

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

In Re Verizon Service Quality
in Western Massachusetts

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DTC 09-1

SUPPLEMENTAL TESTIMONY OF
JOHN CONROY AND PAUL B. VASINGTON
ON BEHALF OF VERIZON NEW ENGLAND INC.

PUBLIC VERSION

April 23, 2010

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1 **I. INTRODUCTION**

2 **Q. Mr. Conroy, please state your name and occupation.**

3 A. My name is John Conroy and I am Vice President-Regulatory for Verizon New England
4 Inc., d/b/a Verizon Massachusetts (“Verizon MA”).

5 **Q. Mr. Vasington, please state your name and occupation.**

6 A. My name is Paul B. Vasington. I am a Director – State Public Policy for Verizon.

7 **Q. Did the two of you previously file testimony in this proceeding?**

8 A. Yes, along with Mr. Sordillo we submitted direct and rebuttal testimony in this
9 proceeding on December 31, 2009, and March 16, 2010, respectively (referred to herein
10 as “Verizon MA Direct Testimony” and “Verizon MA Rebuttal Testimony”).

11 **Q. What is the purpose of this supplemental testimony?**

12 A. We are testifying on issues related to the Department’s Hypothetical Service Quality Plan
13 for Western Massachusetts, which the Department distributed at hearing on April 1, 2010
14 and marked as Evidentiary Exhibit 16 (the “Hypothetical Plan”), and we are also
15 responding to Ms. Susan Baldwin’s responses to Record Requests 3 - 5 filed by the
16 Attorney General on April 16, 2010.

17 **Q. Please summarize your supplemental testimony.**

18 A. Verizon MA appreciates that the Department has to build a record on appropriate
19 remedies in this case, in the event that it finds that service quality in Western
20 Massachusetts is inadequate, but there is no basis for the Department to impose the
21 Hypothetical Plan or any similar regulation on Verizon MA in this proceeding. The
22 substantial evidence before the Department demonstrates that Verizon MA’s service

1 quality across Western Massachusetts is just, reasonable and adequate, and there is no
2 evidence of inadequate service that could justify imposing a new, comprehensive service
3 quality plan on either a statewide or region-wide basis. The evidence that Verizon MA
4 misses one metric (out of 12) in the current Service Quality Plan and that the RPHL in a
5 minority of wire centers is higher than the statewide average standard for that metric
6 calls, at most, for local remedies focused on the particular issue or wire center. It in no
7 way supports imposition of new, blanket regulations revising many measures of service
8 quality on which Verizon MA meets all current standards and covering a broad swath of
9 Massachusetts (if not the entire state), in which the majority of the wire centers, serving
10 the great majority of Verizon MA's customers in the region, have good service quality.

11 Further, the Hypothetical Plan itself has shortcomings and is not consistent with
12 Department precedent. Its terms, especially the penalty mechanism, are unclear, some of
13 the new metrics are inappropriate and not designed to address any failure of service
14 shown in the evidence, the particular standards in the Plan are arbitrary, the application of
15 certain metrics at a wire center level is inappropriate and unprecedented, the proposed
16 penalties are out of proportion to the harm sought to be addressed, and Verizon MA is not
17 financially capable of meeting the dictates of the Hypothetical Plan, which are very
18 costly.

19 **Q. What is your response to Ms. Baldwin's April 16, 2010 response to Record Requests**
20 **3 - 5, on behalf of the Attorney General?**

21 A. We address in this testimony many of Ms. Baldwin's specific analyses and
22 recommendations in the context of particular aspects of the Hypothetical Plan, but there

1 is one particular and telling aspect of her filing that we think the Department should take
2 into consideration as it evaluates the evidence. On page 8 of her response, Ms. Baldwin
3 lists the “Criteria used to evaluate the [Hypothetical Plan],” and what is most noteworthy
4 about this list of criteria is what is missing – *any consideration at all of the cost to*
5 *Verizon MA and the financial ability of Verizon MA to comply with the proposed*
6 *remedies*. As the Department evaluates Ms. Baldwin’s recommendations, it should keep
7 in mind that, on her own terms, she did not even consider one of the most fundamental
8 requirements of the statutory standard on which the Department’s investigation is based,
9 which is the requirement for the Department to consider the financial ability of Verizon
10 MA to comply with whatever remedies the Department may order. This omission
11 renders Ms. Baldwin’s analyses of little help to the Department in meeting its statutory
12 requirements and standard of review for this investigation.

13 Ms. Baldwin also asserts that one of her criteria is the notion that Verizon MA
14 confronts economic incentives to “invest ... disproportionately in Eastern
15 Massachusetts”, and to “Under-invest ... in less densely populated and rural
16 communities.” This is false. There is no evidence in the record to support any allegation
17 that Verizon MA is under-investing in any areas in the state, or what a proper
18 “proportion” is for investment in Eastern Massachusetts. The evidence in the case
19 demonstrates that Verizon MA faces competition throughout the Commonwealth, and
20 that it has economic incentives to retain every line it currently serves and to win back
21 lines that it has lost. *See, e.g.*, Verizon MA Direct Testimony at 81-82, and Verizon MA
22 Rebuttal Testimony at 33-35. If Ms. Baldwin is referring to the fact that Verizon MA is

1 providing FiOS-based services in some Eastern Massachusetts communities, but not in
2 Western Massachusetts, that simple fact is not a foundation for a conclusion that
3 investment is disproportionate, and the allegation is not consistent with Department
4 precedent. The Department has previously found that “Verizon is not required to ‘roll
5 out’ service features, high-speed services, or advanced services to all communities in the
6 state at the same time,” and that “An inherent feature of competitive markets is that
7 investment will be targeted to demand and financial returns – both of which may, and
8 often do, vary across geographic regions. Also, in a competitive market with rapid
9 changes in technology, such as telecommunications, infrastructure investments are highly
10 speculative.” *Athol et al.*, D.T.E. 99-77 (2001), at 28-29; also citing D.P.U. 94-50, Price
11 Cap Order (1995), at 135-139.

12
13 **II. THE HYPOTHETICAL PLAN WOULD NOT BE BASED ON SUBSTANTIAL**
14 **EVIDENCE. SERVICE QUALITY IS ADEQUATE AND MEETS THE**
15 **DEPARTMENT’S STANDARDS ON ALL BUT ONE MEASURE.**
16

17 **Q. Does the evidence in this case support the conclusion that Hypothetical Plan is**
18 **warranted?**

19 A. No, and it is not even a close call. Verizon MA provides just, reasonable and adequate
20 service quality in Western Massachusetts, and there is no substantial evidence suggesting
21 otherwise. Verizon MA meets the Department’s standards in eleven out of twelve service
22 metrics and even meets the Department’s stringent “targets” for six of the seven metrics
23 that can be measured on a regional basis. *See* Verizon MA Rebuttal Testimony at 5 and
24 Figure 1 at 6. With minor exceptions, the RPHL for the region has been well below the

1 Department's target level for years, and the 12-month RPHL was 1.40 as of January,
2 2010. *Id.* Service quality in Western MA is on par with service quality in the rest of the
3 state. *Id.* at 5. No party has submitted evidence contradicting these facts. Moreover, at a
4 wire center level, we have demonstrated that more than 50% of the company's customers
5 in Western Massachusetts are served by wire centers that meet the Department's 1.90
6 RPHL target 91% of the time and rarely exceed the 2.25 standard level. *See id.* at 7;
7 Verizon MA Direct Testimony at 25-26 and Figure 7. In addition, the average RPHL in
8 45 of the 63 wire centers in Western Massachusetts in 2009 met the Department's
9 standard statewide level. Verizon MA Rebuttal Testimony at 7. These 45 wire centers
10 serve approximately 93% of Verizon MA's access lines in Western Massachusetts. *See*
11 Attachment AG-VZ 13-4, Verizon MA's monthly Quality of Service Report for
12 December, 2009.

13 The only evidence in this case showing service quality underperformance in any
14 way is that Verizon MA does not often meet the standard for Troubles Cleared in 24
15 Hours - Residence and that some wire centers experience RPHL higher than the statewide
16 average standard. *See e.g.* Baldwin Rebuttal at 16, Table 2. Of course, it is unreasonable
17 to apply the statewide average RPHL standard and target to individual wire centers, for
18 the reasons we explained in Verizon MA's Rebuttal Testimony, at 10, and expand upon
19 later in this testimony. The Department has never applied a statewide average as the wire
20 center standard in the past but instead has consistently assessed wire center performance
21 against a reporting standard of RPHL of 4.5 (later 4.0) for three consecutive months. *See*
22 *e.g.* D.P.U. 89-300, at 321, 408-409 (discussing "Hot Spot" reports); *Athol*, D.T.E. 99-77,

1 at 15 (applying 4.0 RPHL standard); *Middlefield*, D.T.E./D.T.C 06-6, at 13 (same). Only
2 six wire centers in Western Massachusetts would have fallen within this “Hot Spot”
3 standard in 2009. Verizon MA Rebuttal Testimony at 10.

4 Neither the evidence regarding the Troubles Cleared - Residence metric
5 performance nor the evidence that some individual wire centers exceed the Department’s
6 4.0 RPHL standard warrants a finding of inadequate service throughout the region or
7 justifies approval of the Hypothetical Plan.

8 **Q. If the Department finds that Verizon MA’s performance with respect to Troubles**
9 **Cleared in 24 Hours - Residence was inadequate, would it be appropriate to**
10 **implement the Hypothetical Plan?**

11 A. No. Service quality cannot reasonably be assessed by looking at Verizon MA’s
12 performance with respect to a single metric and ignoring the other 11 aspects of service
13 quality measured by the current Service Quality Plan. Failure to meet the one metric
14 does not support a finding that service quality is inadequate on a regional level, for the
15 reasons we spelled out in Verizon MA’s Rebuttal Testimony, at 12- 19, and the record
16 affords no basis for the kind of comprehensive regulations contained in the Hypothetical
17 Plan, such as a new metric for Repeat Troubles, new provisions for penalties for failure to
18 meet metrics in individual wire centers, new provisions for penalties for failing to satisfy
19 a single metric in a month, and a shift from measuring performance as a 12-month rolling
20 average to individual monthly results. At most, Verizon MA’s performance on the
21 Troubles Cleared 24 Hours - Residence metric might support consideration of revisions
22 to that metric in an appropriate proceeding, but not in this one.

1 **Q. What if the Department finds that there are “pockets” or individual wire centers in**
2 **Western Massachusetts where service quality is inadequate. Would the**
3 **Hypothetical Plan be appropriate in that instance?**

4 A. No. We have testified that findings regarding individual wire centers would be beyond
5 the scope of this proceeding, and the other parties and the Department staff questioned
6 the Verizon MA panel about this assertion at the hearings. However, even if findings on
7 individual wire centers were within the scope of the proceeding, such findings would not
8 support imposition of the Hypothetical Plan.¹ On such findings, the only appropriate and
9 legally-permitted remedies would be tailored to specific improvements in those wire
10 centers. And Verizon MA already has performed open plant surveys and embarked on
11 remediation efforts in 31 Western Massachusetts wire centers and the wire center serving
12 Williamstown, at a roughly estimated cost of \$2 million. *See* Tr. Vol. 5 (4/13/10) at 784.
13 This type of work has proven effective in reducing the RPHL of the area surveyed. *See*
14 *e.g.* Tr. Vol. 4 (4/12/10) at 654-656, 672-673 and 678. A service quality plan that
15 penalizes or makes changes to service quality levels in wire centers where there is no
16 evidence of inadequate service would not be consistent with the requirements of M.G. L.
17 Chapter 30A or Chapter 159, section 16. But the Hypothetical Plan would apparently do
18 exactly that -- if the basis for it is that the RPHL in 18 wire centers in Western
19 Massachusetts was high -- by imposing new metrics and standards on Verizon MA's
20 performance across the state (or maybe in the Western Massachusetts region alone - the

¹ Nor would such findings support the blanket, region-wide “remedies” proposed by the Attorney General and the IBEW, such as a region-wide third-party audit or a regional credit mechanism for failing to clear troubles within 24 hours.

1 Hypothetical Plan is unclear on this). A finding of service quality problems only in
2 pockets or certain wire centers would preclude approval of the Hypothetical Plan.

3
4 **III. THE PROVISIONS OF THE HYPOTHETICAL PLAN ARE NOT**
5 **APPROPRIATE.**

6
7 **Q. You mentioned that the terms of the Hypothetical Plan are unclear. Please explain.**

8 A. It is difficult for Verizon MA to fully describe or analyze the Hypothetical Plan for a
9 number of reasons. First, the Department introduced the Hypothetical Plan at the
10 evidentiary hearings on April 1 simply as a one-page document with no further
11 explanation of the metrics or reporting mechanism. Second, because the Plan was
12 introduced by the Department and not a party to the proceeding, there is no testimony
13 explaining its provisions and there was no opportunity to seek clarification through
14 discovery or cross examination. In fact, it was only introduced during bench examination
15 of another party's witness. Third, despite the fact that it is entitled "Hypothetical
16 Service Quality Plan for Western Massachusetts," some provisions of the Plan would
17 apparently apply statewide; *e.g.* 14 of the 15 metrics fall in the "Statewide" columns and
18 a footnote states that some penalties will be calculated based on statewide revenue.²

19 In order to describe the Hypothetical Plan, we have made some assumptions.
20 First, we assume that the Department would implement this Plan in addition to, not in
21 replacement of, the existing Service Quality Plan approved in D.T.E. 01-31. Second,
22 we assume that the Department does not intend the Hypothetical Plan to have a Service

² The Department stated at hearing on April 1 that it was open to suggestions on how to limit application of the Plan to Western Massachusetts if possible. *See* Tr. Vol. 2 (4/1/2010) at 331.

1 Quality Index, meaning a scoring mechanism to determine if Verizon MA is providing
2 adequate service and to serve as a determinate for penalties. Although the Hypothetical
3 Plan includes “standard” and “target” levels for some metrics, it does not indicate any
4 scoring mechanism but simply includes penalties for not meeting specific metrics alone
5 or in combination. Third, since this Plan would be in addition to the current Service
6 Quality Plan, the penalties associated with the Hypothetical Plan would be additive to any
7 penalties resulting from the current Service Quality Plan. Fourth, because there are no
8 definitions for the proposed metrics, we assume the definitions from the current Service
9 Quality Plan carry over to this Plan for those metrics that are common to both Plans.
10 With respect to the modified metrics included in the Hypothetical Plan,³ we assume the
11 definition of the metric in the current Service Quality Plan with the only change being the
12 distinction between “Out of Service” and “Service Affecting.” One of the new metrics,
13 Percent Repeat Troubles within 60 days, is not included or defined in the current Plan.

14 **Q. Based on your assumptions, please explain your understanding of how the**
15 **Hypothetical Plan would work?**

16 A. In addition to the current reporting requirements and SQI under the existing Service
17 Quality Plan, the Hypothetical Plan would require Verizon MA to evaluate every metric
18 in that Plan on a monthly basis. In addition, the metrics listed as “Maintenance Items,”
19 with the exception of Network Trouble Report Rate, would require evaluation on a wire
20 center basis.

³ Percent Out of Service Over 24 hours – Res, Percent Service Affecting over 48 Hours-Res, Percent out of service Over 24 hours – bus, and Percent Service Affecting Over 48 Hours-Bus.

1 We understand that penalties under the Hypothetical Plan would be determined as
2 follows. First, if Verizon MA misses any of the Maintenance Items on a statewide basis⁴
3 in a month, it incurs a penalty of one-twelfth of one percent of total retail revenue derived
4 from its Massachusetts customers that year. For example, if Verizon MA were to miss
5 any of those five metrics each month during the year, it would incur a penalty of one
6 percent of its total retail revenues. Second, penalties are also assessed for missing certain
7 metrics at a wire center level, so that if Verizon MA misses any of the Maintenance Items
8 except Network Trouble Report Rate in any month in any central office in Western
9 Massachusetts, it would incur a penalty of one-twelfth of one percent of total annual
10 retail revenue for that particular central office. For example, if Verizon MA does not
11 meet the standard for one of the metrics in one wire center and for another metric in
12 another wire center in a month, it would pay a penalty of one-twelfth of one percent of
13 the annual retail revenue for each of those wire centers, in addition to any penalties
14 associated with the statewide metrics. However, if Verizon MA misses two metrics in a
15 particular wire center, the penalty would be only one-twelfth of one percent of annual
16 retail revenue for that wire center. Finally, Verizon MA would pay a penalty if it does
17 not meet the standards for three or more of the Installation Items and Service Response
18 Items across Massachusetts in any month.⁵ The penalty associated with that criterion is

⁴ Or perhaps just on a Western Massachusetts regional basis. Again, the Hypothetical Plan is ambiguous.

⁵ Because the Hypothetical Plan is in addition to the existing Service Quality Plan, the Hypothetical Plan exposes Verizon MA to double penalties for missing the same Installation Items or Service Response Items -- one penalty under the existing Plan and one under the Hypothetical Plan.

1 one-twelfth of one percent of total annual revenue in Massachusetts for each month the
2 criterion is not met, in addition to the other penalties mentioned above.

3 The current Service Quality Plan requires any penalty to be paid as a one-time
4 credit to each residence and business line in service at the time of the credit. The
5 Hypothetical Plan, however, does not address the methodology to be used for payment of
6 any penalties incurred, leaving it unclear whether a penalty would be paid as a one-time
7 credit, and, if so, whether it would be to all residence and business lines in the state, just
8 those in Western Massachusetts, or only those in specific wire centers. The methodology
9 to be used for payment could require significant changes to Verizon MA's systems that
10 cannot be assessed until a specific methodology is determined.

11 **Q. You mentioned that the provisions of the Hypothetical Plan are inappropriate.**
12 **Aside from the absence of evidence supporting adoption of a new service quality**
13 **plan, what are the problems with the design of the Hypothetical Plan?**

14 A. First of all, the Hypothetical Plan includes five new Maintenance metrics and standards,
15 one of which, "Percent Repeat Troubles (per 100 initial Trouble Reports within 60
16 days)," is not even currently measured here or in any state where Verizon is an ILEC.
17 Nor does Verizon MA track this information. (Verizon MA tracks repeat reports made
18 within 30 days of the initial report, not 60 days. The data in Evidentiary Exhibit 52 (AG-
19 VZ 8-23) reflects repeat reports in 30 days. Ms. Baldwin's reliance on this data and
20 Verizon MA's related testimony at hearing as support for the proposed metric is thus
21 misplaced. *See* Baldwin Response to Record Request #5, at 11, 12 and Attachment A.)
22 There is no evidence before the Department on the rate at which Verizon MA's

1 customers in the state or the region experience repeat troubles within 60 days of an initial
2 report, although the Department can infer that it is higher than the repeat report rate based
3 on a 30-day interval. Also, the reason to consider repeat troubles is that the “repeat”
4 problem is likely related to the initial service issue and may signal a chronic problem.
5 The likelihood of that linkage is reduced with the passage of time. If the initial problem
6 was not fixed appropriately, it is unlikely that it would take up to 60 days to resurface,
7 making the 60-day metric inaccurate at best as an indicator of chronic troubles.

8 There can be no basis for the Department to find that Verizon MA’s performance
9 with respect to Repeat Troubles is deficient since there is no current metric and no
10 standard or benchmark by which to assess Verizon MA’s performance. For the same
11 reason, there is no information before the Department on which to determine whether the
12 Hypothetical Plan’s proposed 20% standard and 10% target for the Repeat Troubles
13 metric are reasonable or appropriate. If there is no finding of a deficiency or even a basis
14 on which to assess whether performance is deficient, then there is no reason to include
15 this new metric in a new plan.

16 Moreover, because Verizon MA does not track this data, Verizon MA would have
17 to reprogram its systems to measure this new metric in order to comply with the
18 requirements of the new plan. Ms. Baldwin’s claim that this metric would “provide[]
19 important information about the condition of the network,” and her view that the
20 Hypothetical Plan “should create an incentive for Verizon to implement repairs of long
21 duration so that the same consumers are not repeatedly inconvenienced,” (Baldwin
22 Response to Record Request 5, at 12) are not sufficient reason to require Verizon MA to

1 incur this additional expense, much less do they justify penalizing Verizon MA for failing
2 to meet the new metric at a wire center level as the Hypothetical Plan proposes. Verizon
3 MA already reports RPHL by wire center in the current Service Quality Plan, and there is
4 no evidence on which to find that Verizon MA is not already implementing repairs “of
5 long duration.”

6 Ms. Baldwin’s proposal to tighten the standards for this metric each year from
7 12.5% down to 9.5% (Baldwin Record Response #5 at 12) likewise has no evidentiary
8 support, since there is no basis on which to determine that a repeat rate of, say, 14%, is
9 not reasonable. Contrary to her claim, her figures are not “consistent with Verizon’s
10 internal objectives” of 12 to 14%. Her figures are much lower than the 14% that Verizon
11 finds acceptable. Also, as noted above, Verizon’s objectives are for repeats in 30 days,
12 not 60, and the 60 day rate is more stringent by definition. Furthermore, there is no basis
13 for ratcheting the standard downward in the first place. If a certain standard is reasonable
14 in 2010, Ms. Baldwin has offered no basis for finding that the same standard is no longer
15 appropriate a year later. She speculates that Verizon MA’s current open plant work
16 “should cause the quantity of repeat troubles to decline,” *id.*, but there has been no factual
17 testimony on that subject to support such speculation. More to the point, the fact that
18 Verizon MA might be able to improve an aspect of its service quality in the future does
19 not justify penalizing the company if it fails to do so, where it nevertheless continues to
20 meet a standard the Department has found to be reasonable. That is what Ms. Baldwin’s
21 progressively more difficult standards amount to, and it is patently unreasonable.

1 **Q. Ms. Baldwin similarly recommends that the RPHL standard for Western**
2 **Massachusetts be reduced to 1.3 for 2010, ratcheting down in steps to 1.0 in 2012. Is**
3 **this appropriate or based on a solid foundation?**

4 A. No. The purported bases for this recommendation are that: 1) Verizon MA's RPHL for
5 four other districts in the Commonwealth is currently lower than 1.3 (not including the
6 Southeast District, which Ms. Baldwin cursorily dismisses as an "outlier"); 2) Verizon
7 MA is taking steps to reduce the volume of trouble reports; and 3) Frontier agreed to a
8 RPHL standard of 1.03 in Illinois in a settlement for approval of the transfer of Verizon
9 assets in that state to Frontier (which was approved by the Illinois Commerce
10 Commission in an order dated April 22, 2010). These facts are not appropriate reasons to
11 adopt her recommendation. Her recommendation is primarily based on the notion that
12 whatever Verizon MA or another company can achieve or aspires to achieve anywhere in
13 the state or country, Verizon MA should be held accountable to achieve, with penalties if
14 it fails. This has never been, and should not be, the basis for determining the level at
15 which service quality is considered to be adequate. Such a standard in fact would be a
16 disincentive for improvements because improvements would simply cause the regulator
17 to ratchet the bar up higher. In terms of what Frontier agreed to in Illinois as part of an
18 overall settlement, there is no evidence in this case as to the costs of compliance, the
19 market conditions in Illinois, and what other considerations Frontier received or gave up
20 in the settlement. It is worth noting, also, that Ms. Baldwin was a witness in that case on
21 behalf of the IBEW, and her client opposed approval of the settlement that she now cites
22 favorably, in part on the alleged grounds that Frontier is not financially capable of

1 meeting the needs of Illinois customers. Specifically with respect to service quality, Ms.
2 Baldwin's client stated that "[T]here are strong indications that the quality of service
3 would be harmed if Frontier were permitted to acquire Verizon Illinois. The ALJ properly
4 found that Frontier's record of service quality performance in other jurisdictions is
5 questionable. She is correct that there are reasons to believe that Frontier will not be able
6 to maintain Verizon's current level of service quality, *let alone improve on that level of*
7 *performance.*" Illinois Commerce Commission Docket No. 09-0268, Brief in Reply to
8 Exceptions of the International Brotherhood of Electrical Workers, Locals 21, 51, and
9 702, filed March 25, 2010, at 2 (italics added).

10 **Q. What are the other new metrics in the Hypothetical Plan?**

11 A. In addition to the Repeat Troubles metric, the other four new metrics are for out-of-
12 service ("OOS") conditions over 24 hours for both residential and business customers and
13 service affecting ("SA") conditions over 48 hours for both residential and business
14 customers. The standard for performance for OOS is 20% for both OOS and SA
15 conditions and for both residential and business customers. There is no given rationale
16 for having the same standard for both business and residential customers, even though the
17 Department has always had different "Troubles Cleared" standards for residential and
18 business customers, reflecting the more critical need for restoration for business
19 customers. Ms. Baldwin acknowledged at the evidentiary hearings that there may be
20 good reasons for giving business customers a higher priority, using the example of a
21 doctor's office. *See* Tr. Vol. 1, 3/31/10, at 178-179. As we noted in our Direct Testimony
22 at 27, business customers buy different services, pay different rates and have different

1 needs and expectations of their telephone services than do residential customers, and
2 comparing the two is simply inappropriate.

3 There is also no rationale to support a finding that 20% over 24 hours for OOS and
4 over 48 hours for SA conditions is the appropriate standard. The current and long-
5 standing standard for all Troubles Cleared is no more than 40% over 24 hours, and
6 Verizon MA has provided substantial testimony and evidence explaining the reasons that
7 this current standard is no longer consistent with customer expectations or business
8 realities. Establishing a new, even more stringent standard on a going-forward basis
9 would violate the statutory requirement for the Department to consider the company's
10 financial ability to comply with remedies, as will be discussed later, and would be the
11 very definition of "arbitrary" since no evidence has been offered in support of this new
12 standard and no consideration has been given as to whether it is achievable, given
13 financial constraints.

14 **Q. Doesn't Ms. Baldwin provide a rationale for this OOS standard?**

15 A. No. In her discussion titled "Rationale for Standard," she points only to Mr. Sordillo's
16 testimony on Verizon MA's internal practices and to experience in other states, but
17 neither of these supports the proposed standard or her more extreme recommendation.

18 In terms of Verizon's internal standard, Mr. Sordillo testified that Verizon tries to
19 clear 60 percent of OOS conditions within 24 hours and 70 percent of SA conditions
20 within 48 hours. Ms. Baldwin claims that because Verizon MA "measures OOS relative
21 to a 24-hour period," the proposed standard "comports with Verizon's existing practices."
22 (Baldwin Response to Record Request #5, at 13.) This is clearly not the case, even from

1 her example. Verizon MA attempts to meet the Department's current standard, but the
2 current standard is for 60% clearance, not 80%, or 95%. Just because the measurement is
3 on a 24-hour basis does not make it "comport" where there are at least 20 percentage
4 points between the current standard and the proposed new ones.

5 Ms. Baldwin further attempts to explain, without rationale or analysis, that "as
6 Verizon continues to reduce the total volume of troubles, resources will be freed up for
7 improving the timeliness of repair." *Id.* That speculation does not provide a reasonable
8 basis for establishing a standard of clearing 80% of OOS troubles in 24 hours at 80% - 30
9 percentage points higher than Verizon MA's current performance. As we have discussed
10 at length, resources for Verizon MA are shrinking, and it is a race between declining
11 revenues and reducing expenses for Verizon MA to return to profitability. In this
12 environment, resources are not "freed-up;" they are eliminated. Also, even if the number
13 of trouble reports is reduced, the scope of the network that Verizon MA must manage is
14 not reduced. For example, a downed wire that used to serve 100 customers may today
15 only serve 50 customers, but it is just as much work for Verizon MA to repair that
16 downed wire as it used to be, so reducing the volume of troubles does not make it easier
17 for Verizon MA to restore service. The fact is that Verizon MA's plans to reduce the
18 volume of troubles is the best way for it to efficiently manage the network and meet
19 customer expectations, but no one should have any illusions that the challenge of
20 restoring service in 24 hours will get any easier under any expected trends.

21 **Q. What standards do other states use for OOS conditions?**

1 A. First, it is worth noting that many states do not even have service quality plans, much less
2 standards for OOS clearance rates. Ms. Baldwin provides in her Rebuttal Testimony, at
3 76, a Table 18 listing the OOS metrics and standards in “selected states,” and we
4 provided a few corrections to this table in Verizon MA’s Rebuttal Testimony at 50-51.
5 What is notable about this list is that most of these states have exclusions for customer
6 requested appointments and for weekends and holidays. In contrast, the current
7 Massachusetts Troubles Cleared metric and the standards in the Hypothetical Plan do not
8 have any exclusions. Also notable is that the Table does not state when the standards
9 went into effect. The three most recent states to look at this issue were Maryland, West
10 Virginia, and Virginia, and all three adopted OOS standards based on clearance
11 percentages in 48 hours with significant exclusions for weekends and customer requested
12 appointments.

13 Ms. Baldwin appears to be basing her recommendation for a transition to a
14 standard of 95% OOS clearance in 24 hours on two states in this Table – Illinois and
15 Connecticut – though Illinois excludes customer requests and 3rd party-caused outages.⁶
16 And it is worth noting that in Connecticut, the Department of Public Utility Control has
17 just this week recognized that its lack of exclusions makes its OOS metric more stringent:

18 [Its] current OOS metric does not permit any exclusions due to adverse weather,
19 weekends/holidays, third party interference, etc. The Department is aware that
20 Connecticut’s OOS metric is more stringent than that of other jurisdictions. All

⁶ Illinois illustrates the dangers of comparing individual elements of service quality plans in different states in isolation, without considering all elements of the respective plans. While Illinois uses a standard of 95% for OOS troubles cleared in 24 hours, its standard for RPHL is 6.0, almost three times higher than the Department’s standard. In this light, the Illinois plan is not an appropriate guide for the Department in setting an OOS standard.

1 telecommunications service providers need to have the opportunity to comment
2 on the need to implement standards that are competitively neutral and permit
3 providers the flexibility needed to compete and adapt quickly to changes in the
4 market. The Department has determined that any need for exclusions to the OOS
5 metric will be investigated further by the Department in the new proceeding.⁷
6

7 **Q. Is it appropriate to include the Service Response metrics in the Hypothetical Plan?**

8 A. No. As an initial matter, there is no evidence in this case demonstrating any problems
9 with response time for directory assistance and service centers, so there would be no
10 basis for any remedy to address these metrics. Second, data that would tailor these
11 metrics to Western Massachusetts alone is not available. Finally, technology is making
12 the types of services once monitored by regulators in the past under a service quality plan
13 obsolete and irrelevant. Today, automated reporting systems and Internet-based
14 interfaces permit instant interaction between the customer and carriers. Customers can
15 use automated systems to place trouble reports or can go on-line to enter a repair ticket
16 directly into carriers' systems. Such technological capabilities make regulatory retail
17 service measurements—such as the speed-of-answer or percentage of calls answered
18 within a set time frame—obsolete measures of service quality.

19 **Q. The Hypothetical Plan would have standards for each month, would not use a**
20 **rolling average, and would have standards for individual wire centers. Is that**
21 **appropriate?**

⁷ Draft Decision, *Petition of the Office of Consumer Counsel for Enforcement of Quality of Service Standards for the Southern New England Telephone Company d/b/a AT&T Connecticut – Phase II*, Docket No. 08-07-15PH02, April 20, 2010, at 14-15 (“Connecticut Order”).

1 A. No. We noted in the Verizon MA Direct Testimony at 28 that: “When it originally
2 established the Service Quality Index fifteen years ago, the Department approved the use
3 of a 12-month rolling average. The rolling average smoothes out the peaks and valleys
4 that can result from conditions beyond Verizon MA’s control such as weather and
5 seasonal demands, and it would be inherently unfair and inappropriate to subject Verizon
6 MA to possible penalties based on a single month’s performance. The rolling average
7 allows the Department to view performance over time, and not just for one month,
8 providing a clearer picture of the quality customers receive.”

9 But the Hypothetical Plan would assess penalties for actual monthly performance
10 on a central office basis for five metrics (OOS, SA, and Repeat Troubles metrics), with a
11 penalty paid for each central office where Verizon MA misses the standard for just one of
12 these five metrics. So Verizon MA has to go from trying to meet the standards on a
13 regional or statewide basis with a rolling average, to meeting some standards for every
14 single month and some standards for every month in every single central office. There is
15 no evidence before the Department demonstrating any need or basis for such micro-
16 management of Verizon MA’s performance, and the resulting exposure to penalties is
17 unprecedented. No state has subjected an ILEC with a large service area to penalties for
18 failure to meet service quality performance metrics at the wire center level, and the only
19 state that has ever required Verizon MA to report metrics (other than trouble report rate)
20 at a similarly disaggregated level on a regular basis, Florida, recently eliminated the

1 requirement for exchange level reporting.⁸ States have thus consistently recognized that
2 some variation in service quality over time and across wire centers is both inevitable and
3 acceptable in light of the variation in conditions beyond the control of the carrier that
4 affect service quality in different wire centers.

5 **Q. Is it appropriate for the Hypothetical Plan to require Verizon MA to meet the same**
6 **metric standards at the wire center level that also apply at the regional or statewide**
7 **level?**

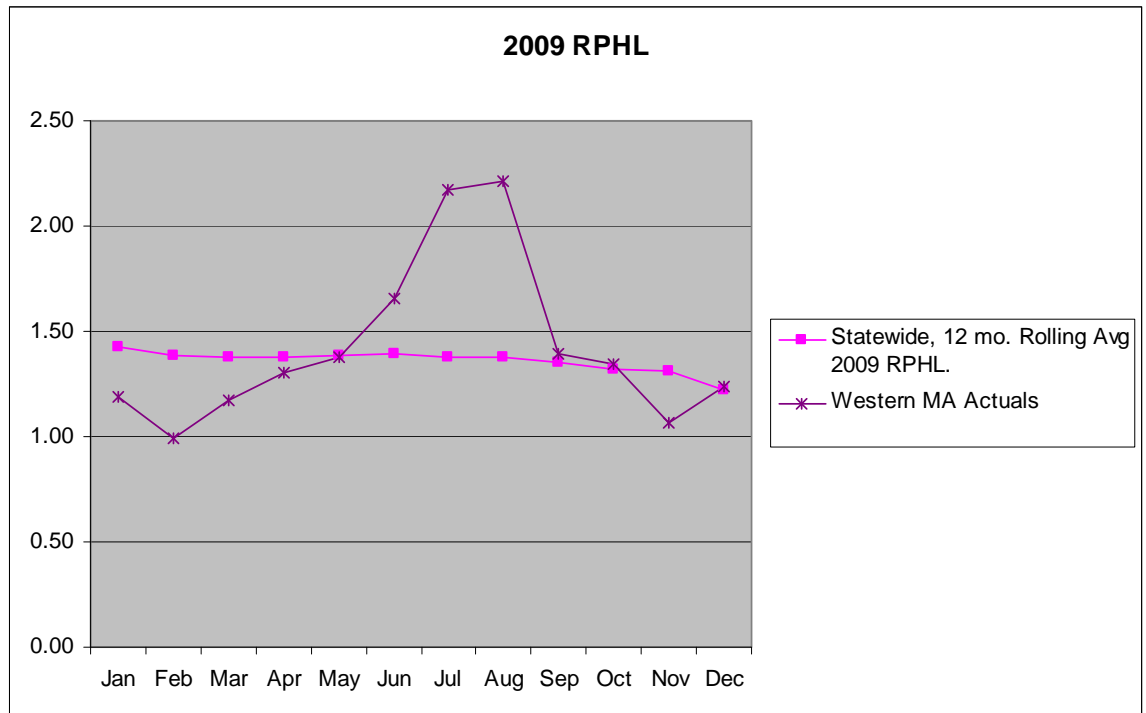
8 A. No. The standard and target performance levels in the current Service Quality Plan were
9 designed to be measures of adequate performance based on averages of performance over
10 time and across wide geographic regions of the state or across the entire state. If a
11 standard is to be developed on a wire center or monthly basis, it should not be the same
12 requirement as the statewide or regional average but must be more flexible. Unlike Lake
13 Wobegon, where “all the women are strong, all the men are good looking, and all the
14 children are above average,” in the real world some individual performances will be
15 above the average of all such performances and some will fall below the average.
16 Applying a statewide or regional average standard to individual wire centers as provided
17 in the Hypothetical Plan would convert the average to a floor, since no wire center is
18 allowed to underperform the standard and all wire centers must either meet or exceed it.
19 For the same reason, if the Department wishes to develop a standard level of performance
20 to measure the adequacy of service quality for particular months or in particular wire

⁸ See Florida Public Service Commission, Docket No. 080641-TP, *Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications*, Rule Changes approved September 3, 2009.

1 centers, then the statewide average standards in the current Service Quality Plan are far
2 too stringent. This is consistent with precedent. The only standard that has ever been
3 applied on a wire center basis is the prior “hot spot” measure, pursuant to which Verizon
4 MA reported the wire centers that exceeded a report rate level of 4.0 or 4.5 RPHL for
5 three consecutive months, as discussed earlier. That “hot spot” level is considerably and
6 appropriately greater than the Department’s standard and target levels for statewide and
7 regional RPHL performance, in recognition that not all wire centers are the same, that the
8 conditions in which Verizon MA provides service vary from wire center to wire center
9 and that these differences result in an allowable range of variation in service quality when
10 measured at the granular, wire center level.

11 Measuring RPHL performance on a monthly basis instead of on a twelve-month
12 rolling average would penalize Verizon MA for weather, changes in seasonal demand
13 and the natural volatility of small, rural wire centers. Figure 1, below, demonstrates the
14 difference in how the RPHL metric is applied in the current SQI (as a statewide rolling
15 average), and in the Hypothetical Plan (as monthly actual performance for Western
16 Massachusetts). Figure 1 clearly demonstrates that the rolling average smoothes out the
17 peaks and valleys that are due to issues unrelated to the adequacy of Verizon MA’s
18 performance. The only thing that a rolling average “masks” is the volatility of
19 performance both above and below the average, which is appropriate for a measure that is
20 in large part a function of circumstances beyond Verizon MA’s control.

Figure 1



Verizon MA's performance thus demonstrates significant variance in RPHL over time and geography, which is why the Department (and every other state commission of which we are aware) does not measure or assess performance in the manner suggested.

Q. You mentioned the volatility of small wire centers. In addition to simply reviewing the RPHL of wire centers over time, do you have any statistical analysis showing that service quality performance in small wire centers in Western Massachusetts is more volatile than in large wire centers?

A. Yes. Using monthly actual performance (not a rolling average), we calculated the standard deviation in 2009 for Troubles Cleared in 24 hours – Residence for each of the 63 Western Massachusetts wire centers. See Figure 2, below. Standard deviation is a

1 statistical measure of the amount by which a set of observed values (in this case, a year of
2 Troubles Cleared performance) differs from the mean or average of those values. It is
3 one way of assessing how volatile a set of data is, in this case the degree to which a wire
4 center's performance on the Troubles Cleared standard differed from the average.

5 **Figure 2**

Wire Center	Standard Deviation
HOLYOKE	12.65
CHESTER ⁹	28.63
GRANVILLE	33.64
WESTFIELD	9.01
NORTHAMPTON	14.60
AMHERST	10.97
EASTHAMPTON	13.65
AMHERST	10.04
HATFIELD	14.58
WILLIAMSBURG	14.73
WORTHINGTON	20.74
CHESTERFIELD	22.06
SOUTHWICK	12.24
HUNTINGTON	13.54
BLANDFORD	20.18
RUSSELL	19.82
GREENFIELD	13.95
S.DEERFIELD	17.12
TURNERSFALLS	13.50
SHELBURNEFALLS	17.86
NORTHFIELD	25.39
MONTAGUE	17.33
BERNARDSTON	30.20
CHARLESMONTMA	13.11
MILLERSFALLS	35.69
COLRAIN	14.09
CONWAY	35.52
ASHFIELD	20.39
PITTSFIELD	15.30
DALTON	14.71
LENOX	23.52
HINSDALE	16.90

⁹ Chester had no OOS conditions in November, so the average of the other 11 months was used to avoid skewing the outcome.

BECKET	17.65
CUMMINGTON	12.05
GT.BARRINGTON	14.98
LEE	19.32
SHEFFIELD	20.37
STOCKBRIDGE	13.71
HOUSATONIC	23.62
OTIS	17.51
W.STOCKBRIDGE	13.53
SANDISFIELD	15.79
N.ADAMS	10.75
ADAMS	13.45
WILLIAMSTOWN	15.47
PALMER	13.14
BELCHERTOWN	18.86
WARREN	29.65
HARDWICK,GILBERTV	21.61
HAMDEN	11.33
WARE	14.89
SPRINGFIELD	14.72
AGAWAM	11.15
BRECKWOODPK.	12.33
CHICOPEE-2	15.49
LONGMEADOW	10.39
LUDLOW	17.31
E.LONGMEADOW	14.29
WILBRAHAM	13.71
INDIANORCHARD	11.83
CHICOPEE-3	19.57
BRIMFIELD	18.40
MONSON	16.33

Adopting the statewide or regional average as the measure of adequacy per wire center and per month would not be appropriate under any conditions, but it is particularly egregious when applied to wire centers with relatively few lines. The results in Figure 2 show that the Troubles Cleared performance is volatile in the smaller wire centers for reasons that are not at all related to whether or not Verizon MA provides adequate service -- the average standard deviation for the largest 10 wire centers in Figure 2 is 13.42, and for the smallest 10 wire centers it is 27.01 -- about double. In other words, the average

1 range of Troubles Cleared performances in the smallest wire centers over the course of
2 the year was twice as broad as the average range for the largest wire centers.

3 This is consistent with other evidence in this case. We acknowledged in our Direct
4 Testimony at 36, that the Housatonic wire center had a very long repair interval in
5 November 2008, but we pointed out that Housatonic had only *****BEGIN**
6 **PROPRIETARY ***** *****END PROPRIETARY***** OOS reports that month,
7 such that a justified inability to address any one of them would result in a high average.
8 In the previous month, moreover, Housatonic fielded *****BEGIN PROPRIETARY**
9 ******* ***** END PROPRIETARY***** trouble reports in an average of *****BEGIN**
10 **PROPRIETARY***** *****END PROPRIETARY***** a
11 good example of the volatility of the small wire centers in the region. (See Proprietary
12 Attachment AG-VZ 3-23(e).)

13 An analogy may help to demonstrate the reasons why it is not appropriate to take a
14 standard developed as an average and turn it into a per unit requirement: Consider a
15 student who is required to maintain a 3.0 grade point average per year in order to retain a
16 scholarship. Requiring that student to meet a 3.0 grade level for every class in every
17 semester would be unfair and would be inconsistent with the standard. If the student has
18 to get better than a 3.0 in every class in every semester, then mathematically that student
19 either has to get exactly a B in every class in every semester, or has to have a GPA that is
20 better than the average-based standard.

21 This analysis shows that even reasonable statewide or regional service quality
22 standards are unreasonable if applied at the level of individual wire centers. In

1 November of 2008, Verizon MA would have missed the 80% standard for clearing OOS
2 and SA troubles proposed in the Hypothetical Plan merely by failing to clear *****BEGIN**
3 **PROPRIETARY ***** *****END PROPRIETARY***** troubles in the
4 Housatonic wire center that month in the allotted time. Likewise, if any customer who
5 reported a trouble that month (or any customer who had reported a trouble in the previous
6 60 days) had also reported a second trouble that month, then Verizon MA would have
7 missed the 80% standard for the proposed Repeat Troubles metric. Demanding this level
8 of service, near perfection, from Verizon MA is simply unreasonable.
9

10 **IV. THE HYPOTHETICAL PLAN IS NOT CONSISTENT WITH DEPARTMENT**
11 **PRECEDENT.**
12

13 **Q. Has the Department ever adopted a Service Quality Plan or a “standard and**
14 **penalty” plan as a remedy in an investigation of Verizon MA’s service quality in a**
15 **municipality or region under G.L. c. 159, §16?**

16 **A.** No. The Department developed the Service Quality Plan only as part of its overall
17 incentive regulation plans for Verizon MA. As we described in our Direct Testimony, as
18 part of its comprehensive evaluation of rate structure and service quality in the late
19 1980s, the Department addressed the overall quality of service provided by Verizon
20 MA’s predecessor, New England Telephone and Telegraph Company (“NET”) in the
21 order in D.P.U. 89-300, which was issued in 1990. Among other things, the Department
22 determined that the “new quality of service reporting mechanisms shall consist of a report
23 to be filed monthly and another report to be filed annually,” and spelled out the content of

1 these reports. D.P.U. 89-300, at 309-316. The Department then developed the Service
2 Quality Plan in docket D.P.U. 94-50, where the Department established an alternative
3 form of regulation, known as a price cap plan, that was designed in large part to improve
4 the incentives of regulation. In particular, the Department recognized that traditional
5 rate-of-return regulation did not provide appropriate incentives for efficiency, and the
6 price cap plan was designed to introduce enhanced incentives for efficiency. Because the
7 price cap plan was designed for regulation of a monopoly, the Department was concerned
8 that enhanced efficiency incentives could result in a degradation of service quality and so
9 adopted the Service Quality Plan as an integral component of the price cap plan. The
10 Service Quality Plan was designed as a “form of protection against a reduction in service
11 quality for monopoly customers.”¹⁰ In its final order in D.T.E. 01-31, issued in April
12 2003, the Department determined that a service quality plan was needed and approved
13 Verizon MA’s proposal to continue the existing Service Quality Plan with modifications
14 to the penalty mechanism to account for the absence of a price cap index in the new
15 regulatory plan. Therefore, the only times that the Department has considered service
16 quality plans with a form and function along the lines of the Hypothetical Plan have been
17 as part of consideration of an overall regulatory plan. The Department has never
18 considered such a plan to be an appropriate remedy in a Section 16 investigation.

19 **Q. How many section 16 service quality investigations has the Department conducted,**
20 **in addition to this one, and what were the results?**

¹⁰ D.P.U. 94-50, Final Order, at 235.

1 A. Since 1989, the Department has conducted four investigations of Verizon MA's (or its
2 predecessor companies') service quality: D.P.U. 89-300; *Mission Hill* D.P.U. 96-30;
3 *Athol, et al.*, D.T.E. 99-77; and *Middlefield*, D.T.C. 06-6.

4 The investigation in D.P.U. 89-300 resulted in a finding that NET's service
5 quality in five districts was "unacceptable and must be remedied." D.P.U. 89-300 at 379.
6 The Department did not attempt to mandate particular remedies or action by NET to
7 improve service quality, nor did it impose penalties on NET for failure to attain service
8 quality standards. Rather, the Department left it to the company to determine how best to
9 proceed, with regular reports to the Department on its progress.

10 In the *Mission Hill* case, the Department found inadequacies in NYNEX's
11 policies related to extended service outages and ordered "That New England Telephone
12 and Telegraph Company d/b/a NYNEX shall develop a major extended service outage
13 plan, in compliance with the findings and directives contained in this Order, and file such
14 a plan with the Department, for its review and approval ..." D.P.U. 96-30, at 32.

15 In the *Athol, et al.* case, the Department found that the company's service quality
16 in the complainant towns was adequate, and only directed Verizon MA to "supplement its
17 monthly service quality reports with a separate section identifying service quality
18 measures for the 30 communities in this docket," and that "This supplement shall be
19 included in the monthly service quality reports for twelve months ..." . *Athol, et al.*,
20 D.T.E. 99-77, at 17-18.

21 Finally, in the *Middlefield* investigation, the Department found that service in
22 Middlefield was inadequate and directed as a remedy that Verizon MA "shall undertake a

1 comprehensive analysis of the service quality and infrastructure issues discussed in this
2 Order,” and to report the results of the analysis and the corrective action the Company
3 planned to take. The Department further ordered that “Verizon shall report to the
4 Department in a separate section of the QOS report, for an 18-month period, the number
5 of customer trouble reports per 100 lines per month in Middlefield for the previous
6 month, a brief description of the nature of each trouble report, and a comparison of
7 Middlefield’s RPHL with the regional and statewide average RPHL for the
8 corresponding month,” among other, related requirements. *Middlefield*, D.T.C. 06-6, at
9 18-19 (footnote omitted).

10 What is most notable about all of these cases is that the Department largely left it
11 to the company to determine the appropriate means of addressing the service quality
12 inadequacy identified by the Department, and the Department’s “remedy,” where
13 relevant, was a reporting requirement and not a “standards and penalties” based SQI plan.
14 Therefore, the Department’s precedent is clearly to use Section 16 investigations to
15 determine whether service in a geographic area is adequate and, if it is not, to monitor the
16 company’s self-designed efforts to remedy the situation, whereas the Department has, in
17 contrast, developed “standards and penalties” plans only as part of overall incentive
18 regulation plans. Since this proceeding is a Section 16 investigation, the only remedy
19 that would be consistent with precedent is a requirement on Verizon MA to report its
20 progress in addressing any service quality inadequacy identified by the Department.

21 **Q. Do you have any concerns about how a new service quality plan, for Western**
22 **Massachusetts or the entire state, would fit within the current regulatory plan?**

1 A. Yes. As just discussed, the Department has imposed service quality regulation on
2 Verizon MA, in the form of a prospective service quality plan with standards and
3 penalties, only as part of an overall regulatory plan, with the particular goal of
4 counteracting efficiency incentives that the Department believed could have led to
5 inadequate service quality, absent customers' ability to switch providers. Adopting a new
6 service quality plan as a remedy to any perceived deficiencies in service quality in
7 Western Massachusetts would represent a fundamental change to the approved regulatory
8 plan under which Verizon MA has operated for the past seven years and which still
9 controls. Given that the current regulatory plan was adopted seven years ago, the
10 Department cannot review and revise only a portion of Verizon MA's form or regulation
11 in isolation from the rest of the regulatory plan for Verizon MA and without also
12 assessing all the other terms of that plan. Otherwise, Verizon MA would be operating
13 under a regulatory plan where certain components are based on market conditions as of
14 seven or more years ago, while a different component (i.e., the Service Quality piece) is
15 based on more current conditions. Also, as we discuss later, one of the reasons that the
16 exogenous events provisions of that regulatory plan do not afford Verizon MA the means
17 to recover the costs imposed by the Hypothetical Plan is that the Department would have
18 to determine whether those costs are exogenous *before* imposing that Plan, but that is
19 beyond the scope of this proceeding.

20 **Q. What if the Hypothetical Plan were applied to Western Massachusetts only and did**
21 **not replace the current Service Quality Plan? Doesn't that mean it is not a change**
22 **to the existing regulatory plan?**

1 A. No. To begin with, it is not at all clear whether the Hypothetical Plan would apply only
2 to Western Massachusetts or to the entire state. In any event, whether it is labeled as a
3 Western Massachusetts plan or something else, it is still a fundamental change to the
4 regulatory incentive plan that the Department has imposed on Verizon MA. The current
5 Service Quality Plan applies statewide and measures performance across the state and at
6 the SBU level. It does not measure service quality at the “district” level, such as for
7 Western Massachusetts, nor does the Service Quality Plan impose potential penalties for
8 failure to meet standards at that level. The Hypothetical Plan, however, would change
9 the way in which Verizon MA’s service quality is regulated, by imposing metrics,
10 standards and penalties at the district level, at least for one district and at the wire center
11 level. That is a modification of the regulation of the Service Quality Plan in the
12 Commonwealth and a modification of Verizon MA’s approved regulatory plan.

13
14 **V. THE COSTS OF COMPLYING WITH THE HYPOTHETICAL SERVICE**
15 **QUALITY PLAN ARE TOO HIGH AND ARE NOT CONSISTENT WITH**
16 **VERIZON’S FINANCIAL ABILITY.**

17
18 **Q. Can you estimate how much Verizon MA would have to pay in fines under the**
19 **Hypothetical Plan?**

20 A. Yes. Based on 2009 results, Verizon MA would have missed one or more of the
21 Maintenance Items in every month, resulting in the plan’s statewide penalty of one-
22 twelfth of one percent of total annual statewide retail revenue in every month. With state
23 revenues of \$991 million in 2009, that penalty amounts to \$9.9 million. In addition, to
24 determine how Verizon MA would have fared with respect to the Maintenance Items that

are measured on a central office basis, we calculated the number of measurements of performance for each metric over the course of the year (756, equal to 63 wire centers times 12 months), and determined how many times a wire center would have missed any one of those metrics. Figure 3, below, lists the number of wire centers in Western Massachusetts per month for which Verizon MA would have paid a penalty in 2009.

Figure 3

	J	F	M	A	M	J	J	A	S	O	N	D
Number of Wire Center in Western MA that would have paid a penalty each month in 2009	63	57	50	55	63	63	63	63	63	63	61	62

Based on this analysis, Verizon MA would have missed the standard for at least one of the Maintenance Items 96% of the time, and would have incurred a penalty of one-twelfth of one percent of its total retail revenue from Western Massachusetts in seven months of the year. The amount of the penalty Verizon MA would have paid in the other five months is a function of the revenues from the particular wire centers that missed the standards in those months, but the figures in Figure 3 show that the great majority of wire centers would have incurred penalties in these months as well. Verizon MA does not have a figure for the amount of its 2009 retail revenue from Western Massachusetts or by wire center and therefore cannot calculate the dollar amount of this penalty.

We have not yet determined whether Verizon MA would have paid an additional penalty of \$9.9 million for missing three or more of the Installation Items and Service Response items in the Hypothetical Plan. While Verizon consistently satisfied the

1 standards for these metrics in 2009 under the current Plan, that was measured on a rolling
2 average basis, not a monthly basis. Accordingly, to sum up this analysis, Verizon MA
3 would have incurred more than \$10 million in penalties under the Hypothetical Plan
4 based on its 2009 performance, and may also have incurred an additional \$9.9 million as
5 well.

6 Of course these fines would be significantly greater if the Department were to
7 adopt Ms. Baldwin's recommendation that the dollars at risk should be \$60 million
8 statewide and \$7 million for Western Massachusetts. Baldwin Response to Record
9 Requests at 17.

10 **Q. What does Ms. Baldwin use as the foundation for her recommendation for dollars at**
11 **risk?**

12 A. She cites to a selective list of other states, calculated on a per-line basis and then adjusted
13 for the number of lines in Massachusetts statewide and in the western region. Her
14 "Overview of Penalty Mechanisms in Other States," is not in fact an overview of *all*
15 "other states" but just selected New England states. As we noted in our direct testimony,
16 only four other states where Verizon is an ILEC even have *any* penalty or credit
17 mechanism in place, so plans with penalties are themselves outliers. *See* Verizon MA
18 Direct Testimony at 94. (Maryland has since added a credit mechanism for certain OOS
19 conditions if standards are not met.) Notably, one of the states that does not have a
20 penalty mechanism is Rhode Island, which Ms. Baldwin has conveniently excluded from
21 her list of other New England states.

22 **Q. To which states does she refer, and what is your response?**

1 A. Ms. Baldwin discusses the dollars at risk in service quality plans from Vermont, Maine,
2 New Hampshire, and Connecticut, without noting that the company to which the
3 provisions apply in the northern New England states, FairPoint, is currently bankrupt.
4 Ms. Baldwin continues to pick and choose components of other states' service quality
5 plans without any discussion or indication that these components are in any way
6 associated with desired outcomes in those states. What is missing from the discussion is
7 any indication of whether the state plans she relies on actually have achieved the results
8 she claims are needed or how the various plan standards are associated with penalty
9 levels. In fact, for some time prior to the FairPoint transaction, Verizon MA met all but
10 one of the metrics in the Vermont plan Ms. Baldwin cites to. Not surprisingly, the one
11 metric Verizon MA was unable to satisfy was Troubles Cleared in 24 Hours - Residence.
12 Verizon MA had similar performance in New Hampshire, meeting many metrics but not
13 all of them. Also, regulators in Maine and Vermont were dissatisfied by the service
14 quality results in their states, even though both states included in their price cap plans the
15 penalties that Ms. Baldwin recommends as a model here. This suggests that just creating
16 ever larger financial penalties is not necessarily an effective means of achieving
17 satisfaction of regulatory service standards.

18 Vermont is actually a very interesting example. The Vermont service quality plan
19 can result in penalties that are far out of line with the purported harm of missing
20 particular metrics. Under the Vermont service quality plan, Verizon Vermont in 2003
21 paid a service quality penalty that amounted to \$26.26 per line. This penalty was largely
22 due to Verizon Vermont's failure to meet the 21 second standard for "Speed of Answer –

1 Repair Centers.” Verizon Vermont’s average speed of answer to repair centers in 2003
2 was 44 seconds, and the 2004 Vermont State Telecom Plan’s customer surveys
3 demonstrated that the vast majority of customers were willing to wait up to 60 seconds to
4 have their repair call answered.¹¹ Therefore, the Vermont plan resulted in a service
5 quality penalty equal to almost 70% of Verizon Vermont's intrastate earnings for
6 answering repair calls well within the range that most customers considered to be
7 reasonable. Ms. Baldwin’s proposal to multiply by five-fold the dollars at risk in the
8 Hypothetical Plan (which itself exposes Verizon MA to penalties of 2 to 3 percent of its
9 statewide revenue, as explained above) suffers from a similar deficiency, potentially
10 subjecting Verizon MA to penalties having no rational relationship to the harm sought to
11 be averted.

12 Connecticut has recently (in the past week) opened a new investigation “to amend
13 the retail service quality standards ...”¹² The basis for the Connecticut DPUC’s decision
14 to review its standards and the need for credits is its finding that the market is competitive
15 and subject to marketplace changes and that financial penalties cannot be competitively
16 neutral:

17 [T]he Department finds the telecommunications market in Connecticut to be
18 competitive. The transformation over the past decade in the Connecticut
19 marketplace makes the imposition of service quality standards on certain retail
20 services unnecessary and inappropriate. The Department also recognizes that
21 some states have eliminated standards entirely, others have relaxed existing
22 standards, while still others have applied either existing or relaxed standards only
23 to a small subgroup of noncompetitive or basic services. In addition, new
24 telecommunications providers offer telecommunications services which are not

¹¹ 2004 Vermont Telecommunications Plan, issued September 2004, at 4-16.

¹² Connecticut Order at 1.

1 subject to the Department's jurisdiction. Application of current retail service
2 quality standards to some but not all providers violates the principle of
3 competitive neutrality.

4
5 Regardless, the Connecticut marketplace has changed since the retail service
6 quality standards were promulgated, and in light of these changes, the existing
7 service standards and their applicability require revision and should be superseded
8 by new standards that more accurately reflect the current telecommunications
9 environment. As such, changes to the retail service quality standards will be
10 addressed in a separate proceeding which will be initiated by the Department.

11
12 ...

13
14 The Department has reviewed whether there is a need for penalties when a
15 telecommunications company fails to adhere to the established metric. The
16 Department acknowledges the above suggestions of additional tariffed credits to
17 customers and the imposition of fines on the offending service provider.
18 However, in a competitive telecommunications market, any financial penalty
19 would have a disparate impact because it can not be imposed on all providers.
20 Therefore, the possible need for credits to customers in the form of tariff changes
21 will be reviewed in the same proceeding established to review the service quality
22 standards.¹³
23

24 **Q. In your rebuttal testimony, Verizon MA provided evidence of the minimum level of**
25 **cost to consistently meet the current Troubles Cleared standard. Can you provide a**
26 **similar estimate for the proposed new standard for OOS?**

27 **A.** Yes. In our rebuttal testimony, we showed that the ability to clear troubles within a
28 certain time period is largely a function of the personnel available to respond to OOS and
29 other service-affecting conditions, and because of reduced demand and revenues, Verizon
30 MA simply does not have (and cannot have) the same workforce that it had in 1994 or
31 even 2004. Ms. Baldwin attempted in her rebuttal to calculate the number of additional
32 troubles that Verizon MA would have to clear within 24 hours in order to meet the

¹³ *Id.* at 14.

1 current Troubles Cleared standard, and we used Ms. Baldwin's example as a starting
2 point to produce a very rough estimate of the absolute minimum floor for a portion of the
3 additional resources that would be needed, noting that even that estimated floor
4 represents an economic expense that Verizon MA cannot incur or sustain.

5 Ms. Baldwin estimated that Verizon MA would have had to clear 4,097 more
6 troubles in 2009 to meet the 60% cleared-within-24-hours standard. Baldwin Rebuttal at
7 39. That would represent an increase of 21% over the number of actual troubles Verizon
8 MA cleared in 24 hours during the year. Verizon MA therefore would seem to require 21
9 percent more SSTs in order to meet this standard. Verizon noted in response to IBEW-
10 VZ 1-16, that, as of August 31, 2009, it employed *** **BEGIN PROPRIETARY*****

11 *** **END PROPRIETARY** *** SSTs in the Western Massachusetts region.
12 Therefore, in order to meet Ms. Baldwin's additional work requirement, Verizon MA
13 would seem to need to add *** **BEGIN PROPRIETARY***** *** **END**
14 **PROPRIETARY** *** additional SSTs to meet the standard level of performance.

15 Using this analysis, in order to meet the new standards of 80% OOS cleared in 24
16 hours and 80% of SA cleared in 48 hours, Verizon MA would have to restore 56% more
17 customers within 24 hours and would have to repair SA conditions within 48 hours for
18 13% more customers. Weighting this additional work by the ratio of OOS and SA to the
19 total new requirements, Verizon MA would need to clear 51% more troubles in the
20 required time periods. Therefore, Verizon MA thus would seem to need to add ***
21 **BEGIN PROPRIETARY***** *** **END PROPRIETARY** *** additional SSTs to
22 meet the new standard. Using the general rule-of-thumb that employee annual salary and

1 benefit costs equate to roughly *** **BEGIN PROPRIETARY***** *** **END**
2 **PROPRIETARY** *** per full-time SST, the additional work to meet the new OOS and
3 SA metrics would cost Verizon MA an additional *** **BEGIN PROPRIETARY*****
4 *** **END PROPRIETARY** *** annually to meet the new standards of
5 performance. Ms. Baldwin of course says that the new standards are not good enough
6 and recommends that the Company transition to meeting 95% of OOS restored in 24
7 hours and 90% of SA cleared in 48 hours. Performing the same calculation as above but
8 using Ms. Baldwin's targets means that Verizon MA would need to clear 77% more
9 troubles in the required time periods, which would cost Verizon MA an additional ***
10 **BEGIN PROPRIETARY***** *** **END PROPRIETARY** *** annually to
11 meet the new standards of performance..

12 But even these estimates of salary and benefit costs severely understate the
13 additional costs. The estimates do not include any additional capital, management,
14 equipment, real estate, or overhead expenses. Also, we noted in our rebuttal testimony
15 that this calculation assumes that the trouble report rate is constant throughout the year,
16 and that is not the case. It is undisputed that Verizon MA's RPHL in Western
17 Massachusetts fluctuates from month to month, particularly in the many small wire
18 centers, with peaks in the summer months and sometimes in selected winter months due
19 to storms. Consequently, the increase in workforce needed to resolve a greater *average*
20 number of trouble reports would be substantially insufficient to actually resolve 60% or
21 70% of trouble reports in the peak months and to meet the Plan standards on a consistent
22 basis. Now, under the Hypothetical Plan, it becomes even more difficult because the

1 Plan requires Verizon MA to meet the standard in each and every month for each and
2 every wire center. That would increase the costs by multiples because it would require
3 additional garages to meet the geographic reach of the new standards and resources
4 necessary to reach the standards in the peak months throughout the year, since averages
5 are no longer acceptable. Moreover, the Department must also consider the waste of
6 resources that would result from the Hypothetical Plan. Verizon MA would have to
7 maintain a workforce large enough to meet the metrics in the Hypothetical Plan in each
8 wire center in the peak load months even though that force would be far larger than
9 would be necessary to meet the work load in the other months, causing Verizon MA to
10 incur substantial, unnecessary labor costs.

11 Therefore, the undisputed evidence in this case demonstrates that the additional
12 cost associated with meeting the standards in the Hypothetical Plan or with Ms.
13 Baldwin's modifications, is so great that it is not consistent with the financial ability of
14 the Company to comply. And this is the case even if one considers only the additional
15 costs to comply with the new standards for OOS and SA conditions alone. Obviously
16 there would be even more costs required to meet the report rate and most of the
17 Installation standards in each and every month.

18 **Q. What does this mean in terms of the remedies available to the Department if it finds**
19 **that Verizon MA's service quality is inadequate in Western Massachusetts?**

20 A. The Department is required by specific statutory language in Section 16 to consider the
21 company's financial ability to comply with any remedy, and it is no less bound by
22 Constitutional requirements against confiscation. Taking these requirements into account

1 in evaluating the evidence in this case of Verizon MA's additional costs to comply
2 consistently with the current and proposed Troubles Cleared, OOS, and SA metrics, there
3 is no legally-permitted way for the Department to require or attempt to require Verizon
4 MA to meet the current or proposed standards.

5 **Q. But at some point, if the financial penalty is high enough, won't Verizon MA do**
6 **whatever it takes to meet the service quality standards?**

7 A. If the legal standards were not so clear and controlling, there would likely be a financial
8 penalty so great that Verizon MA would put all other considerations aside in order to
9 meet regulatory service penalties. We do not know what that dollar amount is, but
10 attempts to make regulatory requirements the predominant driver of business behavior
11 can hardly be considered to be in the best interests of consumers, even if it were legal.
12 For example, Verizon MA could put limits on its investments in the Proactive Cable
13 Maintenance ("PCM") process or in DSL and dedicate all of its resources in the state to
14 meeting outdated service quality standards, but this is certainly not in the state's best
15 interests. Without investing in new services, Verizon MA's revenues likely would
16 decline even faster than they have. Also, investment in advanced services, such as
17 broadband, has been the express goal of telecommunications policy since the passage of
18 the Telecommunications Act of 1996, and that goal is now reflected in the FCC's
19 National Broadband Plan:

20 Broadband is the great infrastructure challenge of the early 21st century. Like
21 electricity a century ago, broadband is a foundation for economic growth, job
22 creation, global competitiveness and a better way of life. It is enabling entire new
23 industries and unlocking vast new possibilities for existing ones. It is changing

1 how we educate children, deliver health care, manage energy, ensure public
2 safety, engage government, and access, organize and disseminate knowledge.

3
4 ...

5
6 But broadband in America is not all it needs to be. Approximately 100 million
7 Americans do not have broadband at home.¹⁴

8
9 **Q. What if the additional costs qualified as an exogenous cost in the company's**
10 **regulatory plan?¹⁵ Couldn't the company recover the costs in that manner?**

11 A. No. That is not realistic. First, the definition of exogenous costs in the current regulatory
12 plan is:

13 An exogenous event is one that is beyond the control of Verizon MA and that
14 positively or negatively changes the Company's cost of providing service, or its
15 revenues from those services. An exogenous event includes, but is not limited to:
16 (i) changes in tax laws; (ii) changes in Generally Accepted Accounting Principles
17 that apply specifically to telecommunications or changes in the Federal
18 Communications Commission Uniform Systems of Accounts; (iii) any Federal
19 Communications Commission rules changes pertaining to jurisdictional
20 separations; and (iv) regulatory, judicial, or legislative changes affecting the
21 telecommunications industry, including rules and orders that are necessary to
22 implement such changes.
23

24 It is arguable whether the costs of a remedy for inadequate service would be considered
25 as "beyond the control of Verizon MA, and there is no way that the Department could
26 commit to that outcome prior to full notice, hearing, and investigation. Second, the
27 magnitude of the additional costs make it highly unlikely that Verizon MA would be able
28 to recover the costs through higher rates pursuant to an exogenous cost provision. As

¹⁴ "Connecting America: The National Broadband Plan," at xi (March 2010).

¹⁵ The bench questioned Verizon MA at the evidentiary hearings on whether or not the cost savings derived from the upcoming decrease in CLEC access charges would qualify as an exogenous event. The cost changes would not be an exogenous event because access charges are inputs to a sufficiently competitive service – retail toll – so the cost changes in access charges will be passed through to end user customers.

1 noted above, the costs of complying with the new OOS standards would be multiples
2 greater than the direct salary and benefit costs of additional employees, and Verizon MA
3 is facing robust and growing competition and declining lines. Trying to recover costs of
4 that magnitude from a shrinking customer base in a highly competitive market is not a
5 realistic prospect.

6 In any event, the Department would presumably address the issue of exogenous costs
7 in a subsequent proceeding. But M.G.L. c. 159, § 16 requires the Department to consider
8 Verizon MA's financial ability to comply with an order in this case "[b]efore making
9 such order...." The mere possibility that the Department might find such costs to be
10 exogenous in a future proceeding to be brought by Verizon MA does not satisfy this
11 requirement.

12
13 **VI. IF THE DEPARTMENT FINDS THAT SERVICE IS INADEQUATE IN**
14 **PARTICULAR WIRE CENTERS, THEN THE CORRECT RESPONSE IS TO**
15 **REQUIRE VERIZON MA TO PERFORM THE INFRASTRUCTURE WORK IT**
16 **HAS IDENTIFIED IN THOSE WIRE CENTERS AND TO REPORT ON ITS**
17 **PROGRESS IN COMPLETING THAT WORK.**

18
19 **Q. Isn't there anything the Department can do if it finds that service quality in Western**
20 **Massachusetts is inadequate?**

21 A. Verizon MA is providing adequate service quality throughout the state, and therefore
22 there is no basis for any "remedies" to correct a problem that simply does not exist.
23 However, if the Department disagrees and insists on imposing a remedy for service
24 quality issues, then it could look to its precedent for a guide, as discussed above. In prior

1 cases, the Department has mandated additional reporting on a temporary basis regarding
2 progress toward correcting deficiencies.

3 Verizon MA has described in detail the steps that it is taking to proactively deal
4 with its network. In 2007, Verizon MA reinvigorated a number of programs to manage
5 the network more aggressively to prevent service issues from arising and thereby improve
6 overall service quality across the state, including in Western Massachusetts. The key
7 program is the PCM process. As the name implies, the purpose of the PCM process is to
8 identify and resolve faults in Verizon MA's outside plant infrastructure before they cause
9 significant customer service-affecting issues. To complement the PCM process Verizon
10 MA has also implemented a Quality Inspection program to better ensure that its repair
11 and installation work is done properly and in accordance with company standards.

12 In addition, although there is no basis to order Verizon MA to survey any
13 individual wire centers in this case, Verizon MA has voluntarily surveyed its outside
14 plant in 31 wire centers in Western Massachusetts, including those whose average RPHL
15 exceeded 2.25 in 2009, and identified open plant and related conditions in those areas.
16 Verizon MA has already started the process of fixing the identified open plant and other
17 conditions found in these surveys. Much of that work is expected to be completed by the
18 end of June 2010.

19 If the Department is concerned, however, about the results of these processes and
20 the surveys, it could require regular progress reports for a set period of time to ensure
21 itself that the work is being completed.

1 **Q. What if the Department also wants reports on service quality metrics in Western**
2 **Massachusetts?**

3 A. Again, we do not believe such reporting is necessary or appropriate, since there is no
4 problem to be solved. But if the Department believes that such reporting is necessary,
5 then it could order Verizon MA to report for a limited period of time its performance in
6 the Western Massachusetts region alone on the seven service quality metrics in the
7 current Service Quality Plan that can be measured on a regional basis, in order to monitor
8 performance in the region following closure of this proceeding.

9 **Q. Does this complete your testimony?**

10 A. Yes.