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August 14, 2015

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

**Re: DTC's July 27, 2015 Request for Comment and Notice of Listening Session  
(Executive Order Number 562, dated March 31, 2015)**

Dear Secretary Clark:

In response to the Department's Request for Comments and Listening Session, dated July 27, 2015, Verizon submits the attached comments.

Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Alex Moore".

Alexander W. Moore

Enclosure

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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Department Regulation Review ) )  
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COMMENTS OF VERIZON NEW ENGLAND INC.

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) files these comments in response to the Request for Comment and Notice of Listening Session issued by the Department on July 27, 2015 (“Request for Comment”), seeking comment on the review and potential elimination of its regulations pursuant to Executive Order No. 562.

Verizon MA supports the goal of the Executive Order to address regulations that “have imposed unnecessary cost, burden and complexity.” With respect to the communications industry, many of the Department’s regulations were adopted decades ago, when the telephone and cable television industries were distinct from one another and largely monopolistic. Those industries (and Internet-based services and technologies that did not even exist when the rules were created) converged some time ago into a highly competitive communications market. Today, customers enjoy a broad choice of voice services, including WiFi, wireless, VoIP (both facilities-based and over-the-top), email, texting, and other Internet-based social media such as Facebook, Twitter, Instagram, Vine and others. With so many options, consumers often use multiple services and technologies each day to communicate, and traditional landline telephone service now plays a small and declining role in consumers’ service portfolio. For video services, consumers enjoy choices among facilities-based CATV providers as well as widely accepted

alternatives in the form of satellite television and free and subscription-based video streaming services over broadband connections.

Competition constrains not only service providers' rates but also their customer service practices, including the quality of their service, policies for addressing customer complaints and inquiries and treatment of billing and nonpayment issues. In this way, market forces driven by new technology, changes in consumer habits and by federal and state regulatory decisions designed to open the voice and cable markets to competition long ago rendered obsolete the Department's need for regulations that dictate behavior on these issues.

A few of these regulations are found in the Code of Massachusetts Regulations – namely, the CATV Billing and Termination of Service regulations at 207 C.M.R. § 10 (“CATV B&T Rules”), the Security Deposit and Late Payment rules in 220 C.M.R. § 26 that apply to business telephone customers, and the CATV Form 500 complaint reports at 207 C.M.R. § 7.03. These regulations no longer serve any purpose but continue to impose costs on service providers and distort the market, chilling investment and constraining competition. They satisfy few, if any, of the criteria in ¶ 3 of the Executive Order, and the Department should eliminate them.<sup>1</sup>

The Department should not, however, limit this review to the formalized regulations in the C.M.R., as the Request for Comment appears to anticipate. Many of the Department's most archaic and burdensome rules are not embedded in the C.M.R. but instead were inherited in orders and informal directives from predecessor agencies. These include the superannuated Rules and Practices Relating to Telephone Service to Residential Customers (“B&T Rules”) dating from 1977 and a number of obligations imposed solely on Verizon MA at the dawn of the

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<sup>1</sup> Other C.M.R. regulations which require parties to file and serve hardcopies of all submissions to the Department are simply outdated by the ubiquity of secure electronic transmission over the Internet. The Department should eliminate this requirement and the attendant unnecessary costs. *See* Part III below.

competitive era, such as the Retail Service Quality plan and other retail relics from the Alternative Regulation Plan. The clear goal of the Executive Order is to eliminate state agency regulations that “inhibit business growth and the creation of jobs” and retain only those that are “essential to the health, safety environment or welfare of the Commonwealth’s residents.” Order at Introduction and ¶ 3. That the B&T Rules, for example, do not appear in the C.M.R. does not make these monopoly-era strictures relevant in an era of rampant competition or make them any less burdensome to residential telephone service providers. Limiting this investigation to formal regulations in the C.M.R. while ignoring the Department’s more numerous, burdensome and archaic rules would elevate form over substance and defeat the purpose of the Executive Order.

I. Competition Has Rendered Many Department Rules Obsolete and Counterproductive, And The Department Should Eliminate Them.

It is beyond debate that competition in the communications market in Massachusetts is widespread, deep and well-established, as Verizon MA demonstrated four years ago.<sup>2</sup> In today’s market, telephone, CATV, VoIP and satellite providers vie with each other and with texting, email, Internet video streaming services, Facebook, Twitter and the ever-expanding world of social media for customers’ voice and video business. With respect to landline competition alone, competitive carriers controlled 52% of the landlines in the state as of 2013, the latest federal data available.<sup>3</sup> Even as early as 2008, 97% of all households in Massachusetts had access to voice service provided by CATV providers, and the Department noted that “cable voice

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<sup>2</sup> See Initial Comments of Verizon New England Inc., dated August 22, 2011, filed in the Department’s informal proceeding captioned *Notice of Public Informational Forums: Billing and Termination Regulations*.

<sup>3</sup> See Federal Communications Commission, Wireline Competition Bureau, *Local Telephone Competition, Status as of December 31, 2013*, (rel. October, 2014) (“*Local Competition Report*”), Table 9, at 20. That report is available at <https://www.fcc.gov/encyclopedia/local-telephone-competition-reports>.

has developed from a new entrant voice service offering to being a widely adopted alternative in the residential voice market.”<sup>4</sup>

And landline is now just a small subsector of the communications market. There are twice as many wireless subscriptions in Massachusetts as there are landlines.<sup>5</sup> In 2010, the Department found that more than 99% of state residents have access to at least one wireless carrier, based on data that is now *seven* years old.<sup>6</sup> More recent data show that 99.9% of Massachusetts residents have a choice of at least *two* wireless providers, and 94% can choose from among five or more.<sup>7</sup> The Massachusetts data is part of a larger, national trend of consumers’ embrace of mobile and Internet-based services. In fact, more than 45% of households in America had only wireless telephones at the end of 2014, and another 15% of households received all or almost all calls on wireless phones.<sup>8</sup> To respond to this demand, wireless carriers offer consumers a growing array of service plans and rates designed to meet different consumer needs, including low-cost pre-paid plans.

Competition is also the hallmark of the CATV and video sub-market. Using 2008 data, the Department has found that 40% of the households in Massachusetts had a choice of two CATV providers, and 19% could choose from among three providers.<sup>9</sup> Those figures do not

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<sup>4</sup> See *Competition Status Report* (rel. February 12, 2010), at iv;

<http://quickfacts.census.gov/qfd/states/25000.html> (showing 2,465,654 households in Massachusetts).

<sup>5</sup> There were 6,928,000 wireless subscribers and 3,466,000 total switched access lines and VoIP lines in Massachusetts as of December 31, 2013. See *Local Competition Report*, Tables 9 and 18. Indeed, there are now more wireless subscribers than people in Massachusetts, which had 6,547,629 residents as of the last census. See <http://quickfacts.census.gov/qfd/states/25000.html>.

<sup>6</sup> See *Competition Status Report*, at 50, 52, using December, 2008 and January, 2009, data.

<sup>7</sup> See, National Broadband Map, Summary for Massachusetts, available at <http://www.broadbandmap.gov/summarize/state/massachusetts>.

<sup>8</sup> See Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2014* (“CDC Report”), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201506.pdf>.

<sup>9</sup> See *Competition Status Report*, at xi. The percentages for CATV competition are higher today, at a minimum because Verizon MA has since expanded its FiOS TV service from 96 communities at the time of the Department’s findings to 113 communities today.

even account for the additional choices afforded all customers across the state by satellite video services such as Dish and DirectTV, which is now part of AT&T.

In addition, both video and voice providers are subject to increasing competition from broadband. Ninety-nine percent of Massachusetts residents have access to broadband service, and 97% have a choice of at least two landline providers.<sup>10</sup> Consequently, while pockets remain, virtually the entire population has access to VoIP services, video websites, the explosively popular Internet video streaming services and the ever-growing array of communications services delivered over the Internet.

Even the state itself has stepped into the market. Through the Massachusetts Broadband Initiative, the Commonwealth has used state and federal funds to build a middle-mile broadband network to more than 1,300 locations throughout central and western Massachusetts. Other local broadband initiatives are well underway, from Open Cape's middle mile project to grassroots efforts in Leverett and a growing number of western Massachusetts towns which are seeking to build last-mile broadband connections in some of the smallest towns in the state. All of these networks are capable of carrying voice, data and video traffic and acting as effective substitutes for traditional cable and telephone networks.

All of these competitive forces together discipline all aspects of service providers' relationships with their customers, including rates, terms, conditions, customer service, quality of service, repair response policies, dispute resolution policies, and billing and termination practices. Service providers know that innovative programs and practices that improve customers' experience help win and retain business. They also understand that customers can and do switch to competing carriers quickly and easily, and that unreasonable or unfair customer service practices and policies only drive customers to take their business elsewhere. Given these

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<sup>10</sup> National Broadband Map, Summary for Massachusetts

market-based incentives, there is no longer a need for government intervention, especially by way of regulations designed to dictate the behavior of a single, monopoly provider.

For example, the B&T Rules and the CATV B&T Rules contain complex, monopoly-era provisions defining when an unpaid bill becomes delinquent and the steps a service provider must take before disconnecting the customer's service for nonpayment. In the competitive market, however, the goals of winning and retaining customers, rather than government regulation, drive service providers to implement fair, reasonable and customer-centric policies on payment terms, customer dispute resolution and (where necessary) to provide customers with ample notice of impending discontinuance of service. Because of the risk of losing to competitors customers who may eventually resolve an arrearage, service providers have every incentive to preserve the customer relationship if possible and to not disconnect a customer unless it is absolutely necessary.<sup>11</sup>

For the same reasons, there is no need for rules regarding late charges, termination notices, return check charges or security deposits in the CATV B&T Rules or in 220 C.M.R. § 26.01(1), 26.09 and 26.10 (regarding business telephone customers). In a competitive market, retaining customers is ample incentive for service providers to adopt fair and reasonable policies.

Likewise, the decades-old Retail Service Quality Plan and other regulations in the Verizon MA Alternative Regulation Plan have long outlived any usefulness and serve only to impose costs on Verizon MA. Verizon MA is doing all it can to provide its remaining customers with high quality voice services, the latest technology and responsive customer service policies, all in order to prevent them from decamping to its many competitors. But to compete fully,

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<sup>11</sup> The many filing, publication and notice requirements in the B&T Rules and the CATV B&T Rules are likewise superfluous and counterproductive. A service provider that repeatedly slaps surprise rate increases on its customers will soon have no customers. Moreover, the Internet has simply bypassed these rules; company websites are a far more effective means of making available to customers and regulators alike the provider's current rates, terms, condition, policies and channel lineups.

Verizon MA should be focused on meeting the needs of customers *as expressed by customers*, rather than devoting resources to standards set by the Department twenty years ago based on performance results and expectations from another era, before cellphones, before broadband and before the 1996 Act and the Department's own rulings opened the industry to competition. For example, due to the ubiquity of cell phones, customers today often prefer to schedule a landline repair appointment for a convenient time, rather than as soon as possible. When Verizon MA agrees to schedule a landline repair appointment for more than 24 hours after the trouble was reported, however, the company will miss the decades-old requirement that it complete repairs within 24 hours, even though the later appointment better meets the customer's preference.

On the CATV side, the Department should drastically simplify the Form 500 reports of consumer complaints in 207 C.M.R. § 7.03. The detailed complaint data that Form 500 requires carriers to report has always far exceeded the mandate of G.L. c. 166A, which requires only the nature of the complaints and their resolution and the time required to resolve. Requiring carriers to break down those complaints into ten vague categories imposes substantial costs and results in fairly random reported results, presumably so that the Department can monitor carriers' service quality and performance. But there is no need for such micro-monitoring in the highly competitive Massachusetts market, in which customers can and do switch providers if they are unhappy with their CATV providers' performance or treatment of them.<sup>12</sup>

In light of the constraints that competition imposes on service providers' policies and practices, there is no longer any policy basis for treating telecommunications and CATV providers any differently than other businesses. Massachusetts' strong consumer protection laws of general application are more than adequate to protect consumers of these services, just as they

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<sup>12</sup> Moreover, only one other state in which Verizon provides CATV service, New Jersey, requires providers to report the number of customer complaints.



protect consumers in other areas of competitive commercial activity. For example, M.G.L. c. 93A protects CATV consumers from unfair and deceptive practices, gives the Attorney General enforcement authority, and affords a private right of action to consumers as well. The Attorney General has issued general Consumer Protection regulations (at 940 CMR § 3), and both the Attorney General (at 940 CMR § 7.00) and the Division of Banks (at 209 CMR § 18.00) have issued regulations specifically protecting consumers from unfair or deceptive debt collections practices. Likewise, M.G.L. c. 93H and regulations promulgated thereunder (at 201 CMR § 17.00) provide comprehensive protection of Massachusetts consumers' personal information owned or licensed by any person, including telephone and CATV providers.<sup>13</sup>

In addition, the FCC's Truth-in-Billing rules regulate the form and content of telephone bills. Among other things, they require bills to be clearly organized and to state the name of the service provider, any change in service providers, a "brief, clear non-misleading, plain language description of the service or services rendered" for each charge and clear and conspicuous information on how to contact the service provider, including a toll-free telephone number. *See* 47 CFR § 64.2401. The FCC recognized that these rules, "will compel subject carriers to provide consumers with clear and necessary information in order to make informed choices and safeguard themselves against fraud."<sup>14</sup> In the competitive Massachusetts telecommunications market, the FCC's Truth-in-Billing rules allow carriers flexibility to address customer-defined needs and demands while ensuring protection of consumers from abuse.<sup>15</sup>

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<sup>13</sup> Similarly, the FCC's regulations at 47 C.F.R. § 64.2001 *et seq.* provide comprehensive protection to Customer Proprietary Network Information ("CPNI").

<sup>14</sup> *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 F.C.C.R. 7492 (1999), at 27.

<sup>15</sup> In addition, the hyper-detailed billing format requirements of Rule 3.4 of the B&T Rules far exceed the federal requirements, and thus fail to meet the criteria of § 3(3) of the Executive Order.

The highly competitive Massachusetts marketplace, coupled with the general consumer protection rules above, provides ample assurance that service providers will act fairly, reasonably and appropriately toward their customers. This is not mere theory but is solidly grounded in experience. After all, the vast majority of voice subscriptions in Massachusetts (i.e. all of them except subscriptions to traditional, residential telephone service) are not covered by the presumed protections of the B&T Rules (which apply only to residential POTS customers) or the Retail Service Quality Plan (which applies only to telephone customers of Verizon MA).<sup>16</sup> Similarly, the CATV B&T Rules do not apply to satellite television customers or to the untold multitudes who stream video over the Internet. Yet there is no evidence of mounting consumer complaints from these “unprotected” consumers on the basic customer service issues addressed in these regulations, and the unregulated services continue to grow in consumer popularity. Indeed, the Department’s own data show that the rate of consumer complaints regarding all voice service providers – both regulated and unregulated – has been consistently low for years – about 1/50<sup>th</sup> of one percent of the subscriber base.<sup>17</sup> These complaints confirm that the market is fully protecting consumers’ interests and there is no need for industry-specific regulations.

In sum, mandated customer service standards are no longer a legitimate regulatory concern. Massachusetts has achieved what it set out to do: competition is driving providers to develop consumer-friendly policies in key areas, improve their services, and innovate to earn the business of their customers. The Department should eliminate both sets of B&T Rules and the other rules noted above and allow customers to determine for themselves the policies that are

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<sup>16</sup> Verizon MA’s telephone customers comprise less than 13% of the voice market. *See Local Competition Report*, Tables 9 and 18 (showing 1,308,000 ILEC switched access lines and 10,394,000 landline and wireless connection in Massachusetts).

<sup>17</sup> *See* Department Annual Reports for 2009 through 2015, detailing the number of telecom complaints received each year and, since 2010, complaints on “unregulated matters,” which includes wireless, satellite and VoIP. The Annual Report for 2014, for example, shows 1,855 total complaints on telecom and unregulated matters, compared to a subscriber base of 10.4 million for all voice services.

important to them and select their providers accordingly. Government one-size-fits-all regulation in this market will only harm competition, choice and innovation.

II. The Department Should Review Its Non-C.M.R. Rules, Regulations And Obligations.

The Department should also take the opportunity afforded by the Executive Order to review all of the substantive obligations it has imposed on carriers over the years, not just the few that have been codified in the C.M.R. Verizon MA appreciates that the specific directive to agencies in the Executive Order is to “to promptly undertake a review of each and every regulation currently published in the Code of Massachusetts Regulations under its jurisdiction.” That makes sense for most agencies, which typically promulgate rules of general application through the rulemaking procedures in the Administrative Procedures Act, G.L. c. 30A, resulting in formal regulations in the C.M.R. The Department’s predecessor agencies have acted differently, however, often eschewing rulemakings in favor of adjudicatory proceedings. As a result, most of the Department’s formal regulations are limited in scope to specific issues,<sup>18</sup> while the bulk of the obligations on telephone companies derive from orders in adjudicatory proceedings or less formal directives issued over the years.

The B&T Rules, for example, are regulations in all but name. The Department of Public Utilities created them in 1977 in Docket No. 18448, an adjudicatory proceeding, and later extended them through informal means to all carriers providing residential telephone service. Thus, the B&T Rules are “rule(s), regulation(s), standard(s) or other requirement(s) of general application and future effect ... adopted by an agency to implement or interpret the law enforced or administered by it” as provided in G.L. c. 30A, § 1(5) (definition of “regulation”). Indeed, it would be entirely anomalous and internally inconsistent for the Department to review and

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<sup>18</sup> See e.g. 220 C.M.R. Chapter 13 (slamming), Chapter 15 (rocket docket for wholesale telecom disputes), Chapter 16 (911 expenses); Chapter 37 (automatic dialing systems) and Chapter 45 (pole attachments).

eliminate the CATV B&T Rules in this proceeding (as it should) but refuse to review the analogous rules on the telephone side of the Department's remit. Other substantive regulations imposed through adjudicatory proceedings include the Retail Service Quality Plan and the Alternative Regulation Plan. These provide no benefit to consumers in the competitive market yet impose significant obligations and costs on Verizon MA, hampering its ability to compete.

In addition, reviewing and eliminating the non-C.M.R. regulations would be consistent with the spirit of the Executive Order and better effectuate its goals. The Order expresses deep concern over the plethora of state regulations that impose unnecessary expense and burden, "inhibit business growth and the creation of jobs," place Massachusetts companies at a competitive disadvantage or otherwise harm competition. *See* Executive Order, Whereas clauses. It seeks to retain only those regulations "that are essential to the public good," i.e. "the health, safety environment or welfare of the Commonwealth's residents." *Id.*, and ¶ 3. To that end, it establishes seven rigorous criteria that any regulation must meet in order to pass review, including that: "there is a clearly identified need for governmental intervention;" that the costs of the regulation do not exceed its benefits; that "the regulation does not exceed federal requirements;" that "less restrictive and intrusive alternatives" are not available; that the regulation does not adversely affect the competitive environment; and that the regulation is time-limited. *Id.* Section 6 of the Order requires that any agency proposing a new regulation prepare a "business/competitiveness impact statement" and "assess the disruptive economic impacts" of the regulation on business, including "medium and large for profit enterprises." Although § 6 is not directly applicable to the Department's effort to *eliminate* regulations, it drives home the general purpose of the Order to ensure that state regulations do not unduly disrupt business or competition.

The Department certainly could treat this proceeding as a mere exercise in eliminating the length, but not the burdens, of its regulations. Such an approach, however, would miss the point of the Executive Order and an opportunity to unburden Massachusetts businesses and consumers alike from inefficient and ineffective government regulations that impede, not advance, competition in an increasingly critical sector of the economy of the Commonwealth.

### III. The Department Should Allow For Electronic Filing And Service Of Papers.

The Request for Comment asks whether the Department should “unify its procedural rules among its industry segments” and if so, whether it should use the default procedural rules from C.M.R. Title 801 or the “simplified rules from Title 220, Chapter 1?” In Verizon MA’s view, the Department should apply the Title 220 rules to both telecommunications and cable matters. A single set of rules would avoid undue complexity, and the Title 220 rules are the better choice. The Title 801 rules appear to offer no discernable improvement over the Department’s longstanding rules (with one exception) and, due to lack of specialization, may result in greater inefficiencies in Department proceedings.<sup>19</sup>

The exception is that the Title 801 rules provide for filing and service of papers by Electronic Medium, including email. *See* 801 C.M.R. § 1.01(2)(c) (definition), § 1.01(4)(b) (filing) and § 1.01(5)(f) (service). Adopt these or similar provisions would greatly improve the efficiency of Department proceedings and is the one procedural change the Department could make to reduce the regulatory burden on service providers. The Department’s current rules require parties to file and serve hardcopies – *see* 220 C.M.R. § 1.02(2)(b), § 1.02(8)(a) and § 1.05(1)(a) – and are inefficient and woefully outdated. Many other jurisdictions allow electronic

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<sup>19</sup> As for the first question on which the Department seeks comment, whether the Department codifies its regulations under a single title of the Code is inconsequential.

filing, and some require it, including the Maine PUC and the Federal District Court for the District of Massachusetts. In this day and age, there is no excuse for insisting on filing and serving hardcopies when electronic filing offers a vastly superior, well-accepted alternative.

IV. Conclusion

For these reasons, the Department should embrace the spirit of the Executive Order and eliminate the rules, regulations and obligations discussed above while allowing for electronic filing and service of papers.

Respectfully submitted,

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By its attorney



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