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August 14, 2015

VIA ELECTRONIC FILING AND FEDERAL EXPRESS

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

Re: Department of Telecommunications and Cable Regulation Review Pursuant to Executive Order No. 562

Dear Ms. Clark:

On behalf of the New England Cable & Telecommunications Association, Inc. ("NECTA") enclosed please find Comments in response to the Department of Telecommunication and Cable's July 27, 2015 Request for Comment and Notice of Listening Session in connection with the above-referenced proceeding.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "David W. Bogan", written over a horizontal line.

David W. Bogan

DWB/dw

AM 53981135.1

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Re Department of Telecommunications and :
Cable Regulation Review Pursuant to :
Executive Order No. 562 : August 14, 2015

**WRITTEN COMMENTS OF NEW ENGLAND CABLE
& TELECOMMUNICATIONS ASSOCIATION, INC.**

I. INTRODUCTION

The New England Cable & Telecommunications Association, Inc. (“NECTA”)¹ hereby submits its initial comments in response to the Department of Telecommunication and Cable’s (“Department” or “DTC”) July 27, 2015 Request for Comment and Notice of Listening Session in connection with the above-referenced matter.

NECTA, on behalf of its members, has been an active participant in Department proceedings for many years. NECTA has long advocated that the Department’s regulation of telecommunications and video providers be consistent with the competitive market for communications services and resulting changes in consumer behavior. Today’s marketplace provides consumers with a variety of competitive service and delivery options, which reduces the need for reliance on regulation as a competition substitute. Further, today’s consumers seek more self-service options than ever before, changing the way providers interact. While some consumers continue to visit service centers, more and more consumers seek information online or by other electronic means.

¹ NECTA is a nonprofit organization and trade association that represents the interests of most cable television and cable-based telecommunications providers in the six-state New England region in both legislative and regulatory proceedings.

The Department initiated this proceeding in response to Governor Baker's *Executive Order 562 to Reduce Unnecessary Regulatory Review*, which concludes that many of the regulations adopted by the state's government agencies have imposed unnecessary cost, burden and complexity. The Executive Order requires that each state agency undertake a review of its regulations in order to reduce their number, length, and complexity, and provides guidelines to be considered in undertaking the agency's review.² Section 3 of the Executive Order states that only those regulations mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents must be retained or modified.

NECTA agrees with Governor Baker for commissioning this important effort, and looks forward to working with the Department to fulfill the Executive Order's objectives. NECTA agrees that elimination of unnecessary regulatory requirements which deter new and existing competitors from launching innovative, customer-beneficial new services and features will foster competition in the Commonwealth. Moreover, NECTA recognizes the opportunity to modernize outdated provisions. However, the time constraints imposed by the Executive Order, which requires that each agency complete its review by March 31, 2016,³ counsels against consideration of broad or substantive policy changes because it does not provide for a complete opportunity for all stakeholders to fully review or understand the implications of such changes.

² In order to find that a regulation meets the standard of retaining only those mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents, the Agency must demonstrate, in its review, that:

1. there is a clearly identified need for governmental intervention that is best addressed by the Agency and not another Agency or governmental body;
2. the costs of the regulation do not exceed the benefits that would result from the regulation;
3. the regulation does not exceed federal requirements or duplicate local requirements;
4. less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives;
5. the regulation does not unduly and adversely affect Massachusetts citizens and customers of the Commonwealth, or the competitive environment in Massachusetts;
6. the Agency has established a process and a schedule for measuring the effectiveness of the regulation; and
7. the regulation is time-limited or provides for regular review.

³ See, Executive Order, §2.

The industries over which the Department has jurisdiction are extremely complex and part of a comprehensive communications eco-system. Even seemingly minor changes to communications policy could have an unintended rippling effect throughout that ecosystem.

Accordingly, the Department should not undertake changes that would require a lengthy policy analysis. Rather, the Department's focus should adhere to the Executive Order's mandate to streamline and eliminate duplicative or unnecessary rules, and modernize the few provisions that are now outdated, as further discussed below.

II. RESPONSE TO SPECIFIC DTC QUESTIONS

The Notice also solicits written comments from stakeholders on the following three specific issues:

1. Should the Department codify its regulations under a single Title of the Code? In this instance, the Department anticipates that most of its regulations would be moved to Title 207.

Generally speaking, NECTA supports codifying the regulations governing the provision of retail services under a single Title of the Code of Massachusetts Regulations, at least for those regulations that fall solely under the DTC's jurisdiction. However, even for the DTC's regulations that currently reside in 220 CMR, two rulemaking proceedings would be required: one by the Department of Public Utilities ("DPU") to repeal the regulations and another by the DTC to adopt the regulations. Both agencies would be required to work closely to ensure that resulting rules are consistent.

There are certain provisions that should remain in Section 220 because of shared jurisdiction between the Department and the DPU. For example, 220 CMR 45 (pole and conduit

attachments), 77 (utility voting trust certificates), and 78 (utility investment tax credits) are subject to the jurisdiction of both the Department and the DPU. This makes full consolidation of the regulations within a single title neither possible nor practical. Moreover, any attempt to change or modify the current pole attachment rules would likely trigger a number of issues not appropriate for consideration, given the limited time for implementation afforded by the Executive Order, and would require coordination with the DPU to address. Most importantly, because the current process works well, it does not need modification.

2. Should the Department unify its procedural rules among its industry segments? If the Department were to unify its rules, should the Department utilize the Commonwealth’s default procedural rules from Title 801, Chapter 1, of the Code, or should the Department utilize a version of the more simplified procedural rules from Title 220, Chapter 1? Further, how would such a measure be best accomplished?

By longstanding practice, the Department has applied the detailed state agency procedural rules in 801 CMR 1.00 to satisfy the requirements that cable television proceedings be “subject to” State Administrative Procedure Act requirements in G.L. c. 30A. The Department also has used the more flexible 220 CMR 1.00 procedural rules for all telecommunications proceedings and other unspecified cable television proceedings – albeit with 801 CMR 1.00 procedures available in the event that the 220 CMR 1.00 rules do not address a particular procedural issue that arises in a Department docket. It may be appropriate, with some caveats, to consolidate the procedural rules to achieve efficiency and reduce the potential for confusion. First, in order to preserve the long established precedent under the 220 procedural rules, those rules should be replicated with only minor changes into 207. Second, if the DTC does not obtain a waiver from using the 801 rules, thereby preventing it from adopting the 220

rules, then the DTC should retain the two sets of procedural rules. Finally, the modified 220 rules should include provisions for notices and filings that reflect today's modern, electronic methods of communication. More specifically, the rules should allow for electronic filing of pleadings, petitions, and comments, and allow customer and DTC notification by any reasonable means.

3. What, if any, other measures should the Department take to revise or simplify its regulations?

As discussed above, and as a general matter, the Department should update its regulations governing the provision of retail services to reflect today's market for communications services, including electronic service, notice and filing.

The Department has scheduled a Listening Session to hear from the industry and other interested parties. NECTA requests that the Department share its own proposals for change, if any, shortly thereafter with interested parties as the first and informal step in any proposed regulation changes, prior to the institution of a formal rulemaking process. By providing a "strawman" document and soliciting comment, the Department would be in a better position to evaluate comments and satisfy the requirements of the Executive Order.

CONCLUSION

NECTA looks forward to working with the Department via these comments, those submitted by other interested parties, and ideas presented at the August 19, 2015 "Listening Session", to fulfill the requirements of the Executive Order.

Respectfully submitted,

NEW ENGLAND CABLE &
TELECOMMUNICATIONS
ASSOCIATION, INC.



By: _____

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Dated: August 14, 2015