



T: 617.330.7000 F: 617.330.7550
50 Rowes Wharf, Boston, MA 02110

Kenneth M. Barna
Direct Dial: (617) 330-7086

May 1, 2009

Via Hand Delivery and Electronic Mail

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station, 4th Floor
Boston, MA 02110

Re: D.T.C. 08-12, *Verizon's Form 500 Amendment Petition*

Dear Secretary Williams:


Enclosed please find the Comments of Shrewsbury Electric and Cable Operations in the above-captioned proceeding.

Also enclosed please find the Petition for Limited Participant Status of Shrewsbury Electric and Cable Operations in the above-captioned proceeding. We have also submitted both the Comments and the Petition for Limited Participant Status in electronic format.

Kindly date-stamp a copy of this letter and return it to the messenger in the enclosed envelope so that we may retain a copy for our files.

Thank you for your attention to this matter.

Very truly yours,


Kenneth M. Barna

cc: Service List

Enc.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

_____)	
Petition of Verizon New England, Inc. for)	Docket No. DTC 08-12
Amendment of the Cable Divisions Form 500)	
"Cable Operator's Annual Report of Consumer)	
Complaints")	
_____)	

**COMMENTS OF
SHREWSBURY ELECTRIC AND CABLE OPERATIONS**

Pursuant to the Request for Comment and Notice of Public Hearing issued by the Department of Telecommunications and Cable ("DTC") on March 27, 2009, Shrewsbury Electric and Cable Operations ("SELCO") hereby files its comments concerning Verizon New England, Inc.'s ("Verizon") petition to amend Form 500 eliminating reporting of the total number of subscribers for cable licenses. SELCO supports the continuation of providing cable subscriber counts in Form 500 and subscriber counts for the purpose of calculating the CATV license fee. SELCO also supports reporting requirements that treat all cable operators fairly and equally. Verizon's request, however, is unsupported by the law and fails to place all cable operators on a level playing field. Rather, its request to eliminate the reporting of subscriber counts ostensibly is aimed at giving Verizon, a new entrant into the cable business, a competitive advantage, and not to eliminate any competitive disadvantage to cable operators.

Verizon fails to support its position that G.L. c. 166A does not authorize the DTC to require cable operators to disclose their total number of subscribers. To the contrary, G.L. c. 166A, § 9 requires disclosure of this information because it bases the amount of license fees payable to each issuing authority on the total number of subscribers in their area. That statute provides:

No application for a license to operate a CATV system or for renewal, transfer or assignment of such a license shall be considered by an issuing authority unless it is accompanied by an application fee of one hundred dollars payable to the city or town. A licensee, serving more than two hundred and fifty subscribers, shall on or before March fifteenth of each year, pay to the commonwealth a license fee equal to eighty cents per subscriber served and to the issuing authority a license fee equal to fifty cents per subscriber served. In determining a license fee, the number of subscribers served shall be measured as of December thirty-first of the preceding calendar year.

G.L. c. 166A, § 9. Accordingly, the DTC and issuing authorities have a legitimate interest in obtaining information concerning the total number of subscribers.

Further, G.L. c. 166A, § 10 requires cable operators to annually report the number of subscriber complaints on forms prescribed by the DTC. That statute states in relevant part,

The issuing authority and the department shall be notified by the licensee on forms to be prescribed by the department not less than annually, of the complaints of subscribers received during the reporting period and the manner in which they have been met, including the time required to make any necessary repairs or adjustments.

G.L. c. 166A, § 10. The reporting of subscriber counts provides the DTC and issuing authorities with information needed to assess the extent of any customer service problems as contemplated by G.L. c. 166A, § 10. The total subscriber count enables the DTC and issuing authority to calculate the percentage of subscribers experiencing customer service issues. For instance, ten (10) complaints may indicate a serious customer service problem in an area where a cable operator only has 100 subscribers. Plainly, issuing authorities have a legitimate interest in knowing whether cable operators are adequately responding to the needs of their subscribers in the licensed area. In assessing whether to renew a cable operator's franchise, the issuing authority may consider the quality of the cable operator's service, including quality, response to consumer complaints, and whether such response has been reasonable in light of community

needs, and whether the cable operator has the financial and technical ability to provide the services. See 207 C.M.R. 3.06. Accordingly, the DTC and issuing authorities may solicit customer count information and at a minimum, G.L. 166A, § 10 does not preclude the DTC and issuing authorities from requesting it.

Moreover, Verizon has not shown that the subscriber count information meets the requirements of a “trade secret” to protect such information from disclosure. Verizon merely outlines the Jet Spray factors and then proceeds to hypothesize the harm that could come to Verizon if other cable operators know the number of its customers in a particular area. Verizon’s argument is entirely speculative and assumes that competitors would predicate decisions to spend millions of dollars on infrastructure and marketing costs on customer count data. Verizon’s argument also is specious that such information would be sufficient to draw conclusions about Verizon’s “weaknesses” in a given area.

Nonetheless, the Legislature did not intend to protect cable operators from disclosing information which might provide some competitive insight into their businesses. G.L. c. 166A, § 8 requires licensees to file with the DTC and issuing authority, *inter alia*, a financial balance sheet “which shall be open to public inspection.” This information and other public records may be much more telling about the success of a cable operator’s business. Further, the provision of cable services on a competitive basis always has been allowed in Massachusetts. Verizon has not shown that the reporting of subscriber count information has hindered competition in the past or will hinder competition in the future. In fact, the information solicited on Form 500 promotes fair competition and could protect against “redlining.” Total subscriber counts could reveal infrastructure deployment and service patterns in certain neighborhoods which could be of interest to the DTC and issuing authorities. Moreover, opportunities to provide service in such

underserviced areas should not be viewed as exploiting Verizon's weaknesses, but rather as providing consumers with greater opportunities for obtaining cable services.

In addition, allowing confidential treatment of subscriber count information would not place all cable operators on a level playing field. SELCO, as a municipal light plant, is subject to Massachusetts Public Records Law (set forth by G.L. Chapter 66), and therefore, all information relating to SELCO Cable operations, including such alleged competitively sensitive information such as subscriber counts, cannot be kept confidential. If the DTC grants Verizon's petition to amend information required in Form 500 or otherwise treats such information as confidential, it would place SELCO and other municipally-owned cable systems at a competitive disadvantage because subscriber count information would still be available to anyone including Verizon, under the Public Records Law. Accordingly, in the interest of fairness, any elimination of Form 500 information or confidential treatment must be deferred until SELCO and other municipal cable operators receive adequate protection from disclosure of their subscriber count information and such other "competitively sensitive information." The onus should not be placed on SELCO and other municipal cable operators to level the playing field, but should be placed on the DTC to obtain adequate protections to safeguard from disclosure information deemed confidential for all cable operators.

Respectfully submitted,

SHREWSBURY ELECTRIC
AND CABLE OPERATIONS,

By its attorneys,

 (KJd)

Kenneth M. Barna
Karla J. Doukas
RUBIN AND RUDMAN, LLP
50 Rowes Wharf
Boston, MA 02110
(617) 330-7000

Dated: May 1, 2009