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November 20, 2015

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

Re: Department Reg Review – 220 C.M.R. 5.00

Dear Secretary Clark:

Enclosed for filing in the above-referenced proceeding are the Comments of Verizon New England Inc. on Proposed Revisions to 220 C.M.R. 5.00.

Thank you for your attention to this matter.

Sincerely,

Alexander W. Moore

Enclosure
cc: Kerri DeYoung Phillips, Hearing Officer

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Department Regulation Review	)

COMMENTS OF VERIZON NEW ENGLAND INC.
ON PROPOSED REVISIONS TO 220 C.M.R. 5.00

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") files these comments in response to the Notice Seeking Comment on Hearing Officer Recommendation 220 C.M.R. § 5.00 issued by the Department on November 7, 2015 ("Notice") pursuant to Executive Order No. 562. Verizon MA responds below to the specific questions posed by the Department, followed by brief comments on the revisions to 220 C.M.R. 5.00 proposed in the Notice.

Responses to Department Questions

1. Should the Department implement baseline regulations involving Section 19F's electronic notice and online posting requirements similar to those already required of Section 19 filings?

No. There is no demonstrable need to regulate the precise manner in which a service provider may post the terms of its retail services on its website under M.G.L. c. 159, § 19F, and thereby free those services from the old tariffing requirement of § 19. Verizon MA is not aware of evidence that service providers are commonly withdrawing tariffs without posting their services online, that the postings do not fairly state the rates, terms and conditions of those services, or that companies have failed to take advantage of the statute due to confusion as to what steps are necessary. Verizon MA posted its retail Product Guide on its website before withdrawing its retail tariffs effective on January 1, 2015, and that Guide contains the same level

of detail as the company's former tariffs. In the absence of industry-wide failure, regulations governing service providers' web-postings are unnecessary and would merely re-impose the same administrative costs the statute was designed to eliminate.

Such regulations would fail to meet the strict requirements of Executive Order No. 485. For example, there is no "clearly identified need for government intervention" here, either to implement the statute or to "provide guidance" to service providers. *See* Order § 3(1). The costs to service providers of complying with new substantive and procedural obligations in order to exercise their rights under this straightforward statute would vastly "exceed the benefits that would result from the regulation." *See id.*, § 3(2). And the Department retains the "less restrictive and intrusive [and arguably more effective] alternative" of conducting a targeted investigation of any specific instance in which a service provider fails to tariff a service without posting the rates, terms and conditions of the service on its website. *See id.*, § 3(4).

Moreover, § 19F leverages the new communications capabilities made available by the Internet in order to relieve telephone providers of the administrative and substantive burdens of filing tariffs for retail telephone services. Imposing "requirements similar to those already required of Section 19 filings" on web-posting – the action that the Legislature stated would free telephone services from those very requirements – would substantially frustrate and defeat the purpose of the statute.

In addition to the above considerations, the Department does not have authority to issue regulations under § 19F. An administrative agency possesses only those powers, duties and obligations expressly conferred upon it by statute and such powers as are reasonably necessary to carry out the purpose for which it was established. *Saccone v. State Ethics Comm'n*, 395 Mass. 326, 335 (1985) (*quoting Hathaway Bakeries, Inc. v. Labor Relations Comm'n,* 316 Mass. 136,

141 (1944)); *see also Mass. Mun. Wholesale Elec. Co. v. Mass. Energy Facilities Siting Council*, 411 Mass. 183, 194 (1991) (citations omitted) (agency has no authority to promulgate regulations that exceed the authority conferred by statute). Nothing in § 19F confers authority on the Department to regulate how a telephone provider may post on its website the rates, terms and conditions of its retail services. Section 19, the tariffing statute, expressly provides that common carriers must file and keep open to the public their tariffs "in such places, within such time, and with such detail as the department may order," but that authority applies to the filing of tariffs under § 19, not to the very different act of posting service terms on a website under § 19F. Moreover, that the Legislature provided express authority in § 19 with respect to tariffing but did not provide similar authority in § 19F with respect to web postings is strong indication that it did not intend to grant the Department such powers.

2. What, if any, information should be included in electronic notices to the Department? For instance, should these notices: (a) summarize changes made to the online posting; (b) specify the section(s) and page number(s) of those changes; and (c) include a copy of the notice(s) to consumers of rate increases?

There is no need to define by regulation the information a service provider must include in its electronic notices under § 19F. When Verizon MA posts changes to its online Product Guide, it specifies in its notice to the Department the affected sections and page numbers and also identifies the changes directly on the pages of the Guide. This fairly notifies the Department of the changes and where the Department can find them in a lengthy document. To Verizon MA's knowledge, there is no widespread failure or refusal of other carriers to provide similar information, which might justify a new regulation on the subject. Section 19F does not require a carrier to summarize or characterize in its notice the changes it has made to its online postings, and as long as the notice allows the Department to locate the changes and review them for itself,

there is no need for imposing this additional obligation on carriers. Likewise, while § 19F preserves the Department's ability to require notice to customers of an upcoming rate increase, it does not require a carrier to file that notice with the Department as a prerequisite to exempting the relevant service from the tariffing requirement, so a regulation imposing such a requirement would step beyond the statute. In any event, the Department can always require a carrier to submit a copy of its customer notice of a rate increase if it were to become an issue in a particular case, obviating any need for a broadly applicable regulation.

3. What, if any, format should the online postings have? Do they need to retain the format already required of Section 19 filings?

Service providers should be free to post the terms of their services in the format they deem best. Section 19F neither requires a particular format nor authorizes the Department to mandate one, and regulations in this area would be counterproductive in any event. Verizon MA has to date elected to post its Product Guide in largely the same format as its former tariffs. But Verizon MA and other carriers may find a competitive advantage in developing some other format that they believe communicates the terms of their services more effectively, as a way of differentiating themselves from competitors in the eyes of customers. Providers also need flexibility to change how they make information available to customers in response to changes in the market, in technology and in customers' expectations. Rigid governmental regulations would prevent such innovation and potentially deprive consumers of more effective and user-friendly means of obtaining the terms of their services.

4. What definition should the Department use for an online posting?

Section 19F does not use the term "online posting," and the Department need not define it via regulation. The statute states that a service provider may "post on its website the rates, terms

and conditions of any retail service it offers...." In Verizon MA's view, this phrase is self-explanatory and does not require additional elucidation or interpretation through an agency rulemaking. And as noted above with respect to similar issues, Verizon MA is not aware of widespread or common failure of service providers to post, or to adequately post, the rates, terms and conditions of their services on their websites before withdrawing the tariffs for those services. Regulations seeking to define what constitutes "online posting" are therefore unnecessary both because the statute is clear as written and because there is no market failure that requires yet another regulation.

5. How should the Department account for contract service arrangements of retail rates, terms, and conditions that veer from those rates, terms, and conditions posted online by a carrier?

There is no action for the Department to take with respect to such contracts, because they are not subject to Department approval. Under § 19F, once a service provider posts on its website the rates, terms and conditions of a retail service, "[s]ection 19 shall not apply" to that service. Section 19 requires common carriers to not only tariff their services but also file all "forms of contract or agreements in any manner affecting" those services. M.G.L. c. 159, § 19. Accordingly, the posting of rates, terms and conditions of a retail service under § 19F eliminates any obligation on the service provider to file any contracts for the service.[1]

Other terms of § 19F confirm this. Specifically, the statute provides that:

> Upon written notice to the department, such common carrier may withdraw any schedule, ***contract or agreement*** previously filed with the department under section 19 for such retail service so posted under this paragraph.

[1] The Department Notice, *Use of Contract Service Arrangements*, (April 6, 2004) ("CSA Notice"), does not yield a different result. The CSA Notice grounds the Department's authority to require the filing of customer-specific pricing plans on the provisions of § 19, so the limits on the scope of § 19 found in § 19F similarly restrict the scope of the CSA Notice.

(Emphasis added.) It would be patently unreasonable to interpret the statute as allowing service providers to withdraw contracts previously filed with the Department but require them to file any contracts entered into ***after*** the relevant service had been de-tariffed, and such an interpretation would have no rational policy justification.

6. What other requirements should the DTC implement

   None.

Comments on proposed revisions to 220 C.M.R. 5.00

Rules 5.02 (1), 5.02(2)(a) and 5.03(1)(a)

A number of stakeholders have commented in support of allowing electronic filing and service, and we note that the Department has proposed changes to 220 C.M.R. 1.02(2)(b) and 1.05(1)(a) in this regard. The above regulations, however, would continue to require hardcopies of tariff filings. Electronic filing is far more efficient than hardcopy, and is widely accepted across many jurisdictions. Verizon MA again recommends that the Department allow electronic filing with respect to all submissions, including filings made pursuant to 220 C.M.R. 5.00.

Rule 5.02(2)(b)

This proposed rule would enshrine in regulation the contract filing requirements currently found in the CSA Notice. Presumably, these requirements would apply to contracts for services not posted pursuant to § 19F and to contracts entered into by rural service providers, who are not covered by § 19F. The Department should not weigh down the C.M.R. with these new regulations, however, even with respect to these limited circumstances. The CSA Notice has been in place for more than a decade, and to Verizon MA's knowledge, no service provider has refused to comply with it on the grounds that it is not a regulation and therefore unenforceable.

There is therefore no benefit to formalizing the terms of the CSA Notice in formal regulations. To the contrary, given the policy of the Legislature as expressed by the enactment of § 19F, the Department should seek to retain as much flexibility on this issue as possible, and consider eliminating these filing requirements in response to the rapidly evolving competitive market.

Rule 5.06

This proposed rule would enshrine in regulation the requirement to notify customers of rate increases at least thirty days in advance, originally imposed in the Department's Industry Notice, *Customer Notice of Rate Increases*, issued on February 8, 2002. As with the CSA Notice, there is no evidence that this Industry Notice has been ineffective or proven unenforceable over its long life because it is not a formal regulation. In the absence of general industry non-compliance on those grounds, there is no benefit to be gained by converting this requirement into a regulation.

Moreover, this would send the Department in the exact wrong direction. Verizon MA agrees with AT&T that the 30-day period is far too long and makes Massachusetts anti-competitive, and that the Notice's prohibition on website postings and other means of notifying customers of rate increases is outdated and contrary to the policy underlying § 19F. In our highly competitive telecommunications market, the goals of winning and retaining customers drive service providers to implement fair and reasonable customer policies, including advance notification of rate increases. The Department should allow service providers to compete on this basis and allow customers to decide for themselves the policies that are important to them and chose their providers accordingly. If the Department does not eliminate the advance notice requirement altogether, it should at a minimum preserve its current ability to revise it without the need for a formal rulemaking.

Conclusion

For these reasons, the Department should not propose regulations on web postings under M.G.L. c. 159, § 19F, and should revise its proposed changes to 220 C.M.R. 5.00 as discussed above.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney

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Dated: November 20, 2015