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July 9, 2010

Catrice C. Williams
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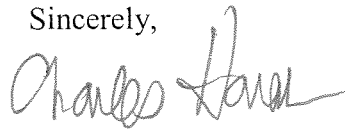
RE: Verizon Service Quality in Western
Massachusetts; D.T.C. 09-1

Dear Ms. Williams:

Enclosed please find the Reply Brief of Local 2324, the International Brotherhood of Electrical Workers.

All parties have been served as indicated on the attached certificate of service. Please do not hesitate to contact us if you have any questions.

Sincerely,



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DATED: July 9, 2010

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

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

DTC 09-1

REPLY BRIEF

LOCAL 2324, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

July 9, 2010

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I. INTRODUCTION

Local 2324 of the International Brotherhood of Electrical Workers (“Local 2324”) finds relatively few points in Verizon’s Initial Brief that merit reply. Local 2324’s initial brief anticipated most of the arguments made by Verizon, and this reply brief will therefore not respond to all of the points Verizon has raised.

The challenge for the Department of Telecommunications and Cable (“Department”), in reviewing the briefs and record in this case, will be decide whether the glass is half empty versus half full --- e.g., do dozens of complaints from customers willing to show up at public hearings in small towns across Western Massachusetts represent just the tip of the iceberg regarding problems with Verizon’s infrastructure in the 413 area; do repeated complaints about phones that do not work when it rains and long delays in Verizon repairing “troubles” show that there are broad-based problems requiring similarly broad remedies; and do company-reported statistics for Reports Per Hundred Lines (“RPHL”) and time to clear troubles in Western Massachusetts demonstrate sub-standard service quality --- as Local 2324 and the Attorney General (“AG”) contend ---- or do the many statements at public hearings and the consistent pattern of complaints in the record mean little or nothing, given the large number of Verizon’s customers --- as Verizon contends?

Local 2324 believes that it is the rare individual who will take the time to testify at a public hearing, and the fact that dozens of residents of Western Massachusetts chose to do so is a strong indicator that there are serious and widespread problems with Verizon’s infrastructure as well as with its maintenance, repair and investment policies. Moreover, the “near uniformity” of

the “quality of service complaints”¹ voiced both at the public and evidentiary hearings demonstrates that those complaints are neither misconceived nor the result of highly isolated problems. The testimony of the witnesses presented by Local 2324, the Attorney General and the several towns provides ample back up to the public hearing testimony, as well as analysis and statistical data that should leave the Department little doubt but that Verizon’s infrastructure in Western Massachusetts is “improper” and “inadequate.”² The Department must take strong remedial steps to rectify the existing problems including, *inter alia*, requiring an independent, third-party audit of Verizon’s infrastructure and repair and maintenance practices.

II. THE DEPARTMENT HAS LEGAL AUTHORITY TO MAKE FINDINGS AND ORDER REMEDIES AS TO WESTERN MASSACHUSETTS AS A WHOLE AND AS TO SPECIFIC TOWNS

In its initial brief, Local 2324 anticipated that Verizon would challenge the authority of the Department to make findings on a community-specific basis in this docket, even if Verizon accepted the Department’s authority to make regional findings. Local 2324 Init. Br., at 47 – 48. Verizon in fact makes the argument at several points in its brief that once the Department chose to open up an investigation of service quality in Western Massachusetts, “findings as to service quality at that [wire center] level are not appropriate,” Verizon Init. Br., at 20, relying, in part, on the testimony of Mr. Vasington, Init. Br., at 21. This argument merits rebuttal.

First, Mr. Vasington is not a lawyer, and his testimony regarding the Department’s legal authority under G.L. ch. 159, § 16 (“Section 16”) should be given little, if any, weight. Second, Mr. Vasington’s own testimony logically undermines an interpretation of Section 16 that would

¹ Order to Open Investigation, DTC 09-1 (June 1, 2009), at 13.

² G. L. ch. 159, § 16.

preclude the Department from making findings as to specific towns or wire centers and providing appropriate remedies. As Mr. Vasington seems to fully acknowledge, the Department has unquestionable legal authority to open an investigation into “individual town issues”, Tr. 3: 532, l. 7, and, as Verizon seems to acknowledge, the Department also has unquestionable legal authority to make regional findings in this docket.³ Yet Mr. Vasington, a non-lawyer, sets up the illogical and legally unsupportable dichotomy that the Department can only choose one “door” or the other, local or regional --- even when the Department opened up the current docket as a way to consolidate a multitude of similar local complaints for the convenience of the Department and of the very towns which sought the Department’s intervention, and not as a way to extinguish any pre-existing legal rights. *See* Order to Open Investigation [“OOI”] (June 1, 2009), at 16 (“The Regional Service Investigation is the most efficient method of addressing multiple quality of service complaints”) & 18 (“ . . . consolidating the Hancock, Rowe, Shutesbury and Egremont cases into a single case . . . would make the best use of the Department’s limited resources Furthermore, Rowe noted that ‘most of the towns in western Massachusetts are very small and lack the funding or manpower needed to pursue such a petition on their own, and therefore would probably not pursue such a petition, to the detriment of their townspeople.’ ”).

The Department’s decision to open up this present investigation was not intended to take away existing legal rights that individual towns had prior to the opening of the investigation, nor to deprive the Department itself of the ability to make findings relative to those specific

³ *See* Interlocutory Order on Appeal of Verizon New England Inc. of Procedure Established to Address Record Request No. 3, 4, and 5, DTC 09-1 (April 16, 2010), at 6 (“Verizon acknowledged in its testimony that the

complaints. The Department's decision in the OOI to merge several individual complaints into one proceeding should be seen as having no more of an adverse impact on the Department's legal authority than would an Interdepartmental Judicial Assignment in the Massachusetts trial courts be seen as diminishing the court's authority to enter just and equitable orders.⁴ In the trial courts, "the Chief Justice for Administration and Management [may] make an appropriate interdepartmental assignment so that one judge may hear related matters" when "two or more actions are pending [and] the separate actions involve substantially the same or similar issues and parties," in order to "promote speedy disposition of cases . . . promote judicial economy [and] afford complete and permanent relief which might not be obtained unless the actions are consolidated for hearing,"⁵ Here, the Department was exercising its inherent authority to manage its own dockets, as well as its investigatory authority under Section 16, and took the procedural step of consolidating various individual complaints to "promote speedy disposition" of those complaints and "promote judicial [i.e., administrative] economy" as well as to facilitate the ability of those complainants to be heard and the ability of the Department to provide complete and equitable relief to the complainants. It strains credulity to suggest, as Verizon has, that this procedural consolidation somehow undermines the rights of the complaining parties and the legal authority the Department itself had prior to consolidation.

Oddly, Verizon cites no legal authority for the proposition espoused by Mr. Vasington, and it is in fact contradicted by Department precedent. In addition to authorities already cited by

Department is required under G. L. c. 159, § 16 . . . to consider remedies should the Department determine that Verizon's service quality in Western Massachusetts is inadequate.")

⁴ See Massachusetts Trial Court Rules, "XII. Requests for Interdepartmental Judicial Assignments."

⁵ *Id.*, ¶ 1.

Local 2324 and the Attorney General⁶, a very recent Department Order which relied on Section 16 noted that the “plain language of the statute grants the Department broad authority to open an investigation solely on its own initiative.” *Tracfone Wireless, Inc., Annual Verification of Safelink Wireless Lifeline Subscribers*, DTC 09-9 (June 30, 2010), at 15. There is no authority supporting Verizon’s very narrow and strained reading of Section 16, and the Department should explicitly reject it.

III. VERIZON HAS THE ONGOING LEGAL OBLIGATION TO PROVIDE QUALITY SERVICE AND MEET THE SERVICE QUALITY STANDARDS

On the one hand, Verizon repeatedly argues that its service quality is “just, reasonable and adequate.” Verizon Init. Br., at 6 & *passim*. On the other hand, Verizon argues that the Department should not require it to comply with the existing metric for Troubles Cleared – Residence because the company cannot afford to do so. Init. Br. at 43 – 47. Verizon’s stark admission that it has not and will not devote adequate resources to meet a service quality requirement established in an adjudicated proceeding before the Department underscores one of the main points of Local 2324’s brief --- that “Verizon has not invested adequately in Western Massachusetts, and its preferred business model militates against adequate future investment in wireline” service in the 413 area. Local 2324 Init. Br., at 31 – 42. Local 2324 agrees with the Attorney General that Verizon remains a “local exchange carrier with carrier of last resort responsibilities,” and that Verizon therefore “must continue to provide adequate and reliable service” to customers in Western Massachusetts. AG Init. Br., at 29 – 30. Nothing more clearly highlights the problem customers in Western Massachusetts face than the company’s naked

⁶ See Local 2324 Init. Br., at 45 – 52; AG Init. Br., at 34 – 37.

admission that it will not meet the “Troubles Cleared – Residence metric in the current [Service Quality] Plan.” Verizon Init. Br., at 43.

IV. COMPETITION FOR WIRELINE SERVICE IN WESTERN MASSACHUSETTS IS LIMITED

Local 2324 in its initial brief underscored the fact that many towns in Western Massachusetts do not have either competitive wireline providers or dependable wireless service. Init. Br., at 28 -31. Local 2324 maintains that there is no reason for the Department to limit or restrict the remedies it would otherwise impose, based on Verizon’s allegations that competition alone provides sufficient motivation for the company to provide adequate, reliable, high-quality service. One point raised in Verizon’s brief regarding the state of competition merits additional discussion by Local 2324.

Verizon suggests that because it allegedly delivers its bundled services over the same network that provides basic service, it therefore faces sufficient competition and has adequate incentives to invest in and maintain its copper infrastructure. Verizon Init. Br., at 66. Yet one of the consistent complaints at the public hearings was that Verizon does not offer DSL service (one of the means by which Verizon delivers advanced and bundled services) in much of Western Massachusetts, even in cities as large as Northampton,⁷ and does not offer FiOS (another means by which it delivers advanced and bundled services) at all. *See* Tr. 2: 248 (Northampton resident Wendy Foxmyn’s testimony: “I live in a 90-unit condo complex, and despite dozens of flyers, inserts, e-mail notices from Verizon, inviting me to subscribe to their DSL service during the last decade, this service remains unavailable to me.); Tr. 1: 12 - 13

⁷ Northampton has a population slightly under 30,000 (http://en.wikipedia.org/wiki/Northampton,_Massachusetts) and is one of the larger cities in Western Massachusetts.

(Aaron Goldman testimony: “The fact is that while Verizon has deployed next generation technology in Boston, fiber-optics, their brand is called FiOS, to great fanfare and excellent PR, we are still waiting for the last generation of technology. And in fact, a lot of the organizing has been around broadband . . .”). Local 2324 witnesses Rowley and Calvey both pointed to Verizon’s complete failure to bring FiOS to Western Massachusetts, and to bring DSL to Western Massachusetts only on a limited basis and much later than it was rolled out in the eastern part of the state,⁸ as compelling proof that Verizon is not willing to invest sufficiently in Western Massachusetts, particularly in comparison to other parts of the state. Whatever the actual level of competition may be, it certainly has not provided sufficient incentive for Verizon to direct adequate investment to the western part of the state. Rather, investment in FiOS in eastern Massachusetts has been draining resources from the 413 area for the past several years. *See, e.g.*, Calvey Testimony, Ev. Exh. 2, at 3 – 4 (describing meetings with Verizon management at which the unions were “asking why there was no DSL in Western MA”); Tr. 1: 71 (“The joke in the company has always been that everything but 413 area code . . . When a new product came out, the position of . . . Verizon was that we really have no interest in putting it into Western Mass.”); Tr. 1: 85 (“Western Mass. is probably the last place to get converted to hundred percent touch tone And then when FiOS was rolled out in 2004, the company was pretty emphatic that there would be no FiOS deployed in Western Mass.”); Rowley Testimony, Ev. Exh. 3, at 39 -42 (describing how rollout of FiOS in eastern Massachusetts has resulted in reassignment of employees and resources from 413 area to central and eastern Massachusetts).

⁸ Verizon did not start rolling out DSL in Western Massachusetts until approximately two years ago. Tr. 1: 89.

While Verizon relies heavily on the testimony of Mr. Vasington in making its arguments about the level of competition in Western Massachusetts (*e.g.*, Verizon Init. Br., at 65 – 67) and, consequently, its alleged motivation to invest adequately in the 413 area, Mr. Vasington voluntarily offered that he does not have “an independent expertise” to “develop [his] own opinion” on Verizon’s corporate investment philosophy and business model. *E.g.*, Tr. 2: 407, l. 16 to 408, l. 11.

In fact, as Verizon Communications CEO Seidenberg has made clear, the company’s “preferred platform for its business model” is FiOS, not copper, and with the rollout of FiOS, Verizon is beginning to think about “eliminating central offices, eliminating call centers, and eliminating garages.” Tr. 2: 407 – 409 & Ev. Exh. 57 (Transcript of Seidenberg conference call at Goldman Sachs Communacopia). While there are certainly many more cell phone users in Western Massachusetts than there were ten years ago, there are also many more miles of FiOS east of the 413 area than there were even five years ago, and Mr. Seidenberg’s comments make it clear that the company is far more interested in investing in FiOS than in the aging copper infrastructure, competition notwithstanding.

V. THE RECORD DEMONSTRATES THAT THERE ARE SIGNIFICANT SERVICE QUALITY PROBLEMS, DESPITE VERIZON ARGUMENTS TO THE CONTRARY

Local 2324’s initial brief (at 6 – 31) includes a lengthy discussion of the service quality problems in Western Massachusetts, and the business motivations behind the lack of adequate investment (at 31 – 43). Because Verizon argues so vigorously that service quality is adequate, rebuttal is called for.

A. The Customer Survey Results As Presented Do Not Show A High Level of Customer Satisfaction, And The Underlying “Verbatims” Actually Show Significant Dissatisfaction

Verizon argues that its customer surveys demonstrate a high level of satisfaction with service quality in Massachusetts. As Local 2324 pointed out in its initial brief (at 25 – 27) , those surveys, at best, reflect how satisfied the customer is with the repair service provided by the company, after repairs have in fact been completed, and cannot be read as reflecting customer satisfaction with overall service quality. As Local 2324 noted already, “The survey does not ask customers whether they are generally satisfied with the quality of their wireline service.” Init. Br., at 27.

But the Attorney General’s brief provides far more compelling and damaging evidence that the company’s customer surveys in no way demonstrate satisfaction with service quality, particularly regarding the service quality issues that have been highlighted in this case: phones that do not work when it rains and long delays in repairing a range of service problems. Verizon witness Mr. Sordillo posited:

I’ve rarely seen a customer who answered this survey who thought that the specific repair was great but the service was awful and said we did a great job.

Tr. 4: 720, l. 21 – 24. Apparently, Mr. Sordillo did not read the customer survey “verbatim” which capture any specific comments the customer makes in addition to completing the survey. Fortunately, the Attorney General has read those verbatims, and has demonstrated that customers often do what Mr. Sordillo says they rarely do: they rate the quality of the repair service they receive highly (if the work was in fact done well), even if they are very troubled by the need to make repeated calls for repair or are quite dissatisfied with the overall quality of service.

For example, one customer, with an obvious touch for irony, rated the company's repair performance as "outstanding," yet he commented that he was going to "open up [his] cell phone" to call Verizon because "all these technicians that come up, I'm on a first name basis. We have that many problems up here." AG Init. Br., at 27. But even customers without such a flair for the ironic note that the repair service was "satisfactory," or "very good," while commenting along these lines:

"I wish the phone wasn't down so long. I think it was a total of four days. Other than that I thought they did a good job."⁹

"It has been a reoccurring problem . . . but for some reason it just seems to be an area with problems."

"Two days without a phone is too long to wait."

"Kind of figure out these lines better, that way they don't have to come back more than once."

"The service wasn't very quick, that's for sure."

"From what I've heard for a lot of repair persons . . . a lot of these lines are very old. I keep having problems . . . I understand occasional problems, but five times in one year?"

"Upgrade the telephone service . . . We have static in these lines. These are very old copper lines on a dirt road. They're not investing in the infrastructure in our part of the state because we're less populated . . . For us, this is our only mode of communication. Our cell phones don't work. We don't have high speed internet through DSL or any other means. Our land line is the only form of communication from our house if there's an emergency."

AG Init. Br., at 26 – 27. Thus, Mr. Sordillo had it exactly wrong. The customer surveys glean information about precisely what they purport to survey: satisfaction with the repair or installation service just received. The summary results, at least as scrubbed and initially

⁹ This customer's comment puts in one's mind the acerbic quip, "Other than that, Mrs. Lincoln, how was the play?"

presented by Verizon in this case, reveal nothing about overall satisfaction with the quality of service. Rather, as shown in the quotes above, those surveys, if read in full, support many of the major arguments Local 2324 and the Attorney General have made in this case: (1) Customers can often wait several days to have their repair service completed.¹⁰ (2) Problems keep reoccurring, and customers need to make repeat calls for repair service. (3) Some areas have old cables, causing the need for repeat repair calls. (4) Customers in Western Massachusetts often have no alternative to Verizon's wireline service. These verbatims also indirectly make the important point that customers are quite satisfied with the repair service provided by front-line technicians (who are members of Local 2324) but dissatisfied with management decisions that leave old copper in place, causing repeat service calls. The verbatims strongly support Local 2324's position that Verizon is engaging in band-aid repairs, such as simply closing currently open plant, when more substantial investments such as replacing old cables may be needed:

Mr. Lee: Do you know if the fixes [that have been conducted on open plant] are permanent in nature, or are they just temporary just to make them work until another problem occurs?

Mr. Rowley: It is difficult to answer that only because if the employee is working on a closure, it will take care of that piece, but that piece of cable can still be that 50-year old cable that we have spoken about before. So you might be, instead, be putting a Band-Aid on.

Tr. 1: 120.

In sum, nothing in the customer surveys should give the Department comfort that customers in Western Massachusetts are satisfied with the overall quality of service.

¹⁰ Moreover, the level of frustration reflected by those customers completely rebuts Verizon's assertions that customers voluntarily choose to delay repairs, to suit their own schedules.

B. Customers Of Small Wire Centers Still Deserve High-Quality Service

Verizon attempts to minimize the severity and scope of problems that customers of small wire centers experience, alleging, among other things, that the RPHL statistics in small wire centers are more volatile. Verizon Init. Br. at 18. Ms. Baldwin performed statistical analyses of the volatility of wire center RPHLs, by size of wire center, and concluded that the “size of the wire center doesn’t explain much at all of Verizon’s service quality.” Tr. 6: 982. “[L]ess than 10 percent of volatility of the service quality performance is measured by the size of the wire center.” Tr. 6: 983. Moreover, as Ms. Baldwin makes clear in her testimony, there are 57 of 101 municipalities (and 27 of 63 wire centers) in Western Massachusetts that merit significant attention by Verizon due to high RPHLs and other indicators. Baldwin Rebuttal [redacted version], Ev. Exh. 6, Table 6 (at 25) and accompanying discussion (at 8 to 24). Because many small wire centers report below-average RPHLs, it simply is not true that Verizon cannot maintain satisfactory RPHLs in small wire centers. Ev. Exh. 6 [redacted version], at 15.

The relatively large number of municipalities and wire centers that Ms. Baldwin considers “hot spots” that merit particular focus suggests that problems in Western Massachusetts are fairly widespread. Ms. Baldwin’s primary recommendation, one which Local 2324 fully supports (Local 2324 Init. Br., at 53 – 57) is “that the Department direct a comprehensive audit of the entire Western Massachusetts region because it is difficult to ascertain precisely which aspects of Verizon MA’s network require attention” in the absence of such an audit. Baldwin Rebuttal, Ev. Exh. 6 [redacted version], at 11. It is the small towns in particular that merit the full attention of the Department “[p]recisely because . . . the level of service quality that they receive from Verizon MA is simply ‘background noise’ in the metrics

that Verizon MA reports to the Department.” Ev. Exh. 6, at 11. There is overwhelming evidence in this case that customers in the small towns depend heavily on Verizon’s wireline service because they often do not have access to reliable, alternative means of communication,¹¹ and residents of these towns have a relatively greater need for access to reliable phone service in case of emergency, since there are usually further from police, fire and ambulance services than residents in larger, urban areas. Customers in these towns deserve high-quality service, and the Department should ensure that they receive it by ordering a region-wide infrastructure audit.

C. The Town of Hancock Still Has Unresolved Service Quality Problems

Curiously, Verizon alleges that a “team of technicians” resolved the “potential service-affecting conditions” that caused the Town of Hancock (“Hancock”) to file its complaint with the Department. Verizon Init. Br., at 23, n. 14. Yet the written and live testimony of Hancock Police Chief Sherman Derby is directly to the contrary. Local 2324 has already summarized much of Chief Derby’s testimony in its initial brief, and will only reiterate a few key points here. First, unlike Verizon’s witnesses, Chief Derby experienced the service quality problems first-hand and also dealt directly with William Dealicio, the Verizon manager assigned to address the problems Hancock has experienced. It is not clear that Verizon’s witnesses were ever present in Hancock during the relevant periods of time. Second, Chief Derby testified that after Mr. Dealicio oversaw repairs that could be seen as temporary Band-Aids,¹² he informed Chief Derby “that the company had reached an end point where Verizon could do no more to repair Verizon’s

¹¹ See, e.g., Local 2324 Init. Br., at 12 – 14 & 28 – 31; AG Init. Br., at 27 (final verbatim comment).

¹² Local 2324 means no criticism of Mr. Dealicio, but rather directs its criticism at corporate policies which do not allow for adequate investment in Western Massachusetts and for timely replacement of aging copper lines.

equipment because the lines are older lines.” Derby Testimony, at 1. Mr. Dealicio further 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. Third, the Hancock situation is emblematic of the larger problem that appears to be fairly widespread in Western Massachusetts, based on the available evidence.¹³ Verizon is willing to make limited repairs --- closing open plant --- particularly when pressured by a sufficient number of complaining towns and placed under the Department’s investigatory spotlight, but does not seem willing to make major investments to replace old cable or bring in newer technologies like FiOS and DSL.

D. The Age Of Cable Affects Service Quality

Verizon argues that the age of its cable in Western Massachusetts is not relevant in this case. Verizon Init. Br., at 24 – 26. This argument is not only completely counter-intuitive, it is contradicted by substantial evidence in the record. Local 2324 acknowledges that not every old cable will necessarily cause serious service problems, nor that every cable that was fairly recently installed performs without fault. Similarly, Local 2324 suspects that even Verizon would not suggest that cable installed within the past few years is likely to cause repeated service problems, nor deny that cable which has been replaced is often older than the system average. Cable age is relevant, even if not determinative. If Verizon had provided detailed data on cable lengths and age of cable, Attorney General witness Baldwin might have been able to demonstrate a correlation, even if not a one-to-one correspondence, between cable age and certain types of service quality problems. However, Verizon produced only limited data. Baldwin Testimony,

¹³ One key reason Local 2324 so strongly recommends a regional infrastructure audit is precisely to determine the full scope of the problems with the infrastructure, although the available evidence certainly demonstrates that the problems are widespread.

Ev. Exh. 5 [redacted version], at 63.

Despite Mr. Sordillo's counter-intuitive denials, the record supports the conclusion that age of cable does affect service quality. Verizon chose not to cross-examine nor in any other way contradict Chief Derby's testimony that Verizon manager William Dealicio eventually gave up in trying to fully resolve the Town of Hancock's service quality problems because "the lines need to be replaced to remedy the issues," and, short of replacement, Verizon "had done all they could to fix the problems." Derby Testimony, at 2. Mr. Rowley testified that he had been informed by several Verizon managers that "they realized there was need for replacing the copper cable" but that available funding was instead being directed to the FiOS infrastructure. Rowley Testimony, Ev. Exh. 3, at 41 – 42. Wendy Foxmyn, interim town administrator of the Town of Leverett, who has collected complaints from the town's residents, testified as follows:

This folder [of complaints] 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 somewhat sympathetically, "It's not your fault, it's ours."¹⁴ The lines are old and there is nothing we can do."

Tr. 2: 250.

This testimony from Chief Derby, Mr. Rowley and Ms. Foxmyn demonstrates that old cable can be the underlying cause of recurring service problems, and that those problems will keep reoccurring unless the cable is replaced. Yet Verizon places many obstacles in the way of investing in cable replacement. First, Mr. Sordillo fails to acknowledge that age of cable is even relevant, although that may be simply a litigation posture meant to deflect many of the

¹⁴ One of the main reasons Local 2324 decided to intervene in this case is because its members feel so frustrated in their inability to resolve customer complaints.

complaints that have been lodged in the docket. Of greater concern is that Verizon acknowledges operating in a difficult financial environment (see Verizon Init. Br., at 43 – 47), and in this environment, it is no doubt especially difficult to obtain approval for cable replacement projects. Tr. 2: 414 – 415 (capital projects need to be “proven”); Tr. 3: 477 – 478 (even purchases of tools must now be approved at the V.P. level); Baldwin Testimony, Ev. Exh. 5 [redacted version], at 69 (Verizon’s policies regarding investment may be biased against “upgrading copper plant in rural areas”).

The Department should conclude that the age of cable in Western Massachusetts may well be highly relevant to the issues in this case, and that an audit of the infrastructure should include gathering better and more transparent information regarding the age of cable and any correlation between cable age and reported troubles.

E. Verizon Grossly Mischaracterizes Mr. Rowley’s RPHL Testimony

Verizon chastises Mr. Rowley for his alleged “comparison of RPHL in a few, generally small and rural wire centers in Western Massachusetts to the RPHL in four downtown Boston wire centers,” because the downtown wire centers have some of the “lowest [RPHL] in the state,” and the comparison is thus allegedly unfair. Verizon Init. Br., at 27. While Mr. Rowley does make comparisons between RPHLs in various towns in the 413 area to RPHLs in downtown Boston wire centers, he also makes comparisons with statewide average RPHLs, which comparison Verizon pointedly and deceptively ignores. Verizon itself maintains that RPHL “is the best indicator of the overall health of Verizon Mass.’s network,” Tr. 3: 490. Since Verizon has chosen to ignore completely the fact that Mr. Rowley compared RPHLs in certain Western Massachusetts towns to statewide average RPHLs, nothing in Verizon’s brief can be

read as questioning the relevance and import of this comparison. Mr. Rowley's comparison to statewide RPHLs (again, unchallenged and not even mentioned by Verizon) shows some very disturbing results, summarized at length in Local 2324's initial brief, at 19 – 21. Here, Local 2324 will only reiterate that the 4.0 RPHL level is exceeded far more frequently in Western Massachusetts than elsewhere in the state, and that the RPHLs in particular towns are often double, sometimes triple, the statewide average. While Verizon chose to completely ignore this analysis, the Department should not.

F. There Is Credible Evidence That Form 3722s Were Not Properly Acted Upon --- Even Thrown Away --- In The Past, And That Proper Procedures For Handling These Forms Were Only Recently Adopted

Verizon challenges Mr. Rowley's testimony that the company does not properly use or follow up on Form 3722s, Verizon Init. Br., at 29 – 32, which identify repair work that needs to be performed "at a later date." Rowley Testimony, Ev. Exh. 3, at 35. Mr. Rowley testified that "in the North Hatfield garage, an entire wall was covered with the SST copies of 3722s that had accumulated for over a year. I saw this wall, and it was referred to as the Wall of Shame." Rowley Testimony, Ev. Exh. 3, at 37. Verizon has not seriously rebutted the testimony that these 3722s were effectively thrown away (by being posted on the "Wall of Shame") and further admits that it has only recently mechanized the process for handling 3722s so that they will not be similarly ignored in the future. Verizon Init. Br., at 31 (company has only "now mechanized its Form 3722 process"). Mr. Rowley's testimony regarding lack of follow-up on Form 3722s, and also about inappropriately scrubbed trouble calls (Rowley Testimony, Ev. Exh. 3, at 38 – 39), are entirely consistent with the many complaints in the record that customers too frequently experience repeat troubles even when they have repeatedly called the company for repair service.

To the extent that Form 3722s are not properly acted upon and trouble calls are improperly scrubbed, that would inevitably lead to repeat troubles and frustrated customers.

G. The Record Shows That Verizon Has Shifted Employees Away From Western Massachusetts To Assist With Rollout of FiOS, To The Detriment Of Customers In Western Massachusetts

Verizon challenges (Init. Br., at 32) Local 2324's testimony that the company has shifted employees based in Western Massachusetts to work elsewhere in the state, as a result of the rollout of FiOS, and that these reassignments have been to the detriment of service quality in Western Massachusetts.

There was extensive testimony from both Mr. Rowley and Mr. Calvey that these transfers occurred. Mr. Calvey described the problem this way in his pre-filed testimony:

Verizon took many of its technicians out of Western Massachusetts, so that the technicians could work on installing FiOS in Woburn, which is in Eastern MA, in the Boston area. I know that two employees quit because they could not make the commute. Around November 2005, I met with Bruce Bader, a third liner (third level manager) in construction, and he informed me that there was going to be no need for these two people in Western Massachusetts and that the Company had no interest in doing business there.

Calvey Testimony, Ev. Exh. 2, at 4.

Mr. Rowley provided similar testimony, but with more detail, given his first-hand experience as Business Manager for his local:

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' . . . In mid-2004, the Company began building out FiOS. Almost immediately, the Company began transferring SSTs and OPT¹⁵ [sic – "OPTs"] to other parts of MA to help build out FiOS. Approximately 8 OPTs out of 32 for my entire local were assigned on long term transfers. As many as approximately 35 out of 270 SSTs were similarly assigned. Until recent months, this was business as usual in Western Massachusetts. . . .

¹⁵ Outside plant technician.

As basic funding shifted to the rest of Massachusetts and away from the western part of the state, getting complaints from my Members became the norm.

Rowley Testimony, Ev. Exh. 3, at 39.

When Verizon challenged Mr. Rowley's assertions regarding employee transfers from west to east and asserted that transfers of employees from east to west were common, Local 2324 propounded discovery that would demonstrate whether or not these transfers had occurred, and Mr. Rowley offered additional comment in his rebuttal testimony:

In IBEW-VZ 10-20, IBEW asked the Company to produce the time records that would allow any party (the DTC, Verizon, or any of the intervenors) to determine the extent to which technicians from Eastern Massachusetts have been transferred to do work in Western Massachusetts. I was surprised that Verizon failed to do so. IBEW has been able to obtain comparable time sheet information in other proceedings. . . . Verizon is unwilling to produce the requested information (which only it has access to), and absent proof to the contrary, I stand by my direct testimony on pages 39 and 40 that Verizon transferred technicians from Western Massachusetts to help build its FiOS system in Eastern Massachusetts, to the detriment of customers in Western Massachusetts.

Rowley Rebuttal, Ev. Exh. 4, at 11.

There was additional live testimony corroborating that these transfers took place. During his redirect examination, Mr. Rowley testified:

Beginning, I believe, in early 2005, shortly after the advent of FiOS . . . the Company immediately began transferring people specifically from 2324, 413 area, to go out to these other areas to backfill, and I'll explain that this way.

They would take the technicians for Woburn --- we'll use that for the town, and they [i.e., those technicians] would be trying to deal with the FiOS issues. People that come in [i.e., transferred from elsewhere] would deal with the core issues. That is the Company's term for old copper. . . . Everyone going west to east would continue to do the same [core work] they would do here, but it is to supplement that work force that is displaced to do the FiOS installation.

.....
We had people that were going out for three months at a time, six months at a time. Some of them forced . . . actually forced on the road. From Pittsfield, linemen from Pittsfield,

forced to the eastern part of the state for six months at a time.¹⁶

Tr. 1: 121 – 123.

Mr. Calvey providing very similar testimony, noting:

They [Local 2324 union officials] were incensed, because they [Verizon] were constantly taking new members out of Western Massachusetts and shipping them out to other parts of Massachusetts. And example, in 2004, when they rolled out the 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.

Tr. 1: 78 – 79.

This point regarding transfers is critical because it so well demonstrates the inherent conflict between Verizon's current business model and the needs of customers in Western Massachusetts. Verizon's business model is premised on rolling out FiOS in certain communities where it can then heavily market its bundled services offerings and hope to earn good profits. But given the company's self-avowed financial constraints, it had to cannibalize existing employee resources (and, no doubt, other resources) in Western Massachusetts in order to build out FiOS. It is abundantly clear that the Department needs to take aggressive measures to make sure Verizon devotes to Western Massachusetts the resources needed to maintain adequate service quality. Only a thorough, independent audit will identify the repairs and replacements that will need to be made to bring the infrastructure back into good condition.

¹⁶ Mr. Rowley noted that at least one of his members quit his job, due to the extended transfer to Eastern Massachusetts. Tr. 1: 123.

VI. REMEDIES

In its initial brief (at 52 – 57), Local 2324 urged the Department to order a “thorough, independent audit of the infrastructure in Western Massachusetts and monitor implementation of needed repairs.” Init. Br., at 52. Similarly, in her rebuttal testimony, Ms. Baldwin noted:

My primary recommendation, unchanged from my direct testimony, is that the Department direct a comprehensive audit of the entire Western Massachusetts region because it is difficult to ascertain precisely which aspects of Verizon MA’s network require attention.

Ev. Exh. 6 [redacted version], at 11. Verizon opposes an audit on many grounds, including its belief that the limited surveys it is now conducting in Western Massachusetts are sufficient and that the Department need not take any further action. Verizon Init. Br., at 40. In addition to the arguments Local 2324 already made in its initial brief, Local 2324 fully agrees with reasoning the Attorney General put forth in her initial brief, at 47 – 52, in support of conducting a thorough audit.

Among many other reasons to require a thorough, independent audit, the Department should be concerned that Verizon’s ramped-up maintenance and repair efforts --- including the very recent transfer of 30 employees to Western Massachusetts; the survey work currently ongoing; and even the alleged 2007 ramp-up of the Proactive Cable Maintenance (“PCM”) program --- are highly reactive to the complaints the towns filed and to the Department’s decision to open this investigation, and not evidence of any long-term commitment by the company to maintain service quality on an ongoing basis. It bears noting that the Town of Middlefield petition was filed on January 27, 2006 (OOI, at 1), and that, in addition to holding a public hearing, the Department had served four rounds of information requests before 2007

began.¹⁷ Thus, Verizon was well aware that the Department was paying close attention to service quality in Western Massachusetts towns well before it “reinvigorated a number of programs to manage the network more aggressively.” Verizon Direct, Ev. Exh. 22, at 53. Additionally, before the end of 2007, the Town of Hancock had filed a formal complaint as had the Town of Rowe (OOI, at 2), and public hearings were held in both cases by October of that year. No doubt, Verizon had had several informal complaints from the towns before the formal complaints were filed.¹⁸ Thus, the ramping-up of the PCM program; the transfer of employees to Western Massachusetts; the very recent efforts to conduct surveys of open plant ---- all can be seen as a reaction to the spotlight that has been shone on Western Massachusetts by the towns and by the Department.

Both Local 2324 and the Attorney General are gravely concerned that backsliding will occur if the Department does not enter very clear orders (including an order requiring an independent audit) followed up with close monitoring. As Mr. Rowley put it:

I would believe to my core that once this 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. Ms. Baldwin similarly emphasized the need to “make sure there is some accountability,” questioning whether Verizon would still be engaged in aggressively closing open plant “two years” from now given the historic “lack of investment in Western Massachusetts.” Tr. 2: 294 – 295 & AG Init. Br., at 46.

¹⁷ See the docket entries in DTC/DTE 06-6.

¹⁸ See, e.g., Testimony of Sherman Derby, at 1 (noting his efforts “late 2006 and early 2007” to “address serious concerns regarding the adequacy of Verizon’s service,” in his role as a “member of the Board of Selectmen and as Chief of Police.”)

The Attorney General estimates that a field investigation of the entire infrastructure in Western Massachusetts would cost approximately \$500,000. AG Init. Br., at 49. This does not necessarily represent the costs of an audit, as an audit conducted by an independent party potentially could cost more than an internally-conducted review, but also could cost less than \$500,000 given that Verizon has already conducted extensive survey work in several of the Western Massachusetts towns.

One distinct advantage of Local 2324's recommended procedure for acquiring audit services (Local 2324 Init. Br., at 56) is that the Department can monitor the potential costs at each step and determine if the costs are reasonable and justified. The Department of Public Utilities (DPU) decision in the *Fitchburg*¹⁹ case provides a useful model. In that investigation, which reviewed the response of Fitchburg Gas and Electric Light Company to the December 12, 2008 winter storm, the DPU found "that the Company's lack of planning and training for a significant, region-wide storm event left the Company ill-prepared to meet its service obligations to ratepayers." *Fitchburg*, DPU 09-01-A, at 192. In addition to other remedies, the DPU found "that the Company and ratepayers would benefit from a comprehensive audit of the Company's management practices." *Id.*, at 193. It directed the company to submit to the Department a draft request for proposals ("RFP") describing the independent management audit services being sought, and established a time frame for submitting that draft to the Department and allowing parties in the case to submit comments on the draft RFP. The order further contemplated that the company would later submit to the Department copies of all bids received; the company's proposed short list of at least three bidders; and the company's justification why those bidders

were most highly rated. *Id.*, at 193 – 194. Subsequent DPU memoranda in that case make it clear that this is a very transparent and open process, one that allows all parties the opportunity to comment at each major step.²⁰ This DPU case clearly demonstrates that a Massachusetts utility regulatory agency can, and should, in appropriate circumstances, require an independent audit of a company's operations.²¹ Just as in the *Fitchburg* case, the Department here could establish a transparent and phased RFP process that will allow all parties a fair opportunity to comment on the scope of the RFP, the qualifications of the bidders, and the proposed costs. This would thus give the Department the ability to ensure that the costs are reasonable, and also delay any decisions on major investments in repair or replacement work until the independent audit entity produces its report.

In addition to again recommending that the Department require a management audit, Local 2324 here fully supports the Attorney General's recommendation that Verizon complete repairs to open plant in the 31 wire centers by October 31, 2010, AG Init. Br., at 41.²²

VII. CONCLUSION.

Local 2324 asks the Department to adopt the recommendations included in its initial brief and in this reply brief, and to order such other relief as appears just and reasonable.

¹⁹ *Re: Preparation and Response of Fitchburg Gas and Electric Light Company d/b/a Unitil to the December 12, 2008 Winter Storm*, DPU 09-01-A (Order dated Nov. 2, 2009) ("*Fitchburg*").

²⁰ *See, e.g.*, July 1, 2010 Memorandum in *Fitchburg*, DPU 09-010-A, inviting all parties in the case to submit comments on the company's June 18, 2010 filing that included copies of all bids and a proposed list of three bidders.

²¹ This Department is of course fully aware that prior to the adoption of Chapter 19 of the Acts of 2007, the Department of Public Utilities itself regulated Verizon. It is also worth noting, as the Attorney General does on page 50 of her initial brief, that DPU 86-33-G, in which the DPU required an independent audit of affiliate transactions of Verizon's predecessor company, provides a useful precedent as well.

²² Local 2324's silence in this reply brief on other recommendations made in the Attorney General's initial brief should not be taken to evidence lack of support for those recommendations.

Respectfully submitted,

A handwritten signature in black ink that reads "Charles Harak". The signature is written in a cursive style with a large, prominent 'C' and 'H'.

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