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Alexander W. Moore
Associate General Counsel

March 24, 2010

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station, Fl. 4
Boston, Massachusetts 02110

Re: DTC 09-1 Regional Service Quality Investigation

Dear Ms. Williams:

Enclosed for filing in the above-referenced matter is Verizon New England Inc.'s Response to Hearing Officer Correspondence on the Exclusion of Documentary Evidence

Thank you for your attention to this matter.

Very truly yours,

Alexander W. Moore

Enclosures
cc: Service List
Kalun Lee, Hearing Officer (3)

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Re: Verizon Service Quality in Western Massachusetts	)	D.T.C. 09-1

VERIZON NEW ENGLAND INC. RESPONSE TO HEARING OFFICER CORRESPONDENCE ON THE EXCLUSION OF DOCUMENTARY EVIDENCE

At 4:06 PM on March 23, 2010, the Hearing Officer in this proceeding issued an email to the service list requesting that, by 5:00 PM on March 24, 2010, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon MA" or the "Company") and other parties provide: (1) a list of documents that it objects to inclusion in the evidentiary record of this proceeding, and (2) the grounds for such objections. For the reasons described below, the Company is unable to provide such a list and grounds for objection at this time because the request is premature, inappropriate and prejudicial to Verizon MA and any other party that wishes to offer an objection.

Under the Department of Telecommunications and Cable's (the "Department") rules and practice, and the procedures set forth by the Hearing Officer in this case, it is premature to provide any such objections. Under the Department's procedural rules, before any document may be included in the evidentiary record of a case, it must be "offered into evidence." 220 C.M.R. 1.10(5)(a). *See also* 220 C.M.R. 1.10(4). Consistent with these rules, it is the long-standing practice before the Department that prior to the evidentiary hearings, the parties provide a list of exhibits that they wish to mark for identification. This practice was adopted by the Hearing Officer in his Procedural Notice dated September 4, 2009 ("March 29, 2010 Witness and Exhibit List Due"). This process provides all parties and the Department with prior notice of documents that parties intend to rely on and that they may move into the evidentiary record in

the case. Generally, all documents are marked without objection, and any disputes about whether they should be admitted into evidence are held until a party makes an appropriate motion. At the conclusion of the evidentiary hearings, parties offer a motion to enter some or all of their previously marked exhibits into evidence, and at that time, any objections can be raised and disputes resolved. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 32 ("At the conclusion of the evidentiary hearings, each party will have an opportunity to contest the admission into evidence of any documents offered by any other party.")

The Hearing Officer's email turns the process on its head by asking parties to file objections *before* any party has filed a motion to enter any document into evidence Indeed, not a single document has yet been marked for identification as an exhibit. As stated accurately in the email filed by the Attorney General, and joined by Verizon MA and the IBEW, "...the Department does not have a motion pending before it from Verizon or any other party regarding the admissibility of those discovery responses. As a result, the discovery responses have not been identified. We do not know what we should be responding to or opposing."

Thus, the Hearing Officer's request is premature, in that the Company is not able to identify the discovery responses to which it might object because no party has moved anything into evidence. Nor could they, since no party has provided a list of exhibits it wants to mark for identification, let alone move into the evidentiary record.

Thus far, over 700 discovery responses have been filed by the parties in this case, accounting for literally thousands of pages (or electronic pages) of documents. The Company recognizes that the rules for discovery are significantly less stringent than the rules for admissibility into evidence. *Western Massachusetts Electric Company, supra* at 31-32. For this and other reasons, the Company (and presumably other parties as well) provided responses to

information requests even though the information might not be admissible at hearing. It is the responsibility of the parties (individually or collectively) to affirmatively move documentary exhibits into the evidentiary record and until that occurs, neither Verizon MA nor other parties are in a position to offer objections.[1] It would be highly prejudicial to Verizon MA to presume that every one of the thousands of documents produced in this case is admissible evidence without being proffered and supported by a party and without providing a reasonable opportunity for Verizon MA (and other parties) to provide its objections.[2]

An example of the unfairness of the proposition that all discovery is presumed to be admissible evidence is the single response of the Attorney General to Information Request IBEW 9-1. The response contains over 400 pages of testimony from Attorney General Witness Baldwin regarding the sale of Verizon assets to Frontier Communications Inc. in Ohio, Illinois and West Virginia. The response has nothing whatsoever to do with the issue of the quality of the Company's service in Western Massachusetts, and the Attorney General has already filed substantial testimony from Ms. Baldwin in this proceeding. Testimony in the Frontier cases cannot "automatically" be presumed to be relevant and admissible evidence in this proceeding.[3] Indeed, no one has offered the documents into evidence, and, if a party does so, Verizon MA must have a reasonable opportunity to object to its admission. At that time, the offering party must be required to support its admission into evidence. Such a process can occur at the end of

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1 Of course, it is the burden of the moving party to demonstrate that any documents offered into evidence is admissible.

2 It is patently unreasonable to provide the parties with barely one day to review every document, to decide what is objectionable and prepare the grounds for every objection.

3 Verizon MA also intends to object to any motion to admit the Attorney General's responses to Information Requests DTC-AG 1-1 through 1-5, 1-7, 1-8 and 1-10, which discuss Ms. Baldwin's ideas on revisions to the statewide Service Quality Plan, on the grounds that such issues are beyond the scope of this investigation into Verizon MA's service quality in Western Massachusetts.

the hearing (as it has been done for many years, consistent with the Department's rules and practices), and cannot reasonably be accomplished in a single day before anyone has moved any document into evidence.

For all of the above reasons, the Company is unable to comply with the Hearing Officer's request at this time, and any objections to the admission of evidence must be deferred until an appropriate motion is filed and the parties have a reasonable opportunity to address the issue on its merits.[4] The Company reserves its rights to offer its objections at the conclusion of the evidentiary hearings, when motions for the admission of documents into evidence are offered.

Respectfully submitted,

VERIZON MASSACHUSETTS

By Its Attorney,

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Dated: March 24, 2010

[4] To the extent that the Hearing Officer email of March 23, 2010 is deemed to be a "ruling" by the Presiding Officer, the Company hereby asserts its right to appeal such ruling to the Commissioner pursuant to 220 C.M.R. 1.06(6)(d)3.