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September 13, 2006

Andrea Nixon, Clerk
Department of Telecommunications & Energy
Cable Division
One South Station, 4th Floor
Boston, Massachusetts 02110

**Re: CTV-06-1 - Petition by Verizon New England, Inc. to
Request Rulemaking Regarding Competitive License Regulation**

Dear Ms. Nixon:

Enclosed for filing in the above-referenced matter are the Reply Comments and Responses to Briefing Questions of Verizon Massachusetts.

Thank you for your assistance in this matter.

Sincerely,

/s/Alexander W. Moore

Alexander W. Moore

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

CABLE TELEVISION DIVISION

Petition by Verizon New England Inc. to
commence a rulemaking pursuant to 207
C.M.R. § 2.01(1) to amend 207 C.M.R.
§ 3.00 et seq.: Licensing.

Docket No. CTV-06-1

REPLY COMMENTS OF VERIZON MASSACHUSETTS

I. Introduction

On March 16, 2006 Verizon Massachusetts (“Verizon MA”) petitioned for consumer-oriented changes to the existing cable television franchising process in Massachusetts to eliminate unnecessary steps and provide a more reasonable timeframe for Issuing Authorities (“IAs”) to render decisions on applications for competitive video licenses. Based upon the comments from literally thousands of interested parties, one thing is undisputed – more cable choice will bring lower prices for consumers, more investment and more jobs to the state’s economy. Other states have seen the wisdom of streamlining the cable franchise process and have moved aggressively to deliver the benefits of enhanced cable competition, additional jobs and investment to their consumers.¹ By adopting Verizon MA’s proposed rule, the Cable Division can take a small step toward joining those forward-looking states and welcome more competition and its many benefits in Massachusetts.

¹ Eight states (Texas, California, New Jersey, Virginia, Kansas, Indiana, North Carolina and South Carolina) have passed legislation providing for some form of statewide franchising for CATV providers or otherwise accelerating the licensing process.

Proceeding from self-interest, the incumbent cable providers, some issuing authorities and their outside consultants oppose even the moderate changes proposed by Verizon MA, ignoring the fundamental changes that have occurred in the telecommunications industry in the decades since the current process was promulgated. Opponents of Verizon MA's proposal claim that from their point of view, the current system works – “the existing licensing framework has well-served municipalities and cable operators for almost thirty years.”² Glaringly absent from opponent's comments is any concern over what is best for Massachusetts' cable customers and whether the current 17-month licensing process is in the best interests of the public.

Consumers of cable television services are not “well-served” by the current process, which needlessly delays competitive entry for many months and even years and allows IAs to erect unreasonable barriers to entry by competitive providers. As the Massachusetts Special Commission on cable regulation observed in its 2003 Report, “Consumers express on-going dissatisfaction with the continuing escalation of cable television rates. For municipal officials, spiraling cable rates are an ongoing source of frustration and constituent complaints ...”³ Along the same lines, Juan Cofield, President of the New England Area Conference of the NAACP stated at the public hearing before the Cable Division on August 16, 2006, that, “(e)xisting regulations harm consumers who want to save money, have better access to technology and video service choices.” (CTV 06-1 Volume A, page 245, lines 17-19.) Clearly, the existing franchise framework has not “well-served” consumers.

The evidence Verizon MA submitted in its Initial Comments is clear and convincing – customers benefit from wireline cable competition, and delays in franchising result in direct costs

² Comments of the Towns of Belmont, Brookline, Canton, Dartmouth, *et al.*, filed by the law firm of Epstein & August (hereinafter “Epstein & August Comments”), at 3.

³ Special Commission Report, at 18.

to consumers through the foregone benefits of competition. Against this evidence, opponents' claims that the existing franchising process should not – indeed cannot – be updated to encourage competition simply fail. The Division has an opportunity to stand for Massachusetts cable consumers against the narrow interests of cable monopolists and government entities and their consultants and should approve Verizon's Petition expeditiously.

II. Verizon MA's Reply to Comments

In this section, Verizon MA responds to many of the comments filed with the Cable Division and made at the public hearing.⁴

A. The Existing Process Is Inappropriate and Hurts Consumers

A number of commenters assert that the existing franchising process is working well and that Verizon MA has not demonstrated a need to accelerate it to encourage competition.⁵ Some of these commenters point to the fact that RCN has received franchises in 13 communities and that Verizon MA itself has received 15 franchises as evidence that the existing process works.⁶

On closer review, however, RCN's and Verizon MA's experiences support change, not the *status quo*.⁷ That RCN has obtained franchises in 13 of the 351 municipalities in the state since it entered the market in the 1990's is poor evidence of a process that encourages robust competition. And it has taken Verizon MA, on average, almost a year of filings, negotiations and hearings to obtain each of its 15 franchises. Further, in half of the communities in which

⁴ Verizon MA does not have room here to address each and every factually incorrect point made in opposition to its proposal. Silence on any point or argument should not be seen as agreement or concession by Verizon MA.

⁵ See Comments of Massachusetts Municipal Association ("MMA") at 1-2; Comments of RCN, at 2. The Attorney General, Comments at 4, makes an unsupported request that the Department "open an evidentiary hearing and require Verizon to establish how the existing system deprives customers of competitive cable alternatives." Verizon MA in its Petition and Comments has already established how the existing system delays the benefits of cable competition for customers. In any event, an evidentiary hearing is not necessary or appropriate for a rulemaking.

⁶ See Comcast Comments, RCN Comments, Epstein & August Comments.

⁷ Comcast has rarely, if ever, sought an initial franchise in Massachusetts, as it purchased its licenses and other assets from other carriers already operating in the state.

Verizon MA has a license application pending, it has been pending for more than a year.⁸ (*See* chart included in Verizon MA's Responses to Cable Division's Briefing Questions – Municipality Question 8). A process that requires customers to wait over a year to receive lower rates, better channel selection and services that are the hallmarks of competition is not working and needs significant improvement.⁹

The existing process unnecessarily delays the benefits of video competition for consumers with no countervailing benefits and does not promote additional investment in broadband infrastructure. While competition, expanded technology deployment and investment may not be the goals of incumbent cable monopolists and some municipal advocates, they should be the paramount goals of the Cable Division and the Department. In its Petition and its Initial Comments, Verizon MA provided extensive evidence that its proposal promotes these goals. (*See e.g.* Petition at 9-14, Initial Comments at 2). In addition, at the Division's Public Hearing a number of parties provided additional insight into the many benefits of competition.¹⁰

It is no surprise that the cable companies see no need to change the existing franchise process. They already have their franchises and, with the exception of RCN, have demonstrated absolutely no interest in overbuilding and competing with one another. And in today's ever-changing converged marketplace of voice, data and video, they face no barriers to entry into the

⁸ Although those communities have exceeded the time allowed for in the current regulations, Verizon MA has not appealed to the Division in a good faith effort to reach agreement with the communities.

⁹ The suggestion that the current process is a 12-month one is also incorrect. Under the current process, if a provider files an application with a community, the community has 60 days to hold a public hearing and may decline to open the licensing process. If it decides to move forward it then has 12 months to reach a decision on the application and an additional three months to issue a provisional license, with a final license to issue even later. In any event, even a 12-month process is far too long, especially in this day of rapid convergence of voice, data and video services.

¹⁰ *See e.g.* comments of Stephen Pociask of the American Consumer Institute, CTV06-1 Volume A, at 178-184; comments of Robert Bradford, President of the North Shore Chamber of Commerce, CTV 06-1 Volume A, page 206 ("Expediting the licensing process is good for consumers. In the North Shore Chamber of Commerce territory, ten of our communities have granted franchises to Verizon. In these communities, residents now have a real choice for cable TV and are seeing lower cable prices as a result of competition.")

voice and data market – thereby providing every incentive for them to put up barriers to entry into the video marketplace. Every day that Verizon MA is delayed in offering competitive alternatives to incumbents’ video services is another day for them to benefit from their monopolies and another day that consumers are deprived of competitive pricing and greater innovation for video services.

For decades, the cable industry had much different things to say about the merits of the franchising process. Leading up to the FCC’s 1972 Cable Order, cable incumbents complained of the “confusion and waste” and the “unconscionable delay” caused by the local franchising system.¹¹ Back then, the National Cable Television Association (“NCTA”) “urged that the [FCC] entirely pre-empt this field.”¹²

Even RCN, which has emerged from bankruptcy but lacks plans that would require it to obtain additional franchises and become anything more than what it is now – a niche player in a few communities in the state – was concerned about the cable franchising process when it commented to the FCC:

In a large number of major urban markets, RCN has encountered within the last year local officials who seem intent on burdening RCN with ever-increasing financial and service obligations. Delays follow delays while municipal officials creatively search for new ways to extract goods, services or payments from RCN.¹³

As RCN’s comment makes clear, the long licensing process allows some IAs to simply string out the process in an attempt to extract concessions or unlawful franchise conditions. Although a number of IAs commented at hearing that they support competition, in many cases

¹¹ In the Matter of Amendment of Part 74, Subpart K, of the Commission’s Rules and Regulations Relative to Community Antenna Television Systems, 36 FCC 2d. 143 at ¶¶ 173-74 (1972).

¹² *Id.* ¶ 173.

¹³ Comments of RCN Corporation, *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 00-132, at 25 (filed September 8, 2000).

that support is clearly conditioned on the IA being able to garner new sources of financial support at the expense of the applicant (and ultimately the consumer) without officially raising taxes. For example,

- One IA¹⁴ initially demanded that Verizon MA fund the town's purchase of street lights from the power company, install cellphone repeaters at City Hall, provide free cell phones and service to town employees, wire all houses of worship and make parking available at a Verizon MA facility for patrons of the town library.
- Another IA demanded that Verizon MA provide equipment to improve security and surveillance at school buildings, and to increase the use of video streaming in the schools.
- An IA demanded that Verizon MA pay it \$1 million in PEG support funding, even though the community's PEG access agency had more than \$1.2 million in cash on hand.

Less obvious but just as unlawful are the demands of the great majority of the communities in which Verizon MA has sought a cable license that Verizon MA: (1) construct an I-Net in the town; (2) provide discounts to senior citizens; and (3) provide or subsidize free Internet access to town buildings and/or schools in one form or another. None of these demands are allowable under the federal Cable Act, 47 U.S.C. §§521 *etc.*, for the reasons set forth in Verizon MA's Responses to Briefing Questions – Question 4.¹⁵

The evidence is clear and compelling – the current process is inefficient, not in the public interest and does not work to bring the many benefits of competition and broadband investment to Massachusetts consumers.

¹⁴ In an effort not to chill ongoing franchise negotiations, Verizon MA is not generally disclosing the names of specific cities or towns referenced herein. Verizon MA will, however, provide that information to the Cable Division upon request.

¹⁵ Even Comcast acknowledges that “under the existing licensing system, issuing authorities sometimes demand more than they are entitled to ask.” Comcast Comments at 17. Indeed, the mayor of Northampton commented at hearing that the city could tighten its timetable for franchising if Verizon MA could accelerate its removal of double poles, thus highlighting that franchising delays are being used strategically by IAs to obtain concessions on issues completely unrelated to cable franchising. (*See* CTV06-1 Volume A, at 87.)

B. 90 Days is Sufficient Time for an IA to Review a Franchise Application

Verizon MA explained in its initial comments that three months is more than sufficient time for an LFA to give due consideration to a competitive license application, especially in light of the limited set of factors federal law allows an issuing authority to consider when reviewing an application for a competitive license. *See* Verizon Initial Comments at 8. Verizon MA also demonstrated that several of the steps in the current franchise process are no longer required, legal, or relevant to a competitive license. Ample proof that 90 days is more than enough time to address the issues legitimately raised by a competitive license application is found in the practices in other states. In Texas, the entire licensing process takes 17 days. Other states also complete the licensing process in less than 90 days; *e.g.*, 15 days in Indiana, 30 days in Kansas, 44 days in California, 45 days in New Jersey, 75 days in Virginia, 80 days in South Carolina. Massachusetts cable consumers are no less entitled to receive the benefits of enhanced video competition as soon as possible, even if it means accelerating the existing process that has worked well only for incumbent providers, IAs and their outside consultants.

Some commenters, including a number of IAs, suggest that 90 days is insufficient for a municipality to negotiate a competitive cable license. None of them, however, offer any explanation of how other states and IAs are able to process such applications in a shorter period with no ill effects, and thereby serve consumers' interests, encourage competition and attract investment.¹⁶

¹⁶ These commenters, moreover, disagree on how long the process should be. Epstein & August, Comments at 3, claim it requires a full year. In comments at hearing, representatives from Lexington and Norwood contended that franchising can be completed in less time, while Groton testified that it should take only five to six months. RCN states that franchising for Verizon should take four to six months, but if the completely useless step of the IA advertising for additional licensees were eliminated, RCN outlines what it considers an "eminently workable" "typical time frame" of only 120 days from the filing of Form 100 to IA approval and issuance of a license under existing rules. (*See* RCN comments at 4.) Clearly, even the IA's understand that there is no good reason to retain the lengthy timeframe allowed by the current rules.

The Epstein & August Comments in particular provide, at 4-6, a laundry list of issues that they argue demand a full year to resolve, relying for support on the recent history of negotiations with Verizon MA. But Congress has determined that the need to encourage competition requires limits on the factors IAs are permitted to consider in reviewing franchise applications. Section 621 of the federal Cable Act, 47 U.S.C. § 541(a)(4), expressly delimits the grounds on which an issuing authority may refuse to grant a competitive franchise. An issuing authority may “require adequate assurance” that the new entrant will “provide adequate public, educational, and governmental [“PEG”] access channel capacity, facilities, or financial support,” § 541(a)(4)(B), and that the new entrant “has the financial, technical, or legal qualifications to provide cable service.” *Id.* § 541(a)(4)(C). The franchise authority may also impose a franchise fee, subject to the express limitations in 47 U.S.C. § 542 and the provisions of M.G.L. c. 166A. When the issues before an IA are properly limited to those allowed by federal law, a 90-day period is more than sufficient.

That outside consultants for IAs are able to manufacture issues for negotiation or, more commonly, make mountains out of molehill issues that have been easily and quickly resolved in other states and towns in no way justifies the current antiquated licensing system. Epstein & August’s reliance on past practice suggests that a licensing process established decades ago when cable television was a nascent industry must continue to apply today. But the industry and the market have changed dramatically in the interim. Almost every town in Massachusetts long ago decided (by granting a license to a cable provider) that cable television is in the public interest, the federal Cable Act and regulations have defined accepted modes of practice in the industry and, most importantly, where competition was either *de minimus* or non-existent, it is now knocking at the door, trying to get in. Unlike Epstein & August and other commenters, the Cable

Division cannot and should not ignore these fundamental changes in the industry but should approve Verizon MA's proposal and thereby start to bring the Division's regulations in line with today's industry and market.¹⁷

In stark contrast to Epstein & August's allegations, the comments of those that favor more competition, consumer and business groups alike, focus on the public benefits of prompt action. Mr. Alan MacDonald, Executive Director of the Massachusetts Business Roundtable, former chairman of the Winchester Board of Selectman, discussed the issuance of Winchester's original cable license and subsequent renewals:

It might have been more to the towns' benefit to have that long negotiation period that we did in 1979 and 1980 ... but things have changed dramatically now. To take a year and a half and to say in every single community that's what it's going to be, is a year-and-a-half negotiations, we're not going to see the investment made that we see in Texas and in Florida and the kinds of states that have a state standard contract if we can't negotiate it in a certain period at the local level.

(CTV06-1 Volume A, page 202). Mr. Robert Halpin, President of the Merrimack Valley Economic Development council, former Executive Secretary for the Town of Pepperell, former Town Manager of Westford and North Andover provided his perspective from "23 years of experience as a Town Manager." Having been involved in the negotiations of several franchise agreements he stated "...my observation is that 90 days is not an unrealistic time." (CTV 06-1, Volume A, page 241.)

¹⁷ The language Epstein & August use to describe the current process is particularly revealing. They say it is "customary," "inherently deliberative, protracted, and complex in nature," "long-established licensing practices," and "time-honored." Epstein & August Comments at 2-3. No mention is made of "efficient," "forward-looking" or "consumer-oriented." Clearly, resistance to changing the regulations to match market conditions is largely a function of a consultant's self-interest or an IA's adherence to the status quo. It certainly is not driven by considerations of what is best for cable consumers. On the contrary, the series of tasks outlined in the Epstein & August Comments are the very definition of "inertia, arcane or lengthy application procedures, bureaucracy or, in some cases, inattentiveness or unresponsiveness by the [IA]." Verizon Initial Comments at 6.

Verizon MA has demonstrated that 90 days is sufficient for IAs in Massachusetts to evaluate and make judgments on competitive franchise applications. The Cable Division should approve the petition and recognize the benefits of cable competition.

C. “Level Playing Field” Terms in Incumbent Franchise Agreements Are Not A Valid Concern in this Proceeding

Several commenters argue that Verizon MA’s proposal is deficient because it does not account for the additional steps and time an IA requires to address “level playing field” concerns.¹⁸ Shrewsbury, for example, claims that Verizon MA’s proposal does not account for all relevant issues subject to IA review since cable licenses often include level playing field provisions and other terms and conditions “not specified by the Department’s forms or the statute.”¹⁹

These arguments are without merit. In the interests of promoting competition and investment, competitive franchisees should not be required to adopt all of the terms that were extracted from the monopoly provider. As will be discussed in detail below, new entrants in the telephone business, such as Comcast, RCN, and other cable providers, have not been required to take on the legacy telecommunications obligations that have been and still are imposed on Verizon MA. Imposing burdens on a new entrant that go beyond those permitted by law raises the costs of entry without justification, thus making it less likely that the incumbent will face competition in the first place. IA discretion in granting a competitive franchise is strictly limited by federal and state law, as well as by the First Amendment, and an IA may not condition the award of a competitive franchise on more than the law expressly permits it require – even if an incumbent agreed to more in order to acquire its monopoly. Moreover, level-playing-field

¹⁸ See, e.g., Epstein & August at 5 and 11; see also, Initial Comments of the Attorney General, n.6.

¹⁹ Comments of Shrewsbury at 2.

provisions are contractual in Massachusetts, not statutory. Verizon MA does not argue here that the Cable Division must void any such provisions in incumbents' franchise agreements, but only that those provisions are anti-competitive and are not binding on Verizon MA or any other provider, and that the Division should not allow them to dictate the speed of the licensing process.

D. Encouraged by the Lengthy Process of the Current Regulations, IAs And Their Negotiators – Not Verizon MA – Have Unreasonably Delayed Licensing

Some commenters suggest that Verizon MA has been the cause of delays in the process. For example, five IAs represented by attorney Peter Epstein asserted at hearing that Verizon MA has been unresponsive and guilty of long periods of inaction. However, the evidence demonstrates just the opposite. After negotiating on an individual community basis for some time, Mr. Epstein indicated to Verizon in April of 2006 that he now wished to negotiate a standard form contract for all his clients and then leave specific financial details to be negotiated on an IA basis. Over the next five months (while the representative from Lakeville who testified at hearing apparently thought Verizon MA was incommunicado), Verizon met with Mr. Epstein numerous times to overcome his intransigence on his lengthy list of issues, participated in at least seven conference calls lasting multiple hours each and provided at least six marked-up versions of proposed licenses. While those negotiations are now nearing closure, suggestions that Verizon MA has been the cause of delay are just wrong.²⁰

Also wrong is the MMA's claim that Verizon MA has delayed the licensing process by seeking non-standard terms and conditions in its cable licenses. *See* Comments of MMA at 1. Of course, the concept of a "standard" set of terms and conditions is a myth. As noted above,

²⁰ See Attachment 1 hereto. This letter to Lakeville from Verizon's counsel – read only in part at the Public Hearing – confirms Verizon's attempts to reach agreement.

merely because an IA and the incumbent monopoly cable company reached agreement on the terms of a franchise in no way elevates those terms to a “standard” that the IA is entitled to extract from subsequent licensees.

E. The Proposed Rule Does Not Limit Municipal Authority

Some commenters argue that Verizon MA’s Petition would restrict or diminish municipal authority in franchise decisions.²¹ This is not correct. The MA’s Petition does not change the IA’s authority to determine whether a competitive franchisee has met the legal standards for awarding a franchise – it simply eliminates procedural steps that are not necessary for a competitive franchise and provides for timely review by the IA, along with a better-defined appeal process. These commenters also seem to fear that the shortened licensing timeframe will effectively preclude them from bargaining effectively with a competitive license applicant. This fear is misplaced. Verizon MA’s experience shows that if municipal demands are reasonable and without lawful bounds, the financial terms of franchise agreements can be reached fairly quickly. For example, Verizon MA obtained licenses from Marion, Mattapoisett and Rochester in just four months, start to finish.

The rules that Verizon MA has proposed are firmly grounded in the current statutory and regulatory structure, and do not undermine any legitimate local interests related to franchising. In fact, even when Verizon has advocated broader franchise reform at the national level, it consistently has indicated that legitimate local interests must be protected. Verizon has stated that any franchise reform proposal should: (1) require new entrants to pay franchise fees; (2) carry a reasonable number of PEG channels; (3) preserve local authority to manage public rights-of-way; and (4) subject new entrants to the same federal anti-redlining prohibition that now applies to the incumbents. Verizon MA’s petition here does not undermine this commitment in

²¹ See, e.g., Comments of Attorney General at 3-4, Comcast Comments at 9-11.

any way. The Cable Division should not be distracted by false claims about the rule changes that Verizon is seeking, and should act quickly to adopt rules that will improve the current franchising process and bring the benefits of video competition and widespread broadband deployment to consumers. As stated by Ms. Deborah Lathen, former Chief of the FCC's Cable Services Division, at hearing:

I think the proposal that Verizon has presented is a proposal that is a win-win for consumers, and it is a win-win for government as well because it opens the doors -- it streamlines the process that will allow consumers to have access to video choice, and it brings forth the promise of providing choice, diversity and affordable prices.

(CTV 06-1, Volume A, at 10.)

Contrary to Comcast's Comments, at 1, Verizon MA's Petition does not create statewide licensing. Across the country, Verizon has supported statewide licensing as appropriate and beneficial for consumers; but it recognizes that statewide licensing in Massachusetts would be beyond the Division's authority to grant. Verizon MA's proposed rule contains nothing about statewide franchising and does not change Verizon MA's obligation to seek and obtain a franchise from municipalities.

Verizon MA has demonstrated that a shorter timeframe for IA review is appropriate given that many of the tasks under the existing franchise process are impermissible or irrelevant to the review of a competitive franchise. However, IAs would retain their current authority to assess whether a competitive franchise application meets the applicable legal standards. Arguments that Verizon MA's petition diminishes municipal authority are based on the irrational belief that the way things always have been done is the way they must be done for all time.

F. Investment

Comcast argues that Verizon MA's contention that video service is an important component of the business case for fiber investment is at odds with its prior assertions that the fiber rollout is an upgrade to its network for voice and data services. (Comcast Comments at 6.) These two facts are not at odds. Verizon has been able to make *some* investment in fiber-to-the-premises ("FTTP") based on the economics of enhanced delivery of voice and data services, but a wider deployment of FTTP in Massachusetts unquestionably requires the offering of video service as well.

It is beyond dispute that franchise reform leads to greater investment in broadband infrastructure, and that greater investment brings with it additional jobs for Massachusetts residents. Just last month, a Yankee Group report on the North American fiber-to-the-home ("FTTH") market concluded that:

The service requirement driving virtually all FTTH deployments is the desire to provide the triple play of services, which includes voice, high-speed internet access and video services. Given its ability to consume bandwidth budgets, *video is the lone service among the three that can justify a widespread FTTH rollout.*²²

Myles Calvey, head of the local IBEW representing thousands of Verizon's union employees, testified at the public hearing that approval of Verizon's proposal will bring much needed investment and jobs to Massachusetts:

Verizon jobs are eroding in Massachusetts.... These are great blue-collar jobs. They're eroding because they are in an unfair advantage. I hear the statement, level playing field. They're competing against cable companies that were able to walk into the dial-tone business. No hearings; walked in, because of [the] 1996 [Telecom Act], to create competition. To put up

²² "North American FTTH Market Will Top 20 Million Homes Passed by 2010," Yankee Group, August 2006, at 4 (emphasis added). The Yankee Group report also noted that "Verizon's ability to meet its goal of passing 3 million households [per year] is aided by the movement of several states to offer statewide video franchises." Report at 5.

these unfair barriers in the long run is going to hurt every city and town that testified this morning. There is not going to be competition, because you can't expect anyone to invest money into a community and not get a return on it. And if they can get an instant return in states like Florida, Texas and New Jersey, they're going to put it in that state. That's reality.

(CTV06-1 Volume A, pages 195-196).²³

No commenter has disputed the facts in Verizon MA's Petition showing that policymakers and industry experts for years have recognized the importance of advanced communications infrastructure to the Commonwealth's economy. Juan Cofield of the NAACP testified that, "There are a whole host of people that have not benefitted from new technologies which offer opportunities; and we hope that by providing more opportunities and a better competitive environment, which is certainly, in our view, likely to reduce the price and services, that it will tend to close that digital divide." (CTV 06-1 Volume A, page 247).

A number of municipalities have commented in this case that they are eager to have Verizon MA offer competitive video services in their communities, but they fail to recognize the simple truth that Verizon's ability to expand its rollout of FTTP and video services and offer real cable choice and competition to consumers is dependent on a more efficient franchising process.

Massachusetts needs additional broadband investment in order to maintain its economic competitiveness with other states.²⁴ This is apparent from recent experience in New Jersey. On August 4, 2006, New Jersey Governor Jon Corzine signed legislation that streamlines the process

²³ See also, Comments of Robert J. Haynes, President, Massachusetts AFL-CIO, on behalf of "more than 750 affiliated unions that directly represent over 400,000 organized members in the Commonwealth."

²⁴ See testimony of Myles Calvey, CTV 06-1 volume A page 195 ("When they can market to states like New Jersey, Florida and Texas, and get an open book, why are they going to invest here in Massachusetts?") See also testimony of Alan MacDonald, at CTV 06-1 Volume A, page 200, ("The kinds of investments that we want to attract, we just talked about, are more easily gained in some states that have statewide licensing opportunities such as Texas; and you heard about New Jersey, Florida, Virginia has made a move in this direction. Others have, too, and we see that. Our concern as leaders for Massachusetts in this field over a number of working generations is that we're not necessarily going to maintain that leadership in that area if we can't attract the investment that's needed. And it is about competition and attracting the investment. In order to stay ahead in the areas in our economy where we are dependent, we want to see that investment come to Massachusetts. It's quite important.)

for obtaining video franchises in his state. That same day, Verizon announced that it would move ahead with a \$1.5 billion investment over the next three years for the construction and deployment of a state-of-the-art fiber network. In terms of the effects of increased investment on employment, Verizon also stated that “as a result of New Jersey’s streamlined franchise rules, the company expects the accelerated deployment will lead to hundreds of additional jobs in New Jersey.”²⁵

Approval of Verizon’s petition in this case will promote investment in broadband infrastructure in the Commonwealth and will lead to job growth and enhanced economic development. As Michael Healey, Chairman of the Board of the MetroWest Chamber of Commerce, testified at hearing:

We believe Verizon is investing a great deal of financial resources that will have more capabilities for our members so our members can go out and purchase these capabilities. Whether they purchase them from Verizon or from some of the competition, as a board, we really don't care about that; we just want to have more choices available so the business community has more opportunities to improve their businesses. We believe, as the industry grows, the consumer and the small-business person will be able to purchase items quicker, and be more reliable for their businesses. The cable competition, as we see it, the consumer will benefit from the high broadband networks, interactive services, and the innovation applications that we see coming along.

(CTV 06-1 Volume A, pages 187-188). The existing franchise framework offers no such benefits.

G. Competition in the Cable Industry in Massachusetts
Is Not Vigorous, But It Is Promoted by the Petition

NECTA argues that “vigorous competition already exists for video customers,”²⁶ and both NECTA and Comcast, using market share as their alleged statistical evidence, absurdly

²⁵ See Attachment 2 - Verizon’s press release dated July 14, 2006.

²⁶ NECTA Comments at 4.

claim that the video marketplace in Massachusetts is more competitive than the telephone market.²⁷ First, this “analysis” ignores the longstanding and oft-repeated precedent of the Department to not base its evaluations of competitiveness solely or even predominately on market share.²⁸ More important, though, is that Comcast’s and NECTA’s discussions about the competitiveness of the video market completely ignore the most salient and un-rebutted fact – *cable service prices are lower in areas with wireline competition*. As Verizon MA pointed out in its Petition, at 9-10, both the FCC and the Government Accountability Office have found that cable prices are about 15 percent lower in areas with wireline competition. However one characterizes the degree of competition in the video market, it is undisputed that customers in Massachusetts will benefit from the advent of real wire-to-wire cable competition that will come with approval of Verizon’s petition.

Several parties suggest that it would somehow be unfair for competitive franchisees to have a franchise process different than what has applied to incumbent providers. For example, Comcast argues that Verizon MA’s proposal would “tip the competitive playing field in its own favor” and that the remedy for the current licensing system “is not to create a dual system – one for Verizon and one for everybody else who must carry the existing system as a handicap. The remedy is to create a single regulatory structure that is fair to all players.”²⁹ But the new rules would apply not just to Verizon MA but to all “players” who would compete with an incumbent to provide cable services in a community, and nothing prevents Comcast from being one of those competitors where it is not already the incumbent monopolist. That Comcast is not interested in using the proposed process hardly means it is unfair.

²⁷ *Id.*, Comcast Comments at 4.

²⁸ *See, e.g.*, D.T.E. 01-31-Phase I, at 79 (2002).

²⁹ Comcast Comments at 16-18.

Moreover, Comcast is right to be concerned about being fair to all players, but such a principle requires that Verizon MA and other new entrant cable providers be treated in the same manner as Comcast and other new entrants were in the telephone industry. The market for communications services today is a converged market for voice, data, and video services. Comcast and other cable providers were able to add voice and data to their video services with minimal regulatory rules in Massachusetts and without imposition of legacy telephone requirements. Verizon MA and others should likewise be free to add video to their other offerings without undue delay. Now that Comcast already has put together its own “triple play” with minimal regulatory fuss, however, it has discovered that those who want to offer its incumbent service, video, should be subject to heavy regulatory barriers to entry. This is a classic example of “Heads, I win. Tails, you lose.” Comcast did not object to a “dual system” in the telephone industry, where the Department has regulated Verizon as a dominant carrier, subject to all of the traditional regulatory oversight and restrictions, and all others (including Comcast and RCN) as non-dominant carriers with little to no regulatory obligations. As the Division is well aware, Comcast and others wishing to compete for telephone services in Massachusetts need only file a simple statement of business operations with the Department and a tariff effective on 30-days notice. Moreover, none of the new telephone providers must commit as a condition of competing with Verizon MA to a “level playing field” in which they meet the service obligations, service standards, cost standards, and filing requirements of Verizon MA. In these circumstances, Comcast’s current claim of unfairness rings hollow. Verizon MA has a right to enter the video services market and will meet all legal requirements. A process that takes over a year for it to exercise that right, while its competitors enter the voice and data markets in no more than 30-days, is neither fair nor justifiable on policy grounds.

In any event, what is most important is that the Cable Division primarily focus on what is best for consumers, not what is best for competitors.³⁰ Reducing entry barriers and reforming franchise rules is the single most important and beneficial policy step the Department can take on behalf of cable consumers in Massachusetts.

H. The Cable Division Should Not Defer
To The General Court, FCC, or Congress

Several commenters argue that the Department should not take action on Verizon MA's petition, and instead defer to Congress or the FCC. Others allege that approval of Verizon MA's petition would be beyond the Cable Division's authority and instead should be deferred to the General Court. (*See* Comcast Comments at 11.) In its initial comments, Verizon MA addressed the reasons that the Division and the Department should not wait for federal action. As Verizon MA noted, there is no certainty that either the FCC or Congress will act quickly, and there is no reason to delay the delivery of enhanced competitive benefits to Massachusetts consumers.

Comcast argues that Verizon's proposed rule changes would create a "new substantive standard" that would "radically alter" the respective roles of local government and the Division in cable licensing (Comcast Comments at 11). Specifically, Comcast argues that the Division does not have the authority to adopt Verizon MA's proposed change because it "injects the agency into a substantive role that Chapter 166A reserves for local issuing authorities." *Id.* This argument is categorically wrong.

The Massachusetts Supreme Judicial Court (the "SJC") has emphasized that the state Cable Act gives the Division comprehensive and broad authority to regulate the cable industry in Massachusetts. As described by the SJC, the 1971 cable statute inserted G.L. c. 166A, § 1, to

³⁰ Neither the relevant size of Verizon and Comcast in terms of operating revenue and cash flow (Comcast Comments at 7) nor the history of Bell Atlantic's business decisions vis-à-vis cable in the 1990s (Comcast at 7) has any bearing on the issues in this case. Comcast at one point tried to buy Disney, but that does not mean it should be hindered if it wanted to build a theme park today.

establish the CATV commission and provide “for municipal licensing of CATV systems *subject to regulations of the commission and review by it.*” *Gillis v. Mass. Cablevision*, 369 Mass. 526, at 531 (1976) (emphasis added). The SJC has further found that “General Laws c. 166A (1986 ed.) provides a *comprehensive framework* for the regulation of cable television in Massachusetts with the principal task of regulation delegated to the cable commission.” *Waltham Telecommunications v. O’Brien*, 403 Mass. 747, at 749 (1989) (emphasis added). To that end, G.L. c. 166A, § 16, expressly states:

The division may after hearing issue such standards and regulations as it deems appropriate to carry out the purpose of this chapter for which purpose it may employ such expert assistants as it deems necessary.

In a number of cases, including those involving consideration of the Cable Act and the powers conferred upon the Cable Commission (now the Cable Division within the Department), the SJC has found that a legislative act that grants specific authorization to make regulations as it deems appropriate to carry out the purpose of the act confers “broad power” upon the agency to make substantive determinations on matters relating to the operation of that act. *See Warner Cable of Massachusetts v. Community Antenna Television Commission*, 372 Mass. 495, at 504 (1977) (the Commission is given broad power to make reasonable rules and regulations), *citing Cambridge Electric Light Company v. Department of Public Utilities*, 363 Mass. 474, 494 (1973); *Secretary of Environmental Affairs v. Massachusetts Port Authority*, 366 Mass. 755, 774 (1975). Where the legislature has conferred broad power to establish rules and regulations, the SJC will reject a “cramped reading” of the legislative delegation and, instead, will consider it to extend to the “interpretation and elaboration of the panoply of powers and duties confided to the [agency]” under the relevant section. *See, Cambridge Electric Light Company*, 363 Mass. at 494; *Boston Edison v. Town of Bedford*, 444 Mass. 775, at page 782 fn.21; *David Levy v. Board of*

Registration of Medicine, 378 MA 519, at 524 ("Where an administrative agency is vested with broad authority to effectuate the purposes of an act the validity of a regulation promulgated thereunder will be sustained so long as it is reasonably related to the purposes of the enabling legislation.") (Internal quotes and citations omitted.) Accordingly, Comcast's assertion that the proposed change in the regulations is beyond the scope of the Division's authority is without merit and should be rejected by the Division.

I. Cable Division Appeal

RCN contends that Verizon MA's proposed remedy of an appeal to the Cable Division would be without effect because state law precludes the Cable Division from issuing a cable license. *See* RCN Comments at 5. Of course, Verizon MA has not proposed to create such appeal rights; they already exist in the current statute. *See* G.L. c. 166A, § 14. RCN's conclusion, moreover, does not follow from its premise. As Verizon MA explained in response to the Cable Division's Briefing Question 7, while the Cable Division cannot issue a license itself, G.L. c. 166A, § 14, provides the Division with full authority to overturn an IA's denial of a license application on appeal, make findings related to the shortcomings of the IA decision and remand the matter back to the IA with an order to grant the application or that it not deny the application on grounds which the Division has found to be unreasonable.

III. **Conclusion**

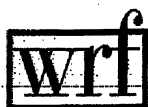
The Cable Division has correctly focused on consumers by recognizing that "Verizon's proposed rules have the potential of increasing video competition in the Commonwealth, thereby conferring the benefits of that competition on consumers." Verizon MA's comments and the thousands of comments received from individual citizens, trade associations, labor unions, Verizon employees, chambers of commerce and groups representing minorities and the disability

communities confirm that the proposed regulation will bring vast benefits to the Commonwealth – choice, competition, lower prices, investment and jobs. In an effort to prevent this much-needed reform, opponents make numerous misplaced attempts to distort the relief requested by Verizon MA, dismiss the burdens of the current franchising process, smear competitive providers with unfounded allegations of redlining or unreasonable conduct, and dress up anticompetitive policies and practices in a mantle of fairness and localism. No commenter comes close to providing a rationale in support of the existing framework for competitive licensees that outweighs the consumer benefits of Verizon MA’s proposal. Accordingly, the Division should expeditiously approve Verizon MA’s Petition.

Respectfully submitted,
VERIZON MASSACHUSETTS
By its attorneys,

/s/Alexander W. Moore
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Dated: September 13, 2006



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July 20, 2006

Robert W. Marshall
16 Barstow St.
Lakeville, MA 02347

Re: Verizon's Application for a Cable Television License in Lakeville

Dear Mr. Marshall:

I am writing on behalf of Verizon Communications Inc. to inform you of our recent progress in obtaining cable licenses in Massachusetts and to ascertain the best way to proceed with license negotiations in the Town of Lakeville. Since our last discussions, Verizon has obtained cable licenses in the towns of Lynnfield, Wakefield, Hamilton, Wenham, Burlington, North Reading, Winchester, and Stoneham and expects to conclude negotiations with several other Massachusetts communities in the near future. Verizon is eager to begin providing cable service in Lakeville as well.

Since our last correspondence, representatives of Verizon Communications, including myself, have met with your cable counsel, Peter Epstein, on more than a dozen occasions to discuss his "List of Outstanding License Issues" (which you submitted to Verizon along with your letter of February 21, 2006) as they relate to other communities in the Commonwealth. We have also exchanged at least eight license drafts with Mr. Epstein since that time in an attempt to craft a cable license that addresses the concerns of Mr. Epstein, the towns he represents, and Verizon. We believe that we are very close to reaching an agreement with Mr. Epstein and it is our hope that, once completed, this license will be used as a guide for license negotiations in Mr. Epstein's other communities.

In your letter of February 21, 2006, you expressed a strong desire to use the Town's existing Comcast Cable License as the basis for negotiations with Verizon. As I have explained to you in our previous correspondence and conversations, it is necessary for Verizon to use its model license as the basis for any cable license that it enters into. As you may already be aware, Verizon holds cable licenses or franchises in over seventy-five communities nationwide. Each of these licenses and franchises is based on Verizon's model license (submitted to the Town of Lakeville along with its Amended Application for a Cable Television License on December 6, 2006) as adapted for the particular laws, regulations, and cable related needs of each local franchising authority. In addition, unlike traditional cable providers which require municipal permission prior to building their cable systems, Verizon is

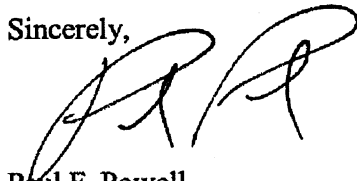
Robert Marshall
July 20, 2006
Page 2

currently upgrading its existing telecommunications network in Lakeville pursuant to its authority under Title II of the Communications Act. Verizon's model license accounts for the differing regulatory regimes governing Verizon's network and provides Verizon with the uniform language and obligations necessary to efficiently and effectively operate its nationwide network of cable systems.

Verizon realizes that the Town of Lakeville has significant concerns with Verizon's model license. It is our hope that we will be able to work with you and Mr. Epstein to craft a mutually agreeable cable license for the Town based on the license that was included with Verizon's Amended Application for the Town of Lakeville and our recent negotiations with Mr. Epstein. If you have not done so already, you may wish to contact Mr. Epstein to obtain further details on the most recent license draft and the status of his "List of Outstanding License Issues" as they apply to Lakeville. We would like to schedule a meeting at your convenience to discuss the Town's remaining issues with Verizon's license and issues specific to Lakeville (including but not limited to the cable service availability date and PEG Access Funding).

Verizon is committed to bringing cable choice to the residents of Lakeville in the near future and we look forward to continuing to work with you and the Town to accomplish this goal. If you have any questions or if you would like to schedule a meeting, please do not hesitate to contact me at 202/719-4645 or by email at ppowell@wrf.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Powell', written over a horizontal line.

Paul F. Powell

CC: Paul Trane
Peter J. Epstein, esq.
Lakeville Board of Selectmen

Moving Ahead at the Speed of Light: Verizon's FiOS TV on the Horizon in New Jersey

Company to Invest \$1.5 Billion to Bring State-of-the-Art Fiber all the Way to Customers' Homes and Businesses

New Statewide Video Franchise Legislation Will Increase Investment, Create Jobs and Quicken Availability of FiOS TV for Consumers

Verizon to Build Major Video Hub Office in Freehold

NEWARK, N.J. -- Verizon announced today it's moving ahead with a \$1.5 billion investment over the next three years for the construction and deployment of its state-of-the-art fiber network in New Jersey. The announcement came after Gov. Jon Corzine signed into law legislation that streamlines the process for obtaining video franchises in the state.

"New Jersey's new law allowing us to offer television service in the state provides all the justification we need to go full speed ahead to bring fiber optics directly to customers – something no other company is doing," said Ivan Seidenberg, Verizon's chairman and CEO.

"Gov. Corzine and the state Legislature deserve full credit for throwing open the door to television competition in New Jersey and new TV choices for consumers in the state."

As a result of this enhanced deployment, Verizon expects to have its industry-leading video network available to three and-a-half million residents by the end of 2008. The first locations will be opened for sale by the end of this year.

"Gov. Corzine's decision today means New Jersey consumers and businesses are poised to have the nation's most advanced communications network delivered directly to their front

door,” said Seidenberg. “We expect it will lead to hundreds of new video-related jobs for New Jersey residents, and result in millions of dollars in savings for consumers.”

As part of Verizon’s plans, the company made the following announcements:

- **Verizon will substantially increase FiOS video availability in New Jersey.**

The company plans to invest \$1.5 billion in Verizon’s fiber network that will bring cable choice and competition quickly to hundreds of municipalities in the state. As Verizon considers deployment of available investment resources throughout its service territory, areas with a clear path to television franchises will be a priority.

- **Verizon will add jobs and bring savings and better services to consumers.**

Verizon currently has more than 1,000 technicians building the FTTP network around the state. As a result of New Jersey’s streamlined franchise rules, the company expects the accelerated deployment will lead to hundreds of additional jobs in New Jersey. In addition, experts have estimated that competition in the cable TV market is expected to result in more than \$200 million a year in consumer savings, as well as more choices and improved services.

- **Verizon is building a major video hub office in Freehold.**

This high-tech video control center will be the primary facility to transmit all video services in most of the state. The multi-million-dollar center will collect the video feed off the company's national fiber-optic video ring and then blend in local channels (network affiliates, PEG channels, etc.) to complete the overall FiOS TV product within the region.

“Today’s announcement will make New Jersey one of the most ‘fibered’ states in the nation, and we fully expect these new franchise rules will open the door to even more competitors,” said Dennis Bone, president, Verizon New Jersey. “We will strive to bring this network to as many communities and consumers as quickly as possible.” He added:

“New Jersey is on the brink of a communications revolution. By the end of this year, we are planning to start offering consumers the most exciting change to home entertainment this side of color television.”

As part of the governor’s approval of the legislation, he issued an executive order directing the State Board of Public Utilities to issue rules concerning the deployment to multiple dwelling units, or MDUs.

“Bringing our network to apartments and high-rise buildings is a clear part of our deployment plan,” said Bone. “This is a tremendous market for Verizon. We’ve been serving customers in these types of dwellings for decades.

“We look forward to working in partnership with the state of New Jersey in ensuring that Verizon is not locked out when we begin negotiating with building owners.”

Customer reaction to FiOS has been very positive, with broadband subscribers more than doubling in the company’s inaugural FiOS market of Keller, Texas, just outside Dallas/Fort Worth.

The company will notify additional customers when FiOS is available locally. Customers who want to determine whether they can order FiOS also can call 888-GET FIOS (888-438-3467) or visit Verizon’s FiOS Web site at www.verizon.net/Fios.

“FiOS has been an extraordinary hit with our first customers in other states,” said Bone. “We are building the communications network of the future to provide customers unmatched network reliability, incredible speed and exciting new options for voice, data and video connections.”

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

CABLE TELEVISION DIVISION

Petition by Verizon New England Inc. to
commence a rulemaking pursuant to 207
C.M.R. § 2.01(1) to amend 207 C.M.R.
§ 3.00 et seq.: Licensing.

Docket No. CTV-06-1

**VERIZON MASSACHUSETTS'
RESPONSES TO BRIEFING QUESTIONS**

On August 23, 2006, the Cable Television Division ("Division") requested additional information on several issues from Verizon Massachusetts ("Verizon MA") and from individual municipalities. Set forth below are Verizon MA's responses to the Division's questions.

Questions for Verizon

Question 1

On average, approximately how long does it take Verizon to build out its fiber to the premises ("FTTP") network in a community in order to be able to provide any FiOS service? For communities in which Verizon has completed its fiber build out, how long does it take to upgrade its network to provide FiOS TV service? Please discuss at what stage in the construction Verizon begins discussions with a community in order to obtain a license to offer video service.

Response to Question 1

It is not possible to provide an average timeframe for the construction of Verizon's FTTP network in a community for a number of reasons. First, the time it takes to construct the network in each community depends on the geographic profile of the community. For example, a community with a greater number of households or a considerable underground network would generally require more time than a community with fewer homes or predominantly aerial

facilities. Other factors include the age and congestion of current facilities, such that a densely populated city like Boston, with congested conduits and poles, presents special construction challenges. Second, the planning and engineering work required for a network build depends not only on a community's geographic profile but also on the availability of investment resources. In other states with a shorter, more predictable licensing process, Verizon MA is able to plan more accurately for the network build and therefore complete the entire process quicker. Finally, Massachusetts law (G.L. c. 166A, § 5(n)) requires only that a licensee complete its build-out of its franchise area within six years of receiving the license, and while particular licenses may impose shorter time frames, Verizon MA need not complete construction of 100% of its license area before it is ready to offer video service in that community.

Thus, even though Verizon MA has not “completed” its fiber build in any Massachusetts community, its ability to offer video services in a community is a function of the speed with which Verizon MA can obtain licenses. Where Verizon MA has been able to obtain video licenses it meets the requirements of those licenses. Indeed, the licensing process has dragged on so long in some communities that Verizon MA has fully installed its FTTP network and has been waiting for months for a license to allow it to offer video service to the public. The point is that the licensing process in Massachusetts generally takes longer than the necessary FTTP construction.

Verizon MA makes every effort to coordinate its construction and licensing efforts, and generally initiates the licensing process early in the plant construction process. Verizon MA's ability to coordinate in this fashion, however, is undermined where the licensing process is lengthy, allows for great variation from IA to IA and is generally unpredictable. Verizon MA's

goal is to obtain a license by the time it is otherwise ready to go to the marketplace with its video service.

Some commenters suggest that Verizon MA initiate the franchise approval process when it begins to deploy FTTP in a particular community. Such a suggestion is unrealistic. First, it ignores that there is no sound public policy reason that negotiations for a license should take longer than 90 days. Neither Verizon MA nor the community should be required to expend the resources necessary to negotiate a license over an extended period, nor should Verizon MA have to make a significant investment only to have it lie fallow until an IA issues a license on its own schedule. Such expenses relative to the size of the market opportunity in Massachusetts already make the Commonwealth one of Verizon's more costly markets for franchise approval, when calculated on the basis of potential customers. For example, the 15 Massachusetts cable licenses the Company already has obtained give Verizon access to less than 100,000 households, compared to 250,000 households covered by just the Hempstead, New York franchise alone. The resources that the current licensing process requires Verizon MA to expend to participate in a 12-month or longer negotiating process in each and every town in which it seeks a cable license poses a significant barrier to entry and to additional capital investment in Massachusetts.

Second, requiring a specific time for applicants for competitive licenses to begin the franchise process is anti-competitive. Such a requirement would provide advance notice to incumbent cable providers about where they need to target their marketing. Incumbent cable providers would have a significant advantage in this respect, even under Verizon's proposal for a 90-day timeline, and that advantage should not be expanded in the interests of maintaining the current framework.

Question 2

In which communities is Verizon currently constructing FTTP? Please identify the communities in which Verizon currently has plans to begin FTTP construction within the next 90 days, and within the next 12 months, respectively. In addition to the foregoing, please indicate the anticipated construction completion dates.

Verizon Response to Question 2:

Verizon is currently pursuing video licenses and is constructing FTTP in the following 39 Massachusetts communities.

<u>City or Town</u>	<u>Date Application Filed</u>
Boxford	4/6/05
Newton	4/21/05
Holliston	4/22/05
Dedham	5/3/05
Lexington	5/13/05
Belmont	5/16/05
Topsfield	5/16/05
West Newbury	5/26/05
Marlborough	6/9/05
Wellesley	6/9/05
Needham	6/10/05
Hopkinton	6/10/05
Natick	6/15/05
Westborough	6/22/05
Sherborn	6/30/05
Westwood	6/30/05
Andover	7/7/05
Lakeville	8/9/05
Littleton	8/26/05
Nahant	9/15/05
Sudbury	10/19/05
Tyngsborough	11/10/05
Dunstable	12/14/05
Swampscott	2/9/06
Lincoln	2/10/06
Southborough	2/21/06
Acton	3/14/06
Canton	3/14/06
Boxborough	3/20/06
Middleborough	4/6/06
Georgetown	4/12/06
Bedford	4/12/06

Lawrence	4/20/06
Lynn	5/25/06
Franklin	5/31/06
Wilmington	6/30/06
Medfield	8/3/06
Rowley	8/3/06
Wareham	9/1/06

The first 20 of these applications have been pending for a year or more.

Because of the highly competitive nature of the information, Verizon MA is not able to provide the status of FTTP construction in, or future plans for, Massachusetts communities. In any event, those plans are constantly under review and may change in the future. The review process evaluates the speed with which Verizon MA is able to enter the video market in Massachusetts and other states and is significantly influenced by Verizon MA's ability to obtain video licenses in an efficient manner.

Question 3

In which communities has Verizon completed the FTTP upgrades necessary to offer video service but has not yet obtained a license? In which of these communities has the licensing process been initiated?

Response to Question 3:

As stated above, Verizon has not completed its FTTP upgrade in any community, but that does not prevent it from offering video in those areas of a license area in which the FTTP upgrade has been completed. In each of the 39 communities listed in response to Question 2, the FTTP upgrade is far enough along that it would not delay Verizon from installing the necessary video service plant and offering video services shortly after receiving a video license.

Question 4

Has any community in Massachusetts caused a delay in the company's plan to obtain a license by imposing what the company considers an unreasonable license requirement? If so, please identify the community and the nature of the requirement.

Response to Question 4:

Yes, many communities have sought to impose unreasonable or unlawful demands on Verizon MA as a condition to approval of an application, thereby substantially delaying the licensing process. Indeed, the great majority of the communities in which Verizon MA has sought a cable license have demanded that Verizon MA: (1) construct an I-Net in the town; (2) provide discounts to senior citizens; and (3) provide or subsidize free Internet access to town buildings and/or schools in one form or another. At public hearing on August 16, a representative of the town of Canton, for example, expressed disbelief that Verizon MA would refuse to build an I-Net for the town. Issuing Authorities ("IA"), however, lack authority to demand that a cable license applicant construct an I-Net. Rather, federal law, specifically 47 U.S.C. § 541, only allows an IA to require a cable operator that has an existing I-Net to devote channels on that I-Net to educational or governmental use. *See* 47 C.F.R. § 76.11505(e); *City of Dallas v. FCC*, 165 F.3d 341, 350 (5th Cir. 1999). As for the other demands, government-imposed discounts for senior citizens is a form of rate regulation, which is prohibited where existence of a second cable provider results in effective competition in a community (*see* 47 C.F.R. § 76.905), and free municipal Internet access is simply an extraneous demand unrelated to provision of video service.

In addition, a number of communities have demanded through their counsel that Verizon MA reimburse the town for its expenses in negotiating and granting the license, including counsel's fees.¹

Specific examples of other improper demands made by IAs include:

- One IA² initially demanded that, among other things, Verizon MA fund the town's purchase of street lights from the power company, install cellphone repeaters at City Hall and provide free cell phones and service to town employees, wire all houses of worship and make parking available at a Verizon MA facility for patrons of the town library.
- Another IA demanded that Verizon MA provide equipment to improve security and surveillance at school buildings, and to increase the use of video streaming in the schools.
- An IA demanded that Verizon MA pay it \$1 million in PEG support funding, even though the community's PEG access agency had more than \$1.2 million in cash on hand.

In addition, many IAs have demanded that Verizon MA match the PEG support and financial terms agreed to by the incumbent provider. Indeed, a number of IAs have demanded that Verizon MA contribute *more than* the incumbent has contributed. For example:

- One IA has demanded that Verizon MA provide three PEG channels, a 5% franchise fee and an equipment grant of \$150,000. The incumbent provides only one PEG channel, an annual franchise fee in four figures and not a percent of gross revenues, and an equipment grant less than half as large.
- An IA demanded an equipment grant \$100,000 greater than that provided by the incumbent, an annual I-Net repair grant of \$10,000 more than provided by the incumbent and more than \$250,000 to build a new, additional I-Net.

Other towns have demanded enormous PEG payments in lieu of building an I-Net, although as demonstrated above, there is no basis for requiring a carrier to build an I-Net in the first place.

¹ One town demanded for the first time that Verizon MA reimburse its external counsel's fees of more than \$20,000 during the hearing set to approve the license, after the parties had reached a final agreement

² In an effort not to chill ongoing franchise negotiations, Verizon MA is not generally disclosing the names of specific cities or towns referenced herein. Verizon MA will, however, provide that information to the Cable Division upon request.

Many IAs have subsequently moved off some of these demands during the course of negotiations, or asked for lesser amounts. Nevertheless, the many improper demands by IAs have caused substantial delays in the licensing process as Verizon MA has attempted to negotiate IAs to more reasonable positions, at great expense of resources and time.

Question 5

Who negotiates license terms with municipalities on behalf of Verizon? Do Verizon's negotiators have direct authority to offer final terms that may be included in a license to be executed by Verizon? If not, please describe the steps necessary to authorize proposed term sheets.

Response to Question 5:

License terms are negotiated for Verizon MA by its own attorneys and staff and sometimes outside attorneys and consultants. Verizon MA's negotiators have the authority to offer terms that are appropriate to each step in the process. Of course, as with the municipalities, there are times where a request is made during negotiations that cannot be approved by the negotiating team without input from others within Verizon. Verizon has developed an efficient process for obtaining the necessary approvals, however, and in those instances is able to obtain the required input on a timely basis. Efficient franchising is a critical part of Verizon MA's business plan, so Verizon MA has no incentive to delay approval of negotiating terms.

Question 6

Please refer to Verizon's initial written comments at page 8, wherein Verizon states that there are a "limited set of factors" that a community may consider in evaluating a license application. Is it Verizon's position that an assessment of cable-related needs and interests is not included within the "limited set of factors" to be reviewed? If not, at what stage and in what manner are those cable-related needs and interests to be considered under the proposed rules?

Response to Question 6:

An assessment of a community's need for PEG "channel capacity, facilities, or financial support," 47 U.S.C. § 541(a)(4), is included within the set of factors an IA may consider in evaluating an application for a cable license. In the case of an application for a competitive license, however, the community would have already assessed its PEG needs and interests in approving the incumbent's application. Moreover, municipal personnel and local Cable Advisory Committees generally maintain an awareness of such needs and interests. Therefore, an assessment of those needs and interests and development of "specifications for the cable license" should be relatively straightforward. For example, in the context of a competitive license application, an IA could permissibly evaluate its existing PEG access equipment to determine whether it needs to upgrade or purchase new equipment.

What is not appropriate, however, is for an IA to commence an entirely new, blank-slate assessment of its PEG needs and interests for each and every licensee. Nor is it appropriate or good policy for an IA to assume that whatever "needs and interests" concessions or value it extracted from the incumbent should be matched by every additional licensee. A community's PEG needs and interests do not double when a second licensee comes to town.

Likewise inappropriate is the current practice of some IAs of working backwards, by first placing a dollar figure value on concessions provided by the incumbent cable provider, demanding that Verizon MA provide the same dollar value in concessions, and only then ostensibly use a "needs and interests" process to figure out how to spend the money. In other words, some IAs start with an assessment of how much money they can extract and *then* determine where to spend it. Of course, a legitimate assessment of PEG needs should work the other way around; the town should take its most recent assessment of PEG needs, then determine

whether changes in programming, technology, or equipment obsolescence have created an additional need that the competitive licensee can be asked to fill consistent with federal law.

Question 7

Under the proposed regulations, if the Cable Division were to determine, upon appeal, that an Issuing Authority unreasonably denied an application for a competitive license, what remedy could the Cable Division order?

Response to Question 7:

Where the Division has determined that an IA has unreasonably denied an application for a competitive license, the Division could order any of the remedies currently available to it under G.L. c. 166A, § 14. That section provides in part that:

If the division approves the action of the issuing authority it shall issue notice to them to that effect, but if the division disapproves of their action it shall issue a decision in writing advising said issuing authority of the reasons for its decision and ordering the issuing authority to conform with such decision. The division shall not, in any event, order a license to be issued until the application for said license has been granted by the issuing authority.

Thus, in such situation, the Division would presumably make findings related to the shortcomings of the IA decision and remand the matter back to the IA with an order to grant the application in conformance with the Division's findings. The Division cannot itself grant a cable license, but it can direct an IA to grant an application consistent with the Division's findings and it can order an IA not to deny an application on grounds which the Division has found to be unreasonable. If an IA still refuses to comply, at the very least there would be a robust record on which the competitive licensee can seek the appropriate legal remedy for the failure of the IA to responsibly discharge its duties.

It should be noted, however, that it is in no party's interests to have to appeal to the Division or to exercise other legal rights, except as a last resort. An appeal entails delays to

market entry, so contrary to the suggestions of some commenters, Verizon MA has not proposed the appeal process as a way of circumventing the decision-making authority of the IAs.

Questions for Municipalities

Municipality Question 3

Does the municipality have a city solicitor or town counsel? Who represents the municipality in negotiations with the cable license applicant? How soon after a cable license application is submitted to the municipality does the negotiator receive application materials and commence negotiations? Does the negotiator have direct authority to offer final terms that may be included in a license to be executed by the municipality? If not, please describe the steps necessary to authorize proposed term sheets.

Verizon's Response to Municipality Question 3:

Verizon is able to provide some information that should be of value to the Cable Division in response to the subquestion: "Who represents the municipality in negotiations with the cable license applicant?" Verizon MA currently is pursuing cable licenses in 39 Massachusetts communities, and the Company has already been approved in 15 other communities. The following table lists attorneys that represent a number of municipalities in negotiations with Verizon MA.

IA	Attorney
Hopkinton	Epstein & August
Winchester	Epstein & August
Belmont	Epstein & August
Boxford	Epstein & August
Dedham	Epstein & August
Framingham	Epstein & August
Holliston	Epstein & August
Lakeville	Epstein & August
Lexington	Epstein & August
Littleton	Epstein & August
Natick	Epstein & August
Needham	Epstein & August
Newton	Epstein & August
Southborough	Epstein & August

Sudbury	Epstein & August
Topsfield	Epstein & August
Wellesley	Epstein & August
West Newbury	Epstein & August
Westwood	Epstein & August
Burlington	Hewig
Lincoln	Hewig
North Reading	Hewig
Westborough	Hewig
Hamilton	Palmer & Dodge
Wenham	Palmer & Dodge
Acton	Solomon
Andover	Solomon
Boxboro	Solomon
Ipswich	Solomon
Marion	Solomon
Marlborough	Solomon
Mattapoissett	Solomon
Reading	Solomon
Rochester	Solomon
Sherborn	Solomon
Stoneham	Solomon
Tewksbury	Soloman
Tyngsboro	Solomon
Wakefield	Solomon

While Verizon MA cannot respond fully to the other subquestions, it does point out that in many cases, months have passed between the date Verizon MA submitted its amended application to an IA (in response to an IAR, as required by the current regulations) and the date on which the IA *even commenced* negotiations with Verizon MA. *See* Chart attached below in response to Municipality Question 8. In some cases, that time period is five months or more.

Municipality Question 5

Many municipalities commented that 90 days is not sufficient to conduct a review of an initial license application. Please state whether there are any provisions of the current licensing process that may be streamlined and, if so, please identify such provisions.

Verizon's Response to Municipality Question 5:

Verizon MA identified in its initial comments several steps in the existing framework that are either impermissible or are irrelevant to a competitive license application: (1) the threshold decision by an IA whether to open the licensing process; (2) solicitation and notice requirements (which the Cable Division routinely waives already); (3) the issuance of a formal IAR and subsequent response by an applicant; and (4) provisional licenses (which the Division said have not been used in the past ten years). With these provisions eliminated, and the limited factors that an IA is permitted to review, 90 days is sufficient time for an IA to make the required findings and issue a competitive cable license.

Municipality Question 8

For communities that have begun the licensing process with Verizon, please provide a detailed timeline of events that have occurred to date. Please provide detail as to when the public hearing is held with respect to the date the proposal was first received.

Verizon's Response to Municipality Question 8:

The following table lists the communities where Verizon has begun the licensing process, as well as the dates of first contact, letter to the DTE, first negotiating meeting, public hearing, and other important events:

Town	LFA Sent DTE Letter	LFA advertises for cable license applications (response date)	VZ submits Form 100	LFA issues IAR (Response Due)	VZ issues amended application	Negotiations Begun	LFA holds public hearing	LFA approves application
Acton	01/15/06	02/16/06 (4/22/06)	03/14/06	06/27/06 (7/26/06)	7/26/06	8/06	8/14/06 9/11/06	
Andover	5/20/05	6/9/05 (7/8/05)	7/7/05	09/15/05 (10/13/05)	10/12/05	1/06	9/25/06	
Arlington	8/21/06							
Bedford	02/27/06	03/09/06 (04/18/06)	4/12/06	7/12/06 (8/11/06)	8/11/06			
Belmont	3/30/05	4/8/05 (5/17/05)	5/16/05	8/15/05 (9/15/05)	9/8/05	10/05		
Boxboro	1/27/06	02/23/06 (03/20/06)	03/20/06	6/12/06 (6/30/06)	6/28/06	7/06	8/28/06 9/18/06	
Boxford	2/9/05	3/3/05 (4/6/05)	4/6/05	7/8/05 (8/19/05)	8/18/05	9/05	9/17/06	
Burlington	4/26/05	5/12/05 (6/13/05)	6/10/05	9/8/05 (10/11/05)	10/10/05	11/05	6/19/06	6/19/06
Canton	12/10/05	1/31/05 (3/15/06)	03/14/06	6/15/06 (7/21/06)	7/21/06			
Dedham	3/11/05	4/1/05 (5/4/05)	5/3/05	8/3/05 (9/6/05)	9/2/05	10/05		
Dover	8/18/06							
Dunstable	8/29/05	11/14/05 (12/15/05)	12/14/05	6/6/06 (06/30/06)	6/22/06			
Franklin	4/24/06	5/5/06 (06/05/06)	5/31/06	8/17/06 (9/6/06)	9/6/06			
Georgetown	10/18/05	03/15/06 (04/13/06)	4/12/06	7/13/06 (8/11/06)	8/11/06			
Groton	8/9/06							
Hamilton	2/9/05	4/23/05 & 4/30/05 (5/26/05)	5/20/05	7/25/05 (9/9/05)	9/8/05	11/05	5/23/06	5/23/06
Holliston	3/1/05	3/14/05 & 3/21/05 (4/25/05)	4/22/05	7/19/05 (8/12/05)	8/12/05	8/05		
Hopkinton	2/16/05	6/8/05 (6/11/05)	6/10/05	9/6/05 (10/6/05)	10/5/05	1/06		
Ipswich	4/7/05	7/7/05 (8/16/05)	8/15/05	03/21/06 (04/03/06)	4/3/06	5/06	7/24/06	7/24/06
Lakeville	6/9/05	7/7/05 (8/10/05)	8/9/05	11/8/05 (12/7/05)	12/7/05	4/06		
Lawrence	1/27/06	03/23/06 (04/24/06)	4/20/06					

Town	LFA Sent DTE Letter	LFA advertises for cable license applications (response date)	VZ submits Form 100	LFA issues IAR (Response Due)	VZ issues amended application	Negotiations Begun	LFA holds public hearing	LFA approves application
Lexington	3/30/05	4/14/05 & 4/21/05 (5/16/05)	5/13/05	9/6/05 (10/14/05)	10/13/05	3/06		
Lincoln	6/13/05	1/19/06 (2/13/06)	2/10/06	05/2/06 (06/12/06)	6/12/06	6/06		
Littleton	6/15/05	7/28/05 & 8/4/05 (8/29/05)	8/26/05	11/21/05 (12/28/05)	12/28/06	2/06		
Lynn	01/15/06	4/25/06 (5/26/06)	05/25/06	8/24/06 (9/22/06)				
Lynnfield	4/13/05	5/17/05 (6/10/05)	6/9/05	9/8/05 (10/14/05)	10/13/05	11/05	3/13/06 03/20/06	03/20/06
Marlboro	4/7/05	4/30/05 & 5/7/05 (6/10/05)	6/9/05	9/2/05 (10/19/05)	10/18/05	7/06		
Malden	9/1/06							
Marion	5/1/06	5/11/06 (6/22/06)	6/14/06	6/30/06 (7/17/06)	7/17/07	7/06	7/27/07 8/30/06	8/30/06
Mattapoisett	5/1/06	5/11/06 (6/22/06)	6/14/06	6/30/06 (7/17/06)	7/17/07	7/06	7/27/07 8/30/06	8/30/06
Maynard	7/26/06							
Medfield	03/15/06	6/20/06 (8/17/06)	8/3/06					
Melrose	8/10/06							
Methuen	8/9/06							
Middleboro	2/1/06	03/09/06 (04/06/06)	04/06/06	7/7/06 (7/28/06)	7/27/06	8/06		
Nahant	7/18/05	8/3/05 (9/16/05)	9/15/05	10/24/05 (12/30/05)	12/29/05	1/06		
Natick	4/7/05	5/17/05 (6/17/05)	6/15/05	10/4/05 (10/28/05)	10/27/05	3/06		
Needham	4/27/05	5/12/05 (6/13/05)	6/10/05	9/30/05 (10/31/05)	10/28/05	12/05		
Newton	2/22/05	3/23/05 (4/22/05)	4/21/05	7/21/05 (9/20/05)	9/19/05	12/05		
North Reading	6/8/05	7/12/05 (8/15/05)	8/11/05	11/08/05 (12/9/05)	12/22/05	12/05	6/19/06	6/19/06
Reading	2/3/05	3/18/05 (4/19/05)	4/15/05	7/12/05 (10/28/05) (Extension)	12/9/05	7/05	12/19/05, 1/9/06, 1/25/06	1/25/06

Town	LFA Sent DTE Letter	LFA advertises for cable license applications (response date)	VZ submits Form 100	LFA issues IAR (Response Due)	VZ issues amended application	Negotiations Begun	LFA holds public hearing	LFA approves application
Rochester	5/1/06	5/11/06 (6/22/06)	6/14/06	6/30/06 (7/17/06)	7/17/07	7/06	7/27/07 8/30/06	8/30/06
Rowley	2/3/06	7/5/06 (8/7/06)	8/3/06					
Sherborn	3/18/05	5/20/05 (7/1/05)	6/30/05	10/19/05 (12/12/05)	12/10/05	12/05		
Southboro	12/1/05	12/23/05 (2/21/06)	2/21/06					
Stoneham	6/3/05	6/22/05 (7/22/05)	7/21/05	03/17/06 (04/11/06)	4/6/06	4/06	6/27/06	6/27/06
Stow	8/9/06							
Sudbury	8/1/05	9/15/05 (10/20/05)	10/19/05	03/06/06 (04/03/06)	3/23/06			
Swampscott	7/18/05	12/10/05 (02/10/06)	02/09/06	7/20/06 (8/4/06)	7/29/06			
Tewksbury	4/26/05	5/16/05 (6/15/05)	6/14/05	9/21/05 amended 9/28/05 (1/10/06)	1/9/06	12/05	5/30/06	5/30/06
Topsfield	3/24/05	4/8/05 & 4/15/05 (5/20/05)	5/16/05	8/9/05 (9/30/05)	9/29/05	11/05		
Tyngsboro	8/26/05	10/13/05 (11/14/05)	11/10/05	03/17/06 (04/10/06)	4/10/06			
Wakefield	6/14/05	7/20/05 (8/22/05)	8/20/05	12/2/05 (01/05/06)	1/18/06	3/06	5/15/06	5/22/06
Wareham	6/19/06	8/4/06 (9/4/06)	9/1/06					
Wellesley	3/24/05	4/21/05 (6/10/05)	6/9/05	9/8/05 (10/7/05)	10/6/05	12/05		
Wenham	2/9/05	4/23/05 & 4/30/05 (5/26/05)	5/20/05	7/25/05 (9/9/05)	9/8/05	11/05	5/23/06	5/23/06
W Newbury	3/31/05	4/28/05 & 5/5/05 (5/31/05)	5/26/05	8/25/05 (9/12/05)	9/9/05	11/05		
Westboro	3/24/05	5/20/05 & 5/27/05 (6/27/05)	6/22/05	8/16/05 (9/22/05)	9/13/05	11/05		
Westwood	3/18/05	6/9/05 (7/8/05)	6/30/05	7/27/05 (9/5/05)	9/29/05	12/05		
Wilmington	5/23/06	5/31/06 (7/5/06)	6/30/06					
Winchester	3/29/05	4/7/05 & 4/14/05 (5/9/05)	5/6/05	7/25/05 (9/15/05)	9/8/05	9/05	6/7/06 6/19/06	6/19/06
Woburn	2/17/05	3/21/05 & 4/4/05 (4/21/05)	4/20/05	7/19/05 (8/3/05)	8/3/05	8/05	9/28/05	9/30/05

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,

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