP-based data to calculate pole attachment rates, as adjusted by the FCC's Implementation Rate Difference ("IRD"),⁷ would have little rate impact (Verizon Further Comments at 1, 3-5). However, Verizon's own data shows that reliance on GAAP-based inputs to calculate pole attachment rates would effectively increase its pole attachment rates in Massachusetts (Verizon Further Comments, Exhs. 1 & 4, Line JJ; Exhs. 2 & 5, Line MM; Exhs 7 & 9, Line JJ; NECTA Further Comments at 2).⁸ Application of an IRD would simply delay the impact of those increases (NECTA 2018 Comments at 2, 9). More

⁵ See Boston Gas Company and Colonial Gas Company, D.P.U. 17-170, at 58 (2018); New England Gas Company, D.P.U. 08-35, at 43-44 (2009); Municipal Light Department Reporting Requirements Advisory Opinion, D.T.E./D.P.U. 06-29, at 16 (2007), citing D.P.U. 4240-A; Aquaria LLC, D.T.E. 04-76, at 21 (2005); Reclassification of Accounts of Gas and Electric Companies, D.P.U. 4240-A, Introductory Letter (May 19, 1941); Classification of Accounts of Gas and Electric Companies, D.P.U. 104, Introductory Letter (May 27, 1921); Second Annual Report of the Board of Gas Commissioners, 2 Ann. Rep. Mass. Gas Comm. (1887) 61, App. B.

⁶ Fitchburg Gas and Electric Company, D.P.U. 10-117-A/D.P.U. 10-154-A at 9 n.4 (2014); Boston Edison Company, D.P.U./D.T.E. 97-95, at 76-77 (2001); Massachusetts-American Water Company, D.P.U. 95-118, at 107 (1996); NYNEX Price Cap, D.P.U. 94-50, at 305 (1995); Massachusetts Electric Company, D.P.U. 92-78, at 79-80 (1992); Cape Cod Gas Company, D.P.U. 20103, at 18-19 (1979).

⁷ With the IRD, certain FCC-regulated telecommunication carriers may elect to adjust their pole rates by the difference between attachment rates calculated under USOA and attachment rates calculated under GAAP for a period of twelve years and as of the last full year preceding the carrier's initial opting-out of USOA, as a means to mitigate any impacts related to the election of GAAP accounting. In re Comprehensive Review of the Part 32 Unif. Sys. Of Accounts, 32 FCC Rcd. 1735, 1746 (2017) ("Accounting Order").

⁸ It is precisely because pole attachment rates calculated using GAAP-based data may be higher than those calculated using USOA-based data that the FCC provided for application of the IRD. Accounting Order, 32 FCC Rcd. at 1746.

importantly, the FCC's IRD is not available to Verizon here because, as discussed above, Massachusetts is a reverse preemption state and Verizon cannot unilaterally discontinue USOA-based reporting in Massachusetts based on federal changes in telecommunication carrier accounting practices and recordkeeping.

Finally, NECTA's suggestion that DTC implement a rate freeze to avoid the impact of Verizon's change to its accounting method (see NECTA Further Comments at 2) would accomplish the same purpose of the FCC's IRD but does not resolve the underlying issues presented in this proceeding and discussed above. Once again, the current method to establish pole attachment rates in the Commonwealth is based on the Massachusetts Formula which relies on publicly available USOA-based data. Pole-owning entities subject to the DTC's and DPU's jurisdiction are obligated to comply with this method and may not unilaterally decide to adopt an alternative method that relies on GAAP-based data.

Given Verizon's actions, it is imperative that the DTC act immediately and ensure that Verizon remains in compliance with existing USOA-based reporting requirements in the Commonwealth for calculating pole attachment and conduit rates as outlined herein and in our previously-filed comments in this proceeding. Thank you for your consideration.

Sincerely,

/s/

Shane Early
General Counsel

cc: Service List – D.T.C. 18-3