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## **I. INTRODUCTION**

The Department of Telecommunications and Cable (“Department”) opened this proceeding on June 1, 2009, to investigate “the reasonableness of Verizon Massachusetts’ telephone service quality in Berkshire, Hampden, Hampshire and Franklin Counties, pursuant to G.L. c. 159, § 16.” D.T.C. 09-1, *Order Opening Investigation*, at 19. In the year since then, the Department has conducted an exhaustive investigation of the matter, in which Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) produced an enormous amount of data on a wide range of issues in response to over 750 information requests, the parties submitted over 500 pages of prefiled testimony, and the Department held five public hearings in Western Massachusetts<sup>1</sup> and six days of evidentiary hearings.

The massive record the Department has assembled amply demonstrates that Verizon MA provides just, reasonable and adequate telephone service quality across Western Massachusetts and that no remedial action by the Department is necessary or appropriate. Verizon MA’s service quality in the region meets and surpasses the criteria in the Department’s Service Quality Plan and is comparable to service quality in the rest of the state. In addition, Verizon MA has implemented appropriate and effective systems and procedures to respond to customer trouble reports, and the Company manages the network proactively through its Proactive Cable Maintenance, Open Plant and Quality Inspection programs to prevent service issues from arising and to improve service quality. Perhaps for these reasons, Verizon MA’s customers in Western Massachusetts give it high marks in surveys measuring customer satisfaction with Verizon MA’s

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<sup>1</sup> Throughout this proceeding, the parties have referred to the geographic area under investigation as “Western Massachusetts,” meaning LATA 126, which covers the area of Massachusetts served by Verizon MA in the 413 area code. “Eastern Massachusetts” means LATA 128, which is the rest of the state.

service quality, confirming that the company provides very good service in the region. See Section II, below.

Conversely, the Complainants<sup>2</sup> and Intervenors<sup>3</sup> have failed to offer substantial evidence in support of their claim that Verizon MA's service quality in Western Massachusetts is unjust, unreasonable or inadequate. They do not dispute or contradict the hard data provided by Verizon MA. Instead, they offer a host of fundamentally flawed arguments that do not, either individually or collectively, support a finding of inadequate service quality across the region.

First, the AG argues that Verizon MA's inability to meet the metric for Troubles Cleared Within 24 Hours - Residential in the Department's Service Quality Plan ("the Plan") demonstrates inadequate service. But Verizon MA's performance must be judged across the full range of all 12 metrics in the Plan, not just one, and this metric in particular is outdated and of less importance than in the past. (*See* Part III.A.)

Second, the AG argues that the network trouble report rate (or Reports Per Hundred Lines, "RPHL") in some Western Massachusetts wire centers exceeds the statewide RPHL standard under the Service Quality Plan. The wire centers the AG relies on, however, are not representative of service quality across the region as a whole. In addition, the statewide standard is not a proper benchmark for RPHL at a wire center level. Evidence of RPHL higher than the statewide standard in a few wire centers does not support a finding that service is inadequate across the region. Nor does this evidence justify making findings with respect to service quality in those particular wire centers, which are beyond the scope of this investigation of service quality at the regional level. Nevertheless, Verizon MA is already implementing a substantial

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<sup>2</sup> The towns of Hancock, Egremont and Rowe.

<sup>3</sup> The Intervenors are the Town of Leverett, the Attorney General ("AG") and the International Brotherhood of Electrical Workers, Local 2324 ("IBEW").

project to close the outside plant in those wire centers, as the most efficient and effective way to reduce the report rate and improve service quality in those areas. (*See* Part III, B and C.)

Third, while Verizon MA regrets that any of its customers experience service issues and works hard to prevent and resolve such issues, the Verizon MA customers who testified to such issues in this proceeding represent only a tiny fraction of Verizon MA's customer base in Western Massachusetts, and their experience is not representative of service quality in Western Massachusetts as a whole, which the data shows to be very good. (*See* Part III.D.)

Fourth, the Intervenor's claim that Verizon MA's cable in Western Massachusetts is old (and therefore underperforming) is unsupported by any evidence, and Verizon MA's expert witness specifically explained that the age of cable is not relevant to its performance, a conclusion supported by the data showing that the network in the region is healthy. (*See* Part III.E.)

Fifth, the AG and IBEW argue that Verizon MA's service quality in Western Massachusetts is inadequate in comparison to other areas of the state, but Verizon MA's service quality meets the requirements of the Plan, and cannot be found to be inadequate merely because service may be even better in other areas. (*See* Part III.F.)

Sixth, the IBEW claims that a number of Verizon MA management policies, such as a failure to provide technicians with tools and the scrubbing of trouble reports, have resulted in poor service quality in the region. But service quality in the region is not poor, and the IBEW's claims regarding particular Verizon MA policies are inconsistent with the facts. (*See* Part III.G.)

Accordingly, the only possible finding consistent with the evidence before the Department is that Verizon MA's service quality in Western Massachusetts is just, reasonable and adequate. In spite of their failure to offer evidence to support a finding of inadequate

service, the Intervenors ask the Department to impose on Verizon MA new regulations and requirements that apply across the entire Western Massachusetts region - including: (1) customer credits for failure to clear residential troubles in 24 hours; (2) a third-party audit of Verizon MA's infrastructure across the entire region; and (3) new reporting requirements, some of which apply on a statewide basis. In addition, the new service quality plan suggested by Staff for consideration - the Hypothetical Service Quality Plan ("Hypothetical Plan") - would impose new metrics, unreasonable standards and harsh penalties on the Company based on its performance across the region and perhaps the entire state. In the absence of substantial evidence of inadequate service quality across the region, however, there is no basis for these region-wide "remedies." Each of the proposed remedies lacks merit for additional reasons, and some of them are beyond the authority of the Department and would be unlawful in the circumstances of this proceeding. (*See Part IV.*)

Specifically, the Department does not have statutory authority to order Verizon MA to issue customer credits for inadequate service quality as the AG proposes. In addition, the AG's proposal and the specific penalty amounts proposed are unreasonable and unsupported by the facts. The proposed third-party audit is also unsupported by evidence that service quality in the region is inadequate, and it is administratively unworkable. Likewise, the additional reporting requirements sought by the AG is a cure for a patient who is not sick, and statewide reporting falls outside the scope of this proceeding. (*See Part IV.A.*)

Second, Verizon MA operates in a highly competitive market in Western Massachusetts and throughout the state, such that one half of households in Western Massachusetts do not even have a Verizon MA primary line, and Verizon MA has presented substantial, undisputed evidence that, as a result, declining revenues have forced it to reduce expenses for years, and that

its net operating income in Massachusetts has been negative (and significantly so) for at least the past six years. Consequently, the Company does not have the financial ability to meet the current Troubles Cleared - Residence metric in Western Massachusetts (and thus avoid the AG's proposed penalties) or the analogous metrics and standards in the Hypothetical Plan, and any order imposing these requirements would violate the terms of G.L. c. 159, § 16. (*See Part IV.B.*) Such an order would also violate the federal and state constitutional prohibitions on confiscation of private property, by imposing enormous additional costs on Verizon MA without affording it an opportunity to recover those costs through its rates. (*See Part IV.C.*)

Third, the Hypothetical Plan is not supported by evidence of inadequate service quality across the region or the state, and there is no rational connection between the alleged minor deficiencies in Verizon MA's service quality in a few wire centers in Western Massachusetts and the broad application of that Plan. Moreover, the specific terms of the Hypothetical Plan are fundamentally flawed and lack substantial evidentiary support. (*See Part IV.D.*)

Fourth, both the AG's proposed customer credits and the Hypothetical Plan are based on the faulty presumption that Verizon MA could meet the Troubles Cleared - Residence metric and could provide a uniform level of service quality in every wire center in Western Massachusetts and the Commonwealth if only it had sufficient regulatory incentive to do so. That presumption is inconsistent with the substantial evidence that competition in the region is robust and provides ample motivation for Verizon MA to provide good service quality, but that its ability to do so is constrained by the need to reduce its expenses as competition eats away at its revenues and by the geography of, and weather in, some parts of Western Massachusetts that are to some extent beyond Verizon MA's control. Consequently, there is no rational connection between these proposed remedies and the harms they seek to address. (*See Part IV.E.*)

In summary, the evidence demonstrates that Verizon MA provides just, reasonable and adequate service quality in Western Massachusetts, and there is no basis to impose additional government regulations on the Company on a region-wide basis as proposed.

**II. VERIZON MA'S SERVICE QUALITY ACROSS WESTERN MASSACHUSETTS AS A WHOLE IS JUST, REASONABLE AND ADEQUATE AND AFFORDS NO BASIS FOR IMPOSING ADDITIONAL SERVICE QUALITY REGULATIONS ON THE COMPANY.**

**A. The undisputed data shows that Verizon MA provides good service quality in Western Massachusetts on a regional basis.**

M.G.L. c. 159, § 16 authorizes the Department to investigate whether a common carrier's service is "unjust, unreasonable, unsafe, improper or inadequate" and to direct the carrier to observe practices that are "just, reasonable, safe, adequate and proper." In the instant case, substantial, uncontroverted evidence demonstrates that Verizon MA's service quality in Western Massachusetts meets the statutory standard, leaving no grounds on which to impose any of the region-wide "remedies" that have been proposed in this proceeding.

First and most importantly, the quality of service Verizon MA provides in the region more than satisfies the Department's Service Quality Plan ("Plan"), adopted in D.T.E. 94-50 and re-affirmed in D.T.E. 01-31. The Plan requires Verizon MA to report its performance on 12 metrics and uses the "Service Quality Index" ("SQI") to evaluate the Company's overall performance on a comprehensive basis. *See* Verizon MA Direct Testimony ("Verizon Direct") at 7-9. Of the 12 metrics, the Network Trouble Report Rate, or Reports Per Hundred Lines ("RPHL"), is the best indicator of the health of Verizon MA's network, since it provides the most direct insight into the quality of design, construction, maintenance and, ultimately, the functioning of Verizon MA's outside plant and switching facilities. *Id.* at 10. In the 34 months from January, 2007, through October, 2009, Verizon MA's RPHL in Western Massachusetts

exceeded the Department’s standard only twice, both times when the region was beset with severe weather. Further, the regional RPHL over the 12 months ending September, 2009, was only 1.57, easily satisfying the Department’s stringent statewide RPHL target of 1.90. *See id.* Over the same period, Verizon MA also scored well on the other metrics in the Plan that can be measured on a regional level, exceeding the Department’s more stringent “target” levels for all of them other than Troubles Cleared - Residence. *Id.* at 11-15 and Figure 3. Updated data for the 12 months ending March, 2010 show even stronger performance, as shown in the chart below:

Figure 1<sup>4</sup>

<u>Measure</u>	<u>DTC Levels</u>	<u>W. MA Results 12 Mo. Ending Sept. 2009</u>	<u>W. MA Results 12 Mo. Ending Jan. 2010</u>
Network Trouble Report Rate	<1.9 target <2.25 standard	1.57	1.40
% Troubles Cleared in 24 hours Residence Customers	>70 target >60 standard	46.93	50.66
% Troubles Cleared in 24 hours Business Customers	>85 target >75 standard	87.95	89.12
% Appointments missed All Customers	<1.5 target <2.5 standard	1.36	1.26
% Appointments missed Residence Customers	<1.5 target <2.5 standard	1.20	1.09
% Appointments missed Due to Company Facilities	<1.15 target <1.25 standard	0.43	0.42
% Installation Trouble Reports (troubles within 30 days of install)	<5.5 target <6.0 standard	4.0	3.5

<sup>4</sup> Verizon MA Rebuttal Testimony (“Verizon Rebuttal”) at 6.

Because the SQI includes statewide measures, it cannot be applied directly only to a single region of the state, such as Western Massachusetts. Nevertheless, if the rest of the state had performed as well as Western Massachusetts had during that time, Verizon MA's score on the SQI would have been even higher than it actually was. Verizon Direct at 16. This is significant, because the Department has always evaluated Verizon MA's service quality at the SBU and state level based on evaluation of its performance on all of the metrics in the SQI, not just one. Verizon MA's performance in Western Massachusetts satisfies the overall standards of the Plan, which the Department has long used to assess the reasonableness of Verizon MA's service quality.

Moreover, the data demonstrates that Verizon MA's service quality in Western Massachusetts is comparable to its service quality in the rest of the state. *See id.* at 14-15. Verizon MA has accomplished this even though the conditions in which it provides service in the more densely populated areas of Eastern Massachusetts are very different than those in the West, and the comparison unfairly favors the East. (*See* further discussion in Part III.F. below.)

No party has submitted evidence contradicting any of these facts. As discussed in Part III below, the Intervenors argue that Verizon MA's service quality is lacking in particular wire centers or as to a particular metric, but they have submitted no evidence disputing the above regional data, which shows that service quality on a regional basis is good.<sup>5</sup> For this reason alone, the only possible conclusion on the evidence is that at a regional level, Verizon MA's service quality meet the standards established by the Department and therefore is just, reasonable and adequate.

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<sup>5</sup> The AG's expert witness, Ms. Susan Baldwin, did claim that the RPHL for Western Massachusetts was 2.7 for the first eight months of 2009, exceeding the Department's standard of 2.25. *See* Prefiled Testimony of Susan M. Baldwin ("Baldwin Direct") at 56-57. Ms. Baldwin later recanted that testimony, however, and agreed with Verizon MA that the regional RPHL during that period was only 1.5. *See* Verizon Direct at 22; Prefiled Rebuttal Testimony of Susan M. Baldwin ("Baldwin Rebuttal") at 28.

**B. Verizon MA's customers' high satisfaction with its installation and repair performance confirms that the Company's service quality in the region is just, reasonable and adequate.**

Verizon MA also submitted strong evidence that its customers report that they are satisfied with the service response they receive. Verizon MA's Customer Care Index ("CCI") surveys query a random sampling of customers who have interacted with the company concerning an installation, repair or business office inquiry during the prior 30 days. *See* Verizon Direct at 16. The surveys are based on a statistically significant number of responses each month. *See* Response to Information Request AG-VZ 14-7. Every year since 2004, at least 93% of the customer/respondents who have had installation work performed by Verizon MA have indicated that they are satisfied with that service, and at least 81% of customer/respondents who have had repair work performed by the company were satisfied with the company's performance. *See* Verizon Direct at 17-18. The high level of satisfaction with Verizon MA's installation and repair services that customers express in the surveys confirms the high quality of the Company's performance in these important customer service areas.

**C. Verizon MA's Operations are appropriately designed to respond to customer trouble reports, and Verizon MA proactively manages the network to prevent troubles from arising and improve service quality.**

The conclusion that Verizon MA's service quality in Western Massachusetts is good does not rest solely on statistics. Rather, the Company offered substantial evidence from a broader perspective, showing that it has a thorough and robust process for addressing customer trouble reports quickly and effectively. Verizon MA's expert witnesses explained the Company's methodology of accepting and routing customer trouble reports to the proper groups for response, dispatching appropriately trained technicians and its system for obtaining feedback

from technicians regarding faults in the network and proposed remedies. *See Verizon Direct* at 45-50.

In addition, in 2007, long before the Department opened this proceeding, Verizon MA reinvigorated a number of programs to manage the network more aggressively to prevent service issues from arising and thereby improve overall service quality across the state, including in Western Massachusetts. Under the Proactive Cable Maintenance (“PCM”) program, Verizon MA uses a Predictor process to identify and resolve faults in Verizon MA’s outside plant infrastructure before they cause significant customer service-affecting issues, and it uses its Capital process to analyze and determine whether a particular section or sections of cable should be replaced. Further, Verizon MA’s Outside Plant program identifies areas of the network where open plant may be causing or about to cause service issues, surveys the area to identify specific items of open plant and then closes the plant. Verizon MA has also implemented a Quality Inspection program in which a centralized management team reviews the quality of field work done by technicians across the state, including Western Massachusetts, in order to better ensure that repair and installation work is done properly and in accordance with company standards. *See Verizon Direct* at 53-57. These programs have proven remarkably successful. In Western Massachusetts, they helped reduce the Code 4 rate (an internal measure of trouble reports arising strictly from outside plant issues) by 27% from 2008 to 2009, *id.* at 58, and due to their success, the Company is expanding the programs to other states. *Tr.* at 485.

In sum, Verizon MA has demonstrated that its service quality in Western Massachusetts meets the Service Quality Plan, which the Department established to ensure that the Company’s service quality is just, reasonable and adequate, and this evidence is not disputed. Verizon MA has also demonstrated that the vast majority of the Company’s customers in the region is

satisfied with its response to installation and repair requests and that Verizon MA aggressively manages the network to prevent troubles from arising. On this showing, the Department can only conclude that service quality in the region is just, reasonable and adequate.

**III. THE COMPLAINANTS AND INTERVENORS HAVE OFFERED NO EVIDENCE THAT VERIZON MA'S SERVICE QUALITY IN WESTERN MASSACHUSETTS IS UNJUST, UNREASONABLE OR INADEQUATE.**

The AG argues that the Department could find that Verizon MA's service quality in Western Massachusetts is inadequate based on evidence that the Company fails to meet the Troubles Cleared - Residence metric and that the RPHL in some wire centers in the region is higher than the statewide standard. The AG also asserts that individual customer complaints, expressed through written filings or testimony at public hearings, are indicative of inadequate service quality. In addition, the AG and IBEW, while not disputing the regional data showing that Verizon MA's service quality satisfies the Plan, assert that service in Western Massachusetts is not comparable to that in other parts of the state, such as in downtown Boston, where the RPHL is even lower than in Western Massachusetts. Also, the IBEW claims that Verizon MA's management practices have resulted in inadequate service quality.<sup>6</sup>

None of these arguments has merit, however, and none of them even address the data showing that Verizon MA's overall service quality on a regional level satisfies the service quality requirements established by the Department.

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<sup>6</sup> It is not surprising that the AG and the IBEW share similar views on the issues and propose similar remedies, including a third-party audit. The AG's expert witness, Ms. Baldwin, regularly and frequently represents union interests. As shown in her Statement of Qualifications, Baldwin Direct Attachment A, in the past two years alone she has represented either the IBEW or the Communications Workers of America (another Verizon union), or both, in four major cases, two concerning service quality (in Connecticut and Maryland) and two concerning the transaction between Verizon and Frontier Communications (in Ohio and Illinois).

**A. Verizon MA's performance with respect to the Troubles Cleared - Residence metric does not support a finding of inadequate service quality.**

The AG's witness, Ms Baldwin, testified that "service quality is inadequate throughout Western Massachusetts because Verizon MA fails to repair lines in a timely manner." Baldwin Rebuttal at 27. This claim is inconsistent with the facts and long-standing Department policy.

As a preliminary matter, Verizon MA's performance in clearing troubles is not nearly as poor or as uniformly poor as the AG makes it out to be. For example, Ms. Baldwin asserted that Verizon MA cleared fewer than 50% of the out-of-service troubles in 24 hours in 23 wire centers in Western Massachusetts in 2009, Baldwin Direct at 41, but she failed to note that those wire centers account for only 12% of Verizon MA's access lines in the region. Verizon Direct at 34. Ms. Baldwin also purported to calculate the "mean time to repair" OOS troubles and created some statistics regarding the number of "wire center-months" in which the mean repair time exceeded 24 hours. *See* Baldwin Direct at 46-47. But like many of Ms. Baldwin's analyses, this one gives equal weight to all wire centers regardless of their size, thus overstating the importance of small wire centers. A proper weighted average of wire center performance shows an actual mean time to repair across Western Massachusetts of **\*\*\* Begin Propriety\*\*\*** **\*\*\* End Propriety\*\*\*** not much greater than the 24 hours standard. Verizon Direct at 35-36. Ms. Baldwin also exaggerated the facts in claiming that Verizon MA "never" meets the Troubles Cleared - Residence metric "anywhere in the Commonwealth." In fact, Verizon MA sometimes meets the standard for that metric on a statewide basis, on an SBU basis and across Western Massachusetts. *Id* at 37. Moreover, at the wire center level, Verizon MA met the Department's 60% statewide standard 152 times in Western Massachusetts over the 12-month period from October 2008 through September 2009, including 65 times when wire centers exceeded even the 70% target. *Id.* Ms. Baldwin's claim that Verizon MA's performance on this metric is

uniformly poor over time and across all wire centers in Western Massachusetts is the foundation for the AG's proposed blanket regulations for the region, but it simply is not true.

Second, the Troubles Cleared - Residence metric in the Service Quality Plan is only one of 12 measures designed and relied on by the Department for many years to monitor, assess and regulate Verizon MA's service quality in the state and by region, and all 12 metrics must be considered in assessing service quality:

We acknowledge that Verizon MA often struggles to meet the metric for Troubles Cleared Within 24 Hours - Residential in the Service Quality Plan. Given that Verizon MA regularly surpasses the Department's standards for *all* of the other eleven metrics in the Plan, however, this lone shortcoming hardly provides grounds to find that service quality in Western Massachusetts is wanting, and it certainly does not justify the draconian "remedies" advocated by the Attorney General.

Verizon Direct at 5. Indeed, the Troubles Cleared - Residence metric is extremely limited in scope -- it is concerned only with the less-than 2% of Verizon MA's residential customers who have a service issue in a given month -- and cannot alone provide a meaningful view of service quality. The subject of the Department's investigation in this case is "the reasonableness of Verizon Massachusetts' telephone service quality" in Western Massachusetts, *Order Opening Investigation* at 19, a topic much broader than just the Troubles Cleared metric.<sup>7</sup> An overall evaluation of the type the Department teed up in this case requires a review of all metrics.

The required holistic analysis of Verizon MA's service quality shows that its very strong performance on the other metrics -- specifically the RPHL metric -- more than compensates for its performance on the Troubles Cleared - Residence metric, in that the total percentage of the Company's customer base that has to wait more than 24 hours for a repair is smaller than it would have been if Verizon MA had met the Troubles Cleared - Residence metric but merely

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<sup>7</sup> In its request for comment, the Department referenced "... such issues as repeated service outages, poor signal quality, delays in repairing or restoring service and generally in responding to troubles, and deficiencies in network maintenance and replacement of aged facilities." See Request for Comment at 2.

met (rather than surpassed) the standard for the RPHL report rate. *See* Verizon Rebuttal at 13-14, citing response to Information Request DTC-VZ 4-1 (for the year ending September, 2009, only 0.83% of Verizon MA's customers experienced a service trouble in a given month that was not cleared in 24 hours, whereas Verizon MA could meet both the RPHL metric and the Troubles Cleared metric while allowing 0.90% to experience such troubles). Thus, while Verizon MA may not meet the Troubles Cleared - Residence metric, its broader service quality performance means that fewer of its customers wait longer than 24 hours for repair than the Plan would allow. That cannot constitute inadequate service.

Third, the AG's claim is inconsistent with decades of experience and precedent under the Service Quality Plan. Because service quality in Western Massachusetts satisfies the Plan, Verizon MA's inability to meet one of 12 metrics cannot form the basis for a finding of inadequate service quality. Moreover, in adopting the Plan, the Department created the Standard Miss criteria specifically to address the concern that merely meeting the 33 point standard of the SQI would leave the company free to under-perform on particular metrics.<sup>8</sup> Thus, the Department subjected Verizon MA to penalties for missing at least three metrics, not just one. The Department has never invested Troubles Cleared - Residence, or any single metric, with such importance that failure to meet it alone would subject the company to penalties or additional action requirements, and the AG has provided no reason to give that metric such importance now.

Indeed, the clear evidence is that the Troubles Cleared - Residence metric is *less* important now than in the past. The great majority of customers now have cell phones,<sup>9</sup>

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<sup>8</sup> *See* D.P.U. 94-50, Final Order dated May 12, 1995, at 238.

<sup>9</sup> As of June 30, 2008, for example, the number of wireless phones in Massachusetts was 63% greater than the number of landlines. *See* Verizon Rebuttal at 18. With respect to Western Massachusetts in particular, while

substantially reducing the former need for quick restoration of landline service. *See* Verizon Rebuttal at 18. Verizon MA testified that customers sometime even refuse available appointments to restore service, choosing instead to have their service restored later, at a more convenient time. *Id.* at 19. Verizon MA expert witness John Sordillo, who manages the Verizon MA call centers that take trouble reports and make the appointments with customers, Verizon Direct at 2 and 46-47, explained that customers often request later appointments than offered by Verizon MA, and “[t]hat is a behavior that in 1971 that didn’t happen. ... There are more people who ... take a customer-requested appointment than take our offered appointment.” *Id.* at 903-906. He also explained that from a customer’s perspective, “Why would I want to inconvenience myself as long as I have communication? It is just a phenomenon that never was before this day.” *Id.* at 906. Whether customers view wireless as a substitute or a complement to landline service and whether every customer has access to wireless service are beside the point, because wireless provides the vast majority of customers with an alternative means of making a phone call when there is a problem with landline service. *See* Verizon Rebuttal at 19. As Hancock Police Chief Sherman Derby testified at hearing, “there are people with cell phones where the pressure isn’t on the land line now as it was.” Tr. (Derby) at 39; *see also* Testimony of Sherman Derby, at 2, stating that, “...complaints to the Board of Selectmen diminished when Jiminy Peak added a cell tower approximately one year ago....”

The AG’s position that the Troubles Cleared - Residence metric is more important than the other metrics is not based on fact. Ms. Baldwin claims that “elderly persons and households with infants or young children” rely especially on wireline service, but the only hard evidence is that these groups, like the population in general, rely on wireline service less than in the past.

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some areas lack wireless coverage, the bulk of the region and the vast majority of the population are served by wireless carriers. *Id.*, at 16.

Ms. Baldwin points to a CDC study showing that 5.4% of adults aged 65 or older live in household with only wireless service. Baldwin Rebuttal at 56. But this is roughly 5.4% more elderly than relied solely on wireless service when the Plan was adopted in 1995, given the state of the wireless industry at the time. Moreover, adults who live with infants and young children are likely to be *young* adults, who are *more* likely than others to rely solely on wireless service. See Verizon Rebuttal at 15-16, *citing* Evidentiary Exhibit 19 (CDC Wireless Substitution Study) at 3. Finally, any claim that the Troubles Cleared - Residence metric serves an important public safety policy is misplaced. As Verizon MA explained at hearing:

The fact is that we [Verizon MA] have a primary line in only approximately 50 percent of the households in western Massachusetts. [The other 50 percent] are served by companies that don't have any service standards, don't have any regulatory metrics, don't have any reporting requirements, and don't have any penalty mechanisms.

Tr. (Vasington) at 951. Since the alleged public safety concern is not sufficient to warrant imposing the Troubles Cleared - Residence requirement (or any service quality requirement) on carriers who serve half of the customers in the region, that concern cannot justify imposing penalties on the carrier - Verizon MA - who serves the other half.

In summary, the Troubles Cleared - Residence metric is just one of 12 metrics that must be assessed in evaluating Verizon MA's service quality, the Department has never ascribed to that metric nearly the level of importance the AG would give it, and timeliness of repair is generally *less* important to Verizon MA's customers today than in the past. Accordingly, the inability to meet that single metric does not support a finding of inadequate service.

**B. Evidence that the RPHL in some wire centers exceeds the Department’s statewide standard does not support a finding of inadequate service across the Western Massachusetts region.**

In response to Verizon MA’s data showing good service quality in Western Massachusetts on the whole, the AG argues that certain “pockets” of the region suffer from inadequate service, in that certain wire centers show relatively high RPHL. For example, Ms. Baldwin asserted that the RPHL in wire centers in Western Massachusetts exceeds 3.0 and 4.0 more often than it does in wire centers in other regions of the state,<sup>10</sup> and she identified five wire centers in the region that exceeded 3.0 RPHL in September of 2009. *See* Baldwin Direct at 57-58.

The evidence of higher RPHL in some wire centers, however, does not demonstrate that service quality is inadequate throughout the region. In the first place, Ms. Baldwin’s analyses invariably focuses on small wire centers, which are not representative of the region as a whole. The wire centers that on average exceeded the Department’s RPHL standard through October of 2009 account for less than 10% of Verizon MA’s access lines in the region. Verizon Direct at 26. In contrast, 55% of the company’s customers in Western Massachusetts are served by wire centers that met the Department’s 1.90 RPHL target 91% of the time and exceeded the 2.25 standard level only 4% of the time over a 12-month period. *See id.*, at 25-26 and Figure 7; Tr. (Conroy) at 818-819. In addition, the average RPHL in 45 of the 63 wire centers in Western Massachusetts in 2009 met the Department’s standard statewide level. Verizon Rebuttal at 7; Baldwin Rebuttal at 16. These 45 wire centers serve approximately 93% of Verizon MA’s access lines in Western Massachusetts. *See* Attachment AG-VZ 13-4. Thus, the vast majority of

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<sup>10</sup> Mr. Rowley makes a similar claim on behalf of the IBEW. *See* Rowley Direct at 14-15.

Verizon MA's customers are served by wire centers with very low RPHL. Of course, this explains why the regional RPHL is only 1.40.

Furthermore, performance metrics such as RPHL are far more volatile in small wire centers than in large ones, in part because small changes in the absolute number of reports in a small wire center can cause extreme changes in the RPHL or other metric. *See* Verizon Direct at 24, 26. For example, in the 400-line Chester wire center, an outage to just 16 customers would cause an RPHL of 4.0 all by itself. *Id.* Likewise, in October of 2008, the Housatonic wire center fielded **\*\*\*Begin Proprietary\*\*\***

**\*\*\*End Proprietary\*\*\***, but the next month it fielded only **\*\*\*Begin Proprietary\*\*\***

**\*\*\*End**

**Proprietary\*\*\***. Verizon Direct at 36. Verizon MA confirmed the volatility of small wire centers with a statistical analysis showing that the Company's average range of performance in clearing OOS troubles in the ten smallest wire centers in Western Massachusetts over the course of 2009 was about twice as broad as the average range for the ten largest wire centers. *See* Supplemental Testimony at 23-26.<sup>11</sup> Again, service quality performance in small wire centers as measured by the metrics does not accurately represent performance across the entire Western Massachusetts region.

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<sup>11</sup> Ms. Baldwin claims, based on her regression analysis of the OOS clearance data also used by Verizon MA, that the volatility of smaller wire centers, as measured by standard deviation, is not correlated with their size. *See* Tr. (Baldwin) at 982-984; Ev. Ex. 64. But her calculation is incorrect and her conclusion is wrong. She assumed that the standard deviation and number of lines are linearly related. In fact, the relationship is non-linear (multiplicative), which means that the regression should have used the logarithms of the variables, not the variables themselves. A proper regression would show a strong relationship between standard deviation and the size of a wire center. This is more easily seen (*i.e.* without doing the math) in Ms. Baldwin's workpapers, response to Record Request 29. The distribution chart on page 1 shows that all of the wire centers with a standard deviation over about 17 had fewer than 5,000 lines, and page 3 shows that the standard deviation exceeded (often far exceeded) 19.0 in each of the ten smallest wire centers.

Moreover, only a very few wire centers in Western Massachusetts reported high RPHL in 2009. Ms. Baldwin recommended that the Department order Verizon MA to survey its infrastructure in all 24 wire centers that averaged over 1.90 RPHL in 2009, implying that service in those wire centers is inadequate. Baldwin Rebuttal at 15. But the 1.90 RPHL is the Department's "target" for the average RPHL performance across the state, whereas Verizon MA satisfies the network Report metric by meeting the 2.25 RPHL "standard" on a statewide basis. Requiring individual wire centers to meet a standard that the Company need not even meet on a statewide basis is patently unreasonable. *See* Verizon Rebuttal at 10. It is equally unreasonable to expect Verizon MA to meet either of the statewide standards in every individual wire center, and the Department has never applied those standards at that level. (*See* further discussion of this point in Part IV.D below.)

Rather, the only metric standard that the Department has ever been applied on a wire center basis is the prior "hot spot" measure, pursuant to which Verizon MA reported the wire centers that exceeded an RPHL of 4.5 (later 4.0) for three consecutive months. *See e.g.* D.P.U. 89-300, at 321, 408-409 (discussing "Hot Spot" reports); *Athol Investigation*, D.T.E. 99-77, at 15 (applying 4.0 RPHL standard); *Middlefield Investigation*, D.T.E./D.T.C 06-6, at 13 (same). Only six wire centers in Western Massachusetts would have fallen within this "Hot Spot" standard in 2009.<sup>12</sup> Verizon Rebuttal at 10.

The failure of six wire centers, serving less than 7,000 access lines, to meet the Department's RPHL standard in no way represents Verizon MA's performance across the Western Massachusetts region, and it affords no basis for imposing any of the region-wide regulations proposed in this case, such as a system of customer credits, a third-party audit of the

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<sup>12</sup> They are Ashfield, Becket, Colrain, Huntington, Otis and Worthington. Collectively, these wire centers serve 6,643 access lines. *See* Response to Information Request AG-VZ 13-4.

entire region or a new service quality plan for the region or the state.

**C. Findings regarding service quality in individual wire centers are outside the scope of this proceeding. Nevertheless, Verizon MA is taking appropriate action to reduce the report rate in 32 of the 63 wire centers serving Western Massachusetts.**

The AG argues that, at a minimum, the Department should find that remedial action is necessary in the wire centers where the RPHL exceeds the statewide target, lest they be “lost in the background noise” of this investigation. *See* Baldwin Rebuttal at 11. Such findings, however, are not within the scope of the proceeding. Prior to opening this case, the Department sought comment on whether to open a regional investigation, and specifically asked for comments on the question, “Is there a reasonable basis for the Department to conclude that there may be a significant or widespread problem with Verizon’s service quality in western Massachusetts, so as to justify opening a regional service quality investigation covering Berkshire, Hampden, Hampshire and Franklin counties?” *See Order To Open Investigation*, at 1, 3. Verizon MA filed comments arguing that its service quality at a regional level is good and does not justify opening a regional investigation. Verizon MA also argued that complaints about service quality from individual customers or municipalities are best addressed through review of the specific facts and circumstances of each case, not through a regional investigation. *See* Comments of Verizon New England Inc. dated February 23, 2009, and Reply Comments of Verizon New England Inc. dated March 9, 2009. The Department disagreed with Verizon MA, however, and voted to open this “Regional Service Investigation.” *See Order To Open Investigation* at 16, 17 and 20. Thus, the Department chose to investigate service quality at the regional level, not at the level of individual wire centers. While data concerning wire center performance is certainly relevant here, findings as to service quality at that level are not appropriate. As Verizon MA’s expert witness, Mr. Vasington, stated at hearing:

So to put it in other words, we suggested Door No. 1; the Department chose Door No. 2. Findings regarding individual wire centers in this case would be like going back and recharacterizing the investigation as if it had chosen Door No. 1.

...

After having rejected Verizon's suggestion that it limit its investigation to the cases that had been opened in accordance with the statutory mechanism provided by the General Court to the Department, ... it would be unjust to do something different having rejected that approach.

Tr. (Vasington) at 532, 535.

Although it would be improper to make findings with respect to individual wire centers in this proceeding, Verizon MA is nevertheless taking significant and appropriate action to reduce the RPHL in over half of the wire centers in Western Massachusetts. Verizon MA has voluntarily surveyed its outside plant in 32 wire centers in Western Massachusetts for which there has even been an intimation that the RPHL is too high, including all 27 wire centers on Ms. Baldwin's list and all of the wire centers that serve the towns of Hancock, Egremont, Rowe, Williamstown, Shutesbury and Leverett (the municipalities that filed complaints with the Department, submitted testimony from consumers and/or submitted substantial comments in response to the Department's Request for Comment). *See* Supplemental Response to Information Request AG-VZ 15-40. Moreover, Verizon MA has specially dedicated a team of between 25 and 30 technicians from Eastern Massachusetts to close the open plant identified in the surveys, at an estimated cost of roughly \$2 million. *See* Tr. (Conroy) at 441-442; Tr. (Sordillo) at 628. This work is already underway, and the team had closed 16% of the open plant items as of May 14, 2010. *See* Suppl. Resp. to AG-VZ 15-40. Verizon MA estimates the work will be complete by June 30, 2010, but will assess its progress and how best to proceed as that date approaches. Tr. (Sordillo) at 788.

Identifying and closing open plant in wire centers with consistently higher RPHL has proven to be the most effective and cost-efficient means of reducing trouble report volume and

improving overall service quality to customers, and it is a mechanism that Verizon MA uses throughout the state. Verizon Rebuttal at 11; Verizon Direct at 56. For example, Verizon MA successfully surveyed and closed its plant serving Middlefield in 2008, addressing the concerns of the Town and the Department. Likewise, Verizon MA's work closing open plant in Western Massachusetts in 2008 helped reduce the number of trouble reports in the region by 27% in 2009. *See* Verizon Direct, at 58; *see also*, Baldwin Rebuttal at 30-35 (discussing the dramatic year-over-year decline in trouble reports in the region). Also, Verizon MA's work to close open plant in the two Amherst wire centers "has made a major difference" and caused the report rate to drop significantly. Tr. (Sordillo) at 672-673. As noted in Part II.C, above, the Open Plant effort has been so successful that Verizon is expanding it to other states. Thus, the open plant project is the most appropriate and effective means of reducing the report rate and improving service quality in those "pockets" of Western Massachusetts where the RPHL is even arguably high.

**D. The anecdotal evidence that some Verizon MA customers have had trouble with their telephone service is not representative of service quality in Western Massachusetts as a whole and does not support a finding of inadequate service quality at the regional level.**

The towns of Hancock and Egremont offered testimony of Police Chief Derby and 15 Verizon MA customers who experienced problems with their telephone service, and 22 other customers offered similar testimony at the public hearings and evidentiary hearings.<sup>13</sup> Verizon MA regrets that any of its customers encounter service issues, but this testimony demonstrates only that Verizon MA is not perfect, and that customers experience service issues from time to

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<sup>13</sup> *See* Verizon Direct at 19-20; Tr. at 12-22, 248-251.

time.<sup>14</sup> It does not provide a basis for finding that Verizon MA's service in Western Massachusetts is inadequate in any way.

The 37 customers who submitted testimony represent about *one-and-one-half one-hundredths of one percent* (0.015%) of Verizon MA's 257,000 access lines in Western Massachusetts. In addition, this group was not randomly selected; the customers who devote the time and effort to testifying in this proceeding are likely to be those who have experienced problems with their service, not customers who have had no issue with landline service. *See* Tr. (Vasington) at 646. Thus, this tiny, non-random sample of customer experiences cannot be extrapolated to a conclusion about service quality at the regional level. For example, if Verizon MA's RPHL in Western Massachusetts were 1.0 (a very low figure by any measure), the Company would still field more than 30,000 trouble reports annually, so evidence from 37 customers who had trouble with their phone service does not tend to show that service quality is inadequate. The only material evidence before the Department on service quality at the regional level is the data concerning Verizon MA's performance across all of Western Massachusetts under the Service Quality Plan, discussed above, and that data demonstrates that Verizon MA provides very good overall service quality in the region. Mr. Vasington cogently explained why the anecdotal evidence cannot support a broader finding where the regional data shows that service quality is good:

Any individual customer issue is a fundamental problem for that customer. It is like saying if we got the unemployment rate down to 1 percent. It is still a

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<sup>14</sup> Importantly, Verizon MA had addressed the specific troubles reported by the 33 customers who testified prior to the evidentiary hearings and none of them had open trouble reports with the company when they submitted their testimony. VZ Direct at 20. In response to the Town of Hancock's concerns, a Verizon MA team of technicians performed substantial work to identify and resolve potential service-affecting conditions in the network and close open plant in the town even before Hancock filed its complaint. Verizon Direct at 20-21. Verizon MA closely coordinated with the Town on this effort, and Mr. Derby acknowledged that Verizon MA's foreman met with him weekly for six to eight months to discuss customer complaints and the progress of Verizon MA's work. Tr. (Derby) at 45.

problem for the 1 percent of people that don't have a job, even though on the aggregate basis you are doing pretty well.

We are very specific that we are not perfect. Customers do go out of service, do have complaints, do have issues. We are not happy about that for any individual customer. The question, however, becomes whether or not individual complaints are indicative of a larger problem. In the context of this case, are the individual complaints indicative that there is a service quality problem in all of western Massachusetts. Can those form the basis for a finding that service quality in western Massachusetts is inadequate? When these types of hearings are conducted, you know you're getting selection bias because the people that are going to drag their three-year-old kid up to a stand are the people that had a problem, not the people who are satisfied with the service.

So what the Department has traditionally done at these kinds of investigations is take the complaints at a public hearing or other forum and investigate and dig deeper and see if they show up in the data as indicative of a larger problem, which is appropriate, what the Department should do and has done in this case. But having dug deeper, and I can't think of any service quality issue in any state that has dug deeper than this one has, I think it is quite clear that those anecdotes, while ... not good for those people experiencing those service quality problems, are not representative of the service quality levels experienced by the vast majority of customers in western Massachusetts, and certainly don't represent a foundation [of] substantial evidence on which to base a finding of [in]adequate service quality in western Massachusetts.

Tr. (Vasington) at 645-646.

**E. The age of Verizon MA's cable in Western Massachusetts is not relevant to an assessment of its service quality.**

Mr. Rowley, testifying for the IBEW, claimed that Verizon MA's cable in Western Massachusetts is old, Rowley Direct at 8, and Ms. Baldwin claimed that "numerous cables ... were deployed in the 1960s and 1970s" and that "[t]he age of the plant may bear on Verizon MA's service quality." Baldwin Direct at 64, 65. These claims have no merit.

To begin with, there is no evidence before the Department of the overall, average or mean age of Verizon MA's cable across Western Massachusetts. Ms. Baldwin's "examination" of cables was non-scientific, biased and cursory. Her sample size was very small and included

only cables that were linked to customer trouble reports. *See* Verizon Direct at 43. Ms. Baldwin even admitted that her data was not representative of Verizon MA's infrastructure in Western Massachusetts. Baldwin Direct at 65. Mr. Rowley offered no data at all on the age of Verizon MA's cable plant. Moreover, neither Ms. Baldwin nor Mr. Rowley has any experience in installing or repairing outside plant or in managing a telephone network, *see* Tr. (Baldwin) at 194-196; *id.* (Rowley) at 101-102, and so are not qualified to opine on the effective age of cable. Their implication that Verizon MA's cable is too old to provide good service is entitled to no weight.

The only witness qualified to testify on this issue was Mr. Sordillo, a Verizon MA Directors of Operations who has more than 38 years' experience in operating and managing the network. *See* Verizon Direct at 1. Mr. Sordillo has overall responsibility for the Verizon MA centers that receive trouble reports from customers and dispatch technicians to resolve those reports. *Id.* at 2, 46-47. He is also in charge of deploying Verizon MA's workforce to meet its daily repair and installation workload, and he establishes the intervals, or appointments, the company offers customers for installation and repair requests. Tr. at 945-946. Mr. Sordillo explained that the age of the infrastructure is of little relevance to the level of service quality provided by Verizon MA and that the more relevant information is the quality of workmanship on a cable and how well it and its associated closures have been maintained and kept protected from the elements. Verizon Direct at 64. As he explained:

open plant is a greater impediment to good service than is the age of the plant. Most troubles in the outside plant arise from infrastructure that has been left exposed to the elements. Open plant results from natural causes (for example, a falling tree branch) and from technicians failing to close plant properly after completing repair or installation work on it. ... [A]ge alone does not make plant more susceptible to water. Rather, aerial plant is affected by rain when it is left open.

*Id.* Mr. Sordillo emphasized this at hearing: “I would tell you, if protected, [cable] would last forever. It is not like a car that wears out. ... We have cables that were placed in 1920 that are still in service. ... The life of the cable isn’t based on the age of it. It is how it is treated by the environment and the people who work in it.” Tr. at 917-918.

Ultimately, the Intervenors’ speculation about how the age of Verizon MA’s cable may affect service quality is irrelevant in light of the actual performance of the network. As noted in Part II above, Western Massachusetts’ RPHL -- the barometer of the health of the network, *see* Baldwin Direct at 36 -- was only 1.40 for the 12 months ending January, 2010, well below even the target level in the Department’s Service Quality Plan. Going back further, the RPHL for the region has rarely strayed above the Department’s standard level over the past three years. The only reasonable conclusion is that Verizon MA’s network in Western Massachusetts, whether it is “old” or not, is very healthy and provides good service quality.

**F. Because Verizon MA’s service quality in Western Massachusetts is adequate under the Service Quality Plan, it cannot be found to be inadequate merely because service may be even better in other parts of the state. The IBEW’s comparison of RPHL in downtown Boston and in rural areas of Western Massachusetts is unfair and inappropriate because the conditions in which Verizon MA provides service in the two areas are vastly different.**

The AG asserts that service quality in Western Massachusetts is not comparable to that in the rest of the Commonwealth because the 1.4 RPHL in that region is higher than the RPHL in four of the five other districts in the state. *See* Tr. (Baldwin) at 277. First, Ms. Baldwin’s analysis is not well-founded on the facts. She calculated the RPHL in the other districts to be 0.9, 1.1, 1.2, 1.2 and 1.6, *see* Evidentiary Exhibit 17, so that the 1.4 RPHL in Western Massachusetts was not the highest figure in the state and was only two-tenths of one percent

(0.2%) higher than the RPHL in two other districts. Thus, the data supports Verizon MA's position that service quality in Western Massachusetts is comparable to the rest of the state.

More importantly, the entire comparative approach is improper here, because the requirements for service quality at the regional and statewide levels in Massachusetts are established by the Department's Service Quality Plan, and the service quality in Western Massachusetts indisputably meets the requirements of the Plan. With respect to RPHL in particular, the 1.4 RPHL in Western Massachusetts is far lower than even the more stringent 1.90 RPHL "target" level in the Plan, so the fact that Verizon MA's network generates even lower report rates in other regions is immaterial.

Mr. Rowley's comparison of RPHL in a few, generally small and rural wire centers in Western Massachusetts to the RPHL in four downtown Boston wire centers, *see* Rowley Direct at 16-34, is immaterial for the same reason. The RPHL of four downtown wire centers, among the lowest in the state, is not a standard that Verizon MA must meet or could possibly be expected to meet in all other wire centers. M.G.L. c. 159, § 16 requires only that Verizon MA's service be just, reasonable and adequate, not that it match the best possible service that Verizon MA can provide under optimal conditions.

Further, the conditions for service in rural areas of Western Massachusetts are substantially different than those in downtown Boston. Cable runs in rural wire centers in Western Massachusetts can be very long and are likely aerial. Thus, they have more splices and are more exposed to the elements than are the short, underground runs typical of urban areas. *See* Verizon Direct at 53. In addition, Western Massachusetts is subject to more severe weather - including severe rainstorms, electrical storms and ice and snow storms - that has substantial impact on Verizon MA's outside plant than in other areas of the state. *Id.* at 50-51. Thus, it is no

surprise that the RPHL in several small, rural wire centers in Western Massachusetts is higher than in downtown Boston, where the cable runs are far shorter and are predominantly underground, insulated from most weather conditions.<sup>15</sup>

The AG noted at hearing that Verizon MA witnesses are not trained meteorologists. *See* Tr. at 553-555, 654, but a witness need not be a meteorologist to testify to the disproportionate effects that the weather has on Verizon MA's infrastructure in different regions of the state, and Mr. Sordillo is more than qualified to testify on that matter. He has been in charge of deployment of Verizon MA's workforce to meet workload for "a long, long time," Tr. (Sordillo) at 916, and his duties require him to pay attention to the weather, redeploy the Company's workforce in advance of storms where warranted and direct its response to weather events across Massachusetts. *See* Tr. (Sordillo) at 945-947 (stating that knowing the weather "is imperative on how I do my job in terms of how it hits me and how it comes. Whether at night, during the daytime, wind associated with it or not, all of that stuff makes it very, very important on how I decide to do what I do.") He commented on this further, provided some hard weather data and explained how Verizon MA's operations are sometimes at the mercy of Mother Nature as follows:

I've been involved in the dispatching of all of New England, even the northern states when we had them, for 35 of my 39 years [with the Company]. I would suggest that nobody knows it better than I do. A physical storm makes havoc with wires. Lightning storms, considerably greater in western Massachusetts. ... I went back and looked in NOAA. In August of 2008 there were eight lightning storms in western Massachusetts. There were two in eastern Massachusetts, none

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<sup>15</sup> That is not to imply that Verizon MA does not prepare for weather and other events when it can predict them. On the contrary, Verizon MA provided several examples of how it prepares for such events. As noted below, Verizon MA annually transfers technicians to Western Massachusetts in May and June to care for the seasonal influx of customers, and it tries to identify and resolve network flaws caused over the winter before the influx of vacationers in the Spring. Verizon Rebuttal at 26; Tr. (Sordillo) at 914-916. When the Company has warning of a storm, Mr. Sordillo may transfer some SSTs from installation to repair and may lengthen the "clocks" (*i.e.* appointment times) for new installation orders to allow greater flexibility in addressing the repair workload. *See id.* at 20; Tr. (Sordillo) at 947. He may also have technicians work overtime *ahead* of a storm to reduce the pending repair workload. *Id.* at 946.

of which were in Boston. ... When you take a look at the rainfall and the damage that that caused in the report rate, that is something that is unpreventable. When you have trees and limbs fall down on cable, they are going to cause damage. I don't care if the cable was brand-new, put in yesterday or put in in 1950. If it is going to get damaged from a storm, there is little we can do with that but repair it.

Tr. (Sordillo) at 653.

The Intervenors have submitted no evidence or argument that rural wire centers are as easy to serve as urban ones, or that the weather affects Verizon MA's infrastructure as much in downtown Boston as in, say, Charlemont or other small, Western Massachusetts wire centers. Accordingly, the Intervenors' comparisons of service quality performance across different regions of the state are not only irrelevant (because the Plan provides the proper benchmark for assessing service quality) but inappropriate on the facts.

**G. The IBEW's claims that Verizon MA's management policies and practices have resulted in poor service quality are irrelevant and inconsistent with the facts.**

The IBEW is barking up the wrong tree in claiming that Verizon MA management policies -- such as scrubbing of trouble reports, inattention to Forms 3722-19, lack of tools for technicians, and a diversion of resources away from Western Massachusetts -- have resulted in poor service quality in the region. These claims presume that service quality in Western Massachusetts is inadequate and purport to explain the causes of that condition. But the performance data cited in Part II, above, demonstrates that Verizon MA's service quality in the region meets the requirements of the Plan -- the only benchmark the Department has established to assess the Company's service quality -- and is therefore just, reasonable and adequate. Even if Verizon MA had the operational policies and practices the IBEW alleges (which it does not, as shown below), that would not contradict that performance data or place it in dispute. Consequently, the IBEW's allegations are not relevant to the Department's investigation.

In addition, the IBEW's claims are nothing more than general accusations unsupported by facts, and they are inconsistent with the substantial evidence submitted by Verizon MA. For example, the IBEW alleged generally that technicians lack the proper tools to respond to complaints, yet its witnesses failed to identify a single instance in which a technician could not effectuate a repair due to lack of tools, and Mr. Rowley admitted that he was not familiar with any details regarding any instance in which a technician's request for a tool or test equipment was rejected by management. Response to VZ-IBEW 2-1; Tr. (Rowley) at 104. Moreover, Verizon MA testified that it purchased almost \$90,000 worth of small tools for Western Massachusetts in 2008 and over \$100,000 worth of tools in 2009. *See* Verizon Direct at 58.

Mr. Rowley claimed, with no supporting detail, that Verizon MA management often directs technicians to just resolve the assigned trouble and ignore network faults the technician might find in the field. Rowley Direct at 9. But Verizon MA explained its clear policy that technicians must repair any network fault they identify within the "T-zone" if it can be fixed quickly and must report to their supervisor any other conditions, including conditions which the technician is unsure whether to repair immediately or defer. Verizon Direct at 60; Verizon Rebuttal at 24. During high repair workload times, the supervisor may advise the technician to write up a Form 3722-19 to defer the identified work and to move along to the next repair item. This is a reasonable and efficient means of balancing the need to resolve current trouble reports quickly with the need to proactively maintain the network to prevent additional troubles from arising. Verizon Direct at 60.

Mr. Rowley alleged that "[p]oor service quality is inextricably tied to Verizon MA's use, or failure to follow-up on the Form 3722-19." Rowley Direct at 37. As noted above, however, service quality in Western Massachusetts is not poor, and the aspect of service quality addressed

by Forms 3722-19 -- the condition and health of the network infrastructure -- in particular is very good, as shown by the low regional RPHL. Also, the purpose of Form 3722-19 is to identify network faults that are not service-affecting but should be addressed as time permits. During periods of high repair workload, Form 3722-19 work will appropriately be deferred, sometimes for months. Verizon Direct at 61. Also, technician input on Form 3722-19 often recommends work that is not appropriate for deferral, including work that should have been done immediately and large projects that are not cost-justified. In any event, Verizon MA has in recent years re-emphasized to its managers the importance of reviewing these forms, and the Company has now mechanized its Form 3722 process for faster and more efficient evaluation and implementation. *Id.*; Verizon Rebuttal at 22; *see also* Response to Information Request IBEW-VZ 10-17. Thus, the IBEW's speculation is unsupported by and inconsistent with the evidence.

That is also true of the IBEW's claims that Verizon MA "scrubs" trouble reports when an automatic test shows no trouble on the customer's line, often leaving customers without resolution of their service issues. *See e.g.* Rowley Direct at 38, 39; Calvey Direct at 7. The IBEW has provided no evidence supporting its claims, and there is none. Verizon MA scrubs trouble reports in the interests of efficiency, to avoid dispatching a technician to resolve a trouble that no longer exists. A report is not scrubbed merely when an automatic test shows no trouble on the line but only when two such results are confirmed by a phone call to the customer. Verizon Direct at 65-66. This process does not leave customers subject to endless rounds of reporting as the IBEW claims. If a customer reports a trouble three times, Verizon MA will dispatch a technician even if the tests show no trouble on the line. *Id.* at 66. As Mr. Sordillo said at hearing, "The third time we come anyway. We don't call and ask; we go out anyway." Tr. (Sordillo) at 925. He then explained in detail the steps a technician will take to identify and

resolve such troubles. *Id.* Moreover, Verizon MA regularly dispatches managers to address particularly nettlesome repeat trouble reports. *Id.* at 805, 807 (stating that, “there’s none of them that we don’t do our best to find.”) Finally, and contrary to the IBEW’s assertion, the data shows that trouble reports in Western Massachusetts are slightly less likely to be scrubbed than those in Eastern Massachusetts, and in any event, scrubbing affects only a small group of reports, less than 2%. *Id.* at 66, 67.

The IBEW insinuated that Verizon MA has a “practice of not opening trouble tickets in areas known to have problems when it rains.” Rowley Direct at 71. Mr. Rowley admitted that he has no knowledge of such a practice, however, and that he relied solely on a single incident in which a Verizon MA customer allegedly reported a trouble but Verizon MA declined to open a trouble ticket. *See* response to Information Request VZ-IBEW 1-2. But that customer, Western MA Connect, disavowed that story and explained that it had not reported the trouble at issue to Verizon MA in the first place. *See* Affidavit of Jessica Atwood. In addition, Verizon MA testified that no manager for Western Massachusetts has ever decided not to dispatch a technician on a trouble report on the presumption that the trouble will go away on its own. Verizon Direct at 71. Once again, the facts get in the IBEW’s way.

The IBEW also asserts that as of 2004, Verizon MA began shifting resources and employees from Western Massachusetts to support its FiOS effort in other parts of the state and that Western Massachusetts suffered as a result. *See* Rowley Direct at 39, 40. Again, the IBEW submitted no details in support of this general claim, and Verizon MA demonstrated that it is not accurate. While Verizon MA will sometimes transfer Construction technicians out of Western Massachusetts, Verizon Direct at 72, it never transfers out Installation and Maintenance technicians, who are responsible for resolving customer trouble reports. Tr. (Sordillo) at 916.

Further, the Company often transfers technicians into Western Massachusetts when the workload requires it, for example in response to the ice storm of December, 2008. Verizon Direct at 53,

72. In addition:

Verizon MA annually transfers technicians to Western Massachusetts in May and June to care for the seasonal influx of residential customers and businesses in the Pioneer Valley and Berkshires. ... At various times during the year, Verizon MA also directs technicians from the Springfield area to travel into these areas to help address seasonal storm or heavy load conditions.

Verizon Rebuttal at 26-27, quoting response to Information Request IBEW-VZ 10-20; *see also* Tr. (Sordillo) at 914-916. In addition, Mr. Sordillo, who deploys the technician workforce, testified that Verizon MA frequently “cascades” the force by shifting technicians from the Worcester area, for example, into Springfield and then moving Springfield technicians to the Pioneer Valley to assist in heavy repair workloads. “We do that all the time, all year long as we need it.” *Id.* at 915. In this way, Verizon MA deploys its workforce efficiently to address service quality needs even while deploying new services. In any event, service quality in Western Massachusetts is good and has improved in the past few years, *see* Part II, above, and Verizon Direct at 73, so that Verizon MA’s force deployment practices have not resulted in inadequate service quality in the region.

**IV. THE PROPOSED REGION-WIDE REMEDIES ARE NOT JUSTIFIED BY THE EVIDENCE AND ARE UNREASONABLE. SOME OF THOSE REMEDIES ARE BEYOND THE DEPARTMENT'S AUTHORITY, WOULD BE INCONSISTENT WITH M.G.L. C. 159, § 16, AND WOULD BE CONFISCATORY.**

As shown above, substantial record evidence demonstrates that Verizon MA's service quality across the Western Massachusetts region is just, reasonable and adequate, and the other parties have failed to submit substantial evidence to the contrary. The only possible finding consistent with the record is that Verizon MA's service quality in Western Massachusetts is just, reasonable and adequate. Accordingly, there is no evidentiary basis on which to adopt any of the regional remedies that have been proposed here. Moreover, each of those remedies is fatally flawed for other reasons, and some are beyond the authority of the Department and would be unlawful in the circumstances of this proceeding.

**A. The Intervenors' proposed regional remedies are not supported by the evidence, are beyond the scope of this case and the authority of the Department and are unreasonable.**

1. The Department does not have authority to impose the customer credits proposed by the AG, the proposed credits are arbitrary, and the proposal would be poor public policy.

The AG proposes that the Department require Verizon MA to issue credits to residential Western Massachusetts customers when the Company fails to meet the Troubles Cleared - Residence metric. *See* Baldwin Direct at 80-81. The AG later modified that proposal, calling for credits either to individual customers or to all customers in the region should Verizon MA fail to meet the 60% troubles Cleared standard in the current Plan. *See* Baldwin Rebuttal at 71. The Department cannot and should not approve either of these proposals, for a number of reasons.

First, even if service quality in Western Massachusetts were inadequate (which it is not), the Department does not have authority to impose customer credits on telecommunications carriers such as Verizon MA for inadequate service quality. An administrative agency, such as the Department, 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). No section or provision of the Department's organic statute, M.G.L. c. 25C or the statutes giving it authority over the telecommunications industry (Chapters 25, 30A, 159 and 166 -- see M.G.L. c. 25, § 6c. 25) expressly grants the Department such authority. M.G.L. c. 159, § 16, does grant the Department authority to "fix and prescribe" the "regulations and practices thereafter to be in force" by a telecommunications carrier, but it includes no language authorizing penalties or rebates to customers for poor service.

Moreover, the Supreme Judicial Court has held that the general authority of the Department's predecessor to regulate New England Telephone, Verizon MA's predecessor, does not imply the power to levy penalties or customer rebates for this purpose. In *Newton v. Department of Public Utilities*, 367 Mass. 667 (1975), the Department found that it lacked statutory authority to impose rate rebates on the Company for inadequate telephone service. The SJC affirmed, holding that, "the statutory grant of authority to the Department to regulate and supervise the Company's activities does not imply the power to impose a broad system of rate rebates for inadequate service." *Id.* at 679 (footnote omitted). The court reasoned that the power

to award reparations must be expressly conferred by statute, and that the explicit reference to such a power in one chapter of the General Laws and its absence in another “is an intentional limitation on the Department’s power.” *Id.*, citing *Metropolitan Dist. Commn. v. Department of Publ. Util.* 352 Mass. 18 (1967). The Court went on, “We draw support for this position from the fact that where the General Court has desired that the Department have the power to order any form of rebates it has expressed that intent by statutory enactment.” *Id.* at 679-680 (footnote omitted), citing as examples G.L. c. 159, § 14 (Department may order rebates for discriminatory railroad rates) and G.L. c. 164 § 94G (power to require rate rebates by electric companies).

*Newton* is dispositive here, since the AG’s proposed “customer credits” for inadequate service quality are just rate rebates under another name. Further, the reasoning in *Newton* precludes the Department from imposing any penalties on Verizon MA for alleged inadequate service quality, whether properly characterized as rate rebates or not. Just as with the power to order rebates, where the Legislature “has desired that the Department have the power” to order penalties for inadequate service quality, it has “expressed that intent by statutory enactment.” *See e.g.* M.G.L. c. 164, § 1E(c), authorizing the Department to “levy a penalty against any distribution, transmission or gas company which fails to meet the service quality standards....” of up to 2% of such company’s revenues. *See also* M.G.L. c. 93, § 112(b) (Department authority to impose penalties for slamming). The explicit reference to the power to penalize a carrier for inadequate service quality in Chapters 164 and 93 and its absence in Chapter 159 “is an intentional limitation on the Department’s power.” Thus, in the absence of express statutory authorization, the Department cannot impose penalties on Verizon MA, including the customer credits/rebates sought by the AG, for inadequate service quality.<sup>16</sup>

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<sup>16</sup> That the Department adopted a system of penalties for inadequate service quality in D.T.C. 94-50 does not authorize the Department to do so here. Verizon MA voluntarily proposed the SQI in that case; it was not

In addition, the AG's proposal must be rejected because it is unsupported by the evidence, unwarranted and unnecessary and the penalties themselves are unreasonable and extreme. As discussed in Part III.A above, Verizon MA's service quality cannot be assessed merely on the basis of a single metric, and the Troubles Cleared - Residence metric in particular is declining in importance. The Department has never considered an individual service issue to be *per se* unreasonable and thus require a credit (other than the credit already in Verizon MA's tariff). See Verizon Direct at 92. Also as noted in Part III.A, any claim that this metric bears special, critical importance for public safety reasons, is belied by the fact that 50% of the households in the region, which are served by carriers other than Verizon MA, seem to get along perfectly well without the alleged protection of this metric.

Nor is the AG's proposal supported by precedent from other states. Ms. Baldwin cites to only four states that even have backward-looking customer credit requirements, and, as Verizon MA testified:

even on those terms, her proposal in this case is draconian and extreme. For example, Ms. Baldwin suggests a credit of \$75 for service that is not restored in 96 hours, yet the credit she cites in West Virginia for service restoration greater than 96 hours but less than 120 hours is only \$15. In Illinois, another of her examples, a similar outage is credited only the monthly recurring charge, which generally is far less than \$75. (Verizon MA's tariffed monthly recurring charges for residential flat-rate basic exchange service, for example, total only \$19.64. (See DTC MA No. 10, Part M, § 1.5.1.) Ms. Baldwin also recommends significant credits for "service-affecting troubles" such as static on the line. Incredibly, she would have Verizon MA credit a customer \$45, or roughly two-months' worth of local unlimited service charges, for four days of static.

Verizon Direct at 93.

The AG's customer credits proposal is one manifestation of Ms. Baldwin's general theory that the Department's Service Quality Plan is inadequate in comparison to plans in other

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imposed on the Company. See D.P.U. 94-50, Order dated May 12, 1995, at 229. Of course, even if the Department had acted beyond its statutory authority in that case, that is no precedent for doing so again now.

states. The Department should be reluctant to credit comparisons of metrics across different states, which are often misleading without a thorough understanding of all terms of the respective plans and the circumstances they were intended to address. For example, the AG relies on an OOS Troubles Cleared metric in West Virginia in support of her proposal, Baldwin Direct at 94, but Mr. Vasington pointed out at hearing that service quality performance in that state is very different than in Massachusetts:

It is important to note that the issues that occurred in Maryland and West Virginia are not at all comparable to anything going on in western Massachusetts. ... [T]he average service restoration times in 2008 for Massachusetts were 34 hours. For both Maryland and West Virginia, it was over 70 hours or more than twice as long on an average basis.

Tr. (Vasington) at 949-950. Likewise, Ms. Baldwin points to Illinois in support of her proposed standard for a third-party audit (addressed below) of clearing 95% of OOS conditions in 24 hours. Baldwin Rebuttal at 40. But while Illinois uses a 95% standard for clearing OOS troubles, it allows for exclusions (which the Massachusetts metric does not), and its standard for RPHL is a whopping 6.0, almost three times the Department's standard. Verizon Supplemental at 18, n. 6. It would be unreasonable and irrational to take the Illinois OOS troubles Cleared standard out of context and apply it here.

The AG's customer credit proposal is fundamentally flawed in other ways. It is based on the presumption that Verizon MA does not have sufficient incentive to provide good service quality in Western Massachusetts, but Verizon MA does provide good service quality in the region, and as discussed in Part IV.E, competition in Western Massachusetts is robust, and the need to retain and win customers is more than enough incentive for Verizon MA to provide good service. In addition, Ms. Baldwin appears to have given no consideration in devising this proposal to the costs that Verizon MA would have to incur in order to avoid the proposed

penalties. But the only evidence before the Department is that those costs would be prohibitive in light of Verizon MA's financial circumstances, in which declining revenues are not matched by declines in expenses, resulting in substantial annual losses. *See* Part IV.B, below. Requiring Verizon to invest enormous amounts, likely unrecoverable, to address the less than 1% of its customers who experience troubles lasting more than 24 hours in a given month would leave even fewer resources available to maintain and improve service quality in more efficient ways, for example by preventing troubles from arising by closing open plant. Thus, the AG's proposal would not only be inconsistent with G.L. c. 159, § 16, as discussed below, but would also be bad public policy. *See* Verizon Rebuttal at 52.

2. There is no evidence justifying a region-wide, third-party audit of Verizon MA's infrastructure in Western Massachusetts, which would be administratively cumbersome, and Verizon MA is already improving the network by closing open plant in the few wire centers where the RPHL is even arguably high.

There is no need or basis for the third-party audit of Verizon MA's infrastructure across all of Western Massachusetts proposed by the AG and the IBEW. Verizon MA has demonstrated that service quality at the regional level is good, and the Intervenors have failed to offer substantial evidence to the contrary. Consequently, there is no regional service quality issue to be addressed by an audit.

Moreover, the purpose of an audit would be to review the condition of Verizon MA's outside plant. *See e.g.*, Tr. (Baldwin) at 306; *see also id.* at 308 ("What I personally was imagining in my view, would be the condition of the plant .... Today's infrastructure in Western Massachusetts, is it up to snuff? Is it capable of surviving a rainstorm?"). Yet it is undisputed that the average RPHL in 45 of the wire centers in Western Massachusetts in 2009 was even lower than the Department's standard for statewide evaluation (*see* Baldwin Rebuttal at 16), so

there is no basis for conducting an audit in those areas. And Verizon MA has already surveyed more than half (32) of the wire centers in the region, including the 18 wire centers in which the 2009 RPHL was higher than the Department's statewide standard, and its crews are currently closing open plant in those areas. In light of the proven success of this program at reducing the network report rate, there are no grounds for an audit in these wire centers either.

If the Department were nevertheless to order such an audit, however, the Intervenors have offered no grounds for using a third-party to conduct it, and the success of the Open Plant program demonstrates that Verizon MA is capable and the most qualified entity to perform that work. *See Verizon Direct at 98-99; Verizon Rebuttal at 46.* In addition, use of a third-party would be administratively cumbersome and slow. *See Verizon Rebuttal at 47.* At hearing, Ms. Baldwin provided a long list of procedures to be followed before the results of a third-party audit could be implemented, including: Verizon MA drafting an RFP; review of the RFP by the Department; bidding; selection of an auditor; review of that decision by the Department; conduct of audit and submission of recommendations; Department review of the recommendations; and Department order on the recommendations. *See Tr. (Baldwin) at 304-306.* Consequently, the recommendations of a third-party auditor would not be implemented for many months, at best.

Ms. Baldwin argued at hearing that this delay is not fatal to her proposal, because the Department could go through the above procedures and approve a third-party audit even while Verizon MA closes the open plant. *See Tr. (Baldwin) at XX.* But the undisputed evidence is that Verizon MA's open plant work will reduce the RPHL in the few wire centers where it is arguably high, and Ms. Baldwin does not explain why the Department should impose the cost of such an audit on Verizon MA when the network in the region is healthy and is getting even better.

3. There is no basis on the record to impose additional reporting requirements on Verizon MA, as proposed by the AG, and those proposals would modify the statewide Service Quality Plan and are thus beyond the scope of this proceeding.

The AG asks the Department to order Verizon MA to report additional service quality data to the Department, including: (1) the ARMIS data that the FCC has decided need no longer be reported; (2) performance statistics under the current Plan metrics but for Western Massachusetts alone; and (3) the Company's average repair intervals and other, unspecified data concerning repair intervals. *See*, respectively, Baldwin Direct at 74-75; Baldwin Rebuttal at 43; *id.* at 82.

The Department should reject all of these proposals. In the first place, the AG has failed to submit substantial evidence that service quality in Western Massachusetts (or statewide for that matter) is inadequate, so there is no basis for imposing additional regional and statewide reporting requirements on Verizon MA in this proceeding. Second, the FCC has granted Verizon and other carriers forbearance from continued ARMIS service quality reporting obligations and has opened a proceeding to determine whether to impose such obligations on all carriers. *See* Verizon Direct at 92, n. 35. Re-implementing the ARMIS service quality reporting for Massachusetts may undermine the FCC's considered decisions on these issues. Third, Ms. Baldwin recommends the continued filing of ARMIS reports in order to provide comparisons between regions, but a decision by the DTC to require additional reporting will affect Verizon MA only, so there will be no data from other carriers and states with which to compare.

Further, these reporting requirements would effectively modify the Service Quality Plan. Indeed, the data in the ARMIS report is provided on a statewide basis. The AG's proposals thus fall outside the scope of this proceeding. As Verizon MA stated in its Direct Testimony at 78:

The scope of this investigation is defined by Department vote as follows: "[T]he Department hereby: VOTES: To open an investigation, docketed D.T.C. 09-1,

regarding the reasonableness of Verizon Massachusetts' telephone service quality in Berkshire, Hampden, Hampshire, and Franklin Counties, pursuant to G. L. c. 159, § 16." (D.T.C. 09-1, Order Opening Investigation, at 19). Thus, the appropriateness and sufficiency of the current SQI plan has not been noticed as part of the scope of the investigation.

Of course, the Department is free to define the scope of its own investigation (within statutory limits), but that does not mean the Department, having defined the scope of this case in its initial order, may later expand the scope of the case without proper notice and due process. Verizon MA acknowledges the finding in the *Interlocutory Order on Appeal of Verizon New England* issued in this case on April 16, 2010, that the Order Opening Investigation provided notice that the Service Quality Plan was at issue in this proceeding. As to this issue, the Commissioner ruled as follows:

The Investigation was opened because the Department received numerous complaints from the municipalities and residents of Western Massachusetts, and because "an analysis of Verizon monthly Service Quality Index reports appear[] to indicate higher levels of trouble reports in Western Massachusetts[.]" Investigation, Order to Open Investigation at 3, D.T.C. 09-1. Thus, the Department, in clear and unambiguous language, indicated that the Service Quality Index was at issue as it supported the Department's decision to open the Investigation and necessarily informs whether the residents of Western Massachusetts are receiving adequate telephone service from Verizon. *In re Ober*, D.T.E. 05-SL-10-A, at 8-9 (Apr. 4, 2007).

*Interlocutory Order on Appeal of Verizon New England*, at 6. With due respect, however, Verizon MA disagrees with this reasoning and finding. The fact that ***data that Verizon MA reported*** to the Department under the Plan was relevant in determining whether to open this proceeding (and is indeed relevant in determining its outcome) in no way apprises the parties that ***the regulations requiring such reports, i.e. the terms of the Plan itself*** would be considered and subject to modification in this proceeding. Moreover, such an undertaking would necessarily require the Department to investigate Verizon MA's service quality performance across the entire state, which is flatly inconsistent with the clear intent and express vote in the *Order To*

*Open Investigation* to open a *regional* investigation “regarding the reasonableness of Verizon Massachusetts’ telephone service quality in Berkshire, Hampden, Hampshire, and Franklin Counties.” Thus, there is no basis for considering new statewide reporting requirements (such as the ARMIS reports) in this proceeding.

**B. Verizon MA does not have the financial ability to meet the current Troubles Cleared - Residence metric in Western Massachusetts or the analogous metrics in the Hypothetical Plan, and any order requiring compliance with such metrics would violate the terms of G.L. c. 159, § 16.**

If the Department were to find that Verizon MA’s service quality is inadequate under M.G.L. c. 159, § 16, it may order Verizon MA to implement “regulations and practices” necessary to provide adequate service. The statute expressly provides, however, that, “**Before making such order, the department shall consider ... the financial ability of the carrier to comply with the requirements of the order...**” (Emphasis added.) The necessary consideration of Verizon MA’s financial circumstances precludes any order imposing penalties on the Company for failing to meet the Troubles Cleared - Residence metric in the current Plan or implementing the Hypothetical Plan, because the undisputed evidence demonstrates that Verizon MA does not have the resources or the financial ability to comply with those directives.

Compliance with the current Troubles Cleared - Residence metric and the analogous OOS and SA Troubles Cleared - Residence metrics in the Hypothetical Plan would be extremely expensive. Verizon MA’s ability to clear troubles within a certain timeframe is largely labor-dependent, and Verizon MA no longer has (and no longer can have, for the reasons discussed below) the workforce that in past decades might have allowed it to meet the metrics at issue here.

See Verizon Rebuttal at 36.<sup>17</sup> In order to clear 60% of trouble reports within 24 hours in Western Massachusetts, Verizon MA would have to invest a bare minimum of **\*\*\*Begin Proprietary\*\*\*** **\*\*\*End Proprietary\*\*\*** annually in labor costs alone for the technicians it would need to meet the average workload. See Verizon Rebuttal at 42. Not surprisingly, the minimum annual labor cost to potentially meet the Hypothetical Plan's much higher standard of clearing 80% OOS and SA residence troubles in 24 hours would be much greater -- **\*\*\*Begin Proprietary\*\*\*** **\*\*\*End Proprietary\*\*\***. Verizon Supplemental at 39. Under the AG's proposed standard of clearing 95% of such troubles in 24 hours under the Hypothetical Plan, the minimum labor cost to Verizon would be **\*\*\*Begin Proprietary\*\*\*** **\*\*\*End Proprietary\*\*\*** a year. *Id.* Moreover, these estimates are the *absolute minimum* expenses that would be necessary to meet these standards, and they severely understate the full costs. As Verizon MA explained:

The estimates do not include any additional capital, management, equipment, real estate, or overhead expenses. Also, [the] calculation assumes that the trouble report rate is constant throughout the year, and that is not the case. It is undisputed that Verizon MA's RPHL in Western Massachusetts fluctuates from month to month, particularly in the many small wire centers, with peaks in the summer months and sometimes in selected winter months due to storms. Consequently, the increase in workforce needed to resolve a greater *average* number of trouble reports would be substantially insufficient to actually resolve 60% or 70% of trouble reports in the peak months and to meet the Plan standards on a consistent basis.

*Id.* In addition, the Hypothetical Plan requires Verizon MA to meet the standard in each and every month for each and every wire center, which would effectively multiply the cost of compliance, since averages would no longer be acceptable. *Id.*

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<sup>17</sup> See also Tr. (Vasington) at 458, stating that, "[w]e do a very good job of maintaining service quality for our customers, in spite of the fact that we have to... reduce our resources and our expenses. We have testified very frankly that we have difficulty meeting one particular metric, troubles cleared, 60 percent of troubles cleared in 24 hours; and that is driven largely by our need to reduce resources."

No party has offered any evidence disputing or contradicting these estimates. Indeed, it appears that no party other than Verizon MA has even considered the cost of compliance in proposing or evaluating these remedies, although such consideration is required by statute. Nowhere in Ms. Baldwin's Direct or Rebuttal testimony does she consider the costs that Verizon MA would have to incur to meet the 'Troubles Cleared - Residence metric, and thereby avoid her proposed customer credits.<sup>18</sup> Likewise, in evaluating the Hypothetical Plan, Ms. Baldwin clearly gave no consideration at all to the costs of compliance and Verizon MA's financial ability to comply. Her list of "Criteria used to evaluate the [Hypothetical Plan]" includes no reference to these factors. *See* Response to Record Requests 3 - 5, at 8. This failure is not surprising in light of Ms. Baldwin's view that, "Network expenditures may not yield reasonable returns on investment but may be necessary all the same to ensure adequate service quality." Baldwin Direct at 92; *see also* Tr. (Baldwin) at 222. Ms. Baldwin's position is at odds with any theory of utility regulation ever approved or used by the Department, with the terms of M.G.L. c. 159, § 16, and with the constitutional limitations discussed in Part IV.C, below.

Verizon MA has offered extensive, undisputed evidence demonstrating that it does not have the financial ability to meet the Troubles Cleared - Residence metric or the analogous OOS and SA metrics in the Hypothetical Plan. With the rise of competition, Verizon MA's access lines and revenues have been declining for years, and those declines are difficult to match by reducing expenses for a network industry. *See* Verizon Direct at 89; *see also id.* at 81-82 (large portion of costs of a network-based provider such as Verizon MA are fixed and do not decline proportionately in response to revenue losses). Specifically, from 2003 to 2008, Verizon MA's access lines declined by 30%, intrastate revenues declined by 26%, but expenses declined by

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<sup>18</sup> Ms. Baldwin's estimate of the average number of additional troubles Verizon MA would have to clear in order to meet the standard, Baldwin Rebuttal at 38-39, is but the merest beginnings of such an analysis.

only 19%. Verizon Rebuttal at 35, *citing* Attachments AG-VZ 8-61 and 8-63. As Verizon MA stated in its Rebuttal Testimony, at 36, “Verizon MA’s demand and revenues have been declining and therefore the revenues that the company once generated to support its workforce and to maintain its network have decreased significantly, as described above. As a result, Verizon MA has fewer (and declining) revenues and personnel to maintain its network.” This situation makes it impossible for Verizon MA to clear trouble reports as quickly as the Department’s Plan requires:

Competition makes it more challenging to meet the standards in this particular metric because competition reduces Verizon’s revenues faster than Verizon can reduce its expenses (*see* Verizon’s Response to AG 12-29), and Verizon must respond to competition from competitors who do not share the same legacy regulatory burdens that Verizon has, such as carrier-of-last-resort and Lifeline service obligations. Therefore, Verizon does not have the same level of revenues and resources that it had when this standard was set fifteen years ago, yet it retains much of the same regulatory burden that it had at that time.

Verizon Rebuttal at 35; response to Information Request AG-VZ 13-9; *see also* Tr. (Vasington) at 457 (same, and stating that the decline in revenues “has continued for a number of years, and is likely to continue into the future.”).<sup>19</sup>

More generally, as a result of consistently declining revenues unmatched by reduced expenses, Verizon MA has been operating at a loss in Massachusetts for some years. From 2004 through 2008, Verizon MA had negative net operating income of (\$103 million) in 2004, (\$69 million) in 2005, (\$145 million) in 2006, (\$138 million) in 2007, and (\$75 million) in 2008. See Verizon Rebuttal at 44 and Exhibit 2; Attachments IBEW-VZ 1-19. In 2009, the loss widened to

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<sup>19</sup> This makes it imperative for Verizon MA to focus on actual customer requirements and expectations, not regulatory standards adopted 15 years ago before the explosion in competition and the advent of ubiquitous wireless service. *See* Verizon Rebuttal at 37. More generally, Verizon MA should be allowed the freedom to choose the best and most efficient way to provide good service quality to its customers. That means that the Department should allow Verizon MA to elect to focus on reducing the RPHL and preventing troubles from arising, which it can do efficiently, rather than spending a disproportionate amount of its resources to clear a necessarily arbitrary percentage of troubles within 24 hours.

\$234 million, almost a quarter-billion dollars. *See* Attachment to Record Request 24. While the net operating income figures are based on all operations in Massachusetts, both interstate and intrastate, Mr. Vasington submitted at hearing his analysis of Verizon MA's rate of return on investment in Massachusetts showing that the Company's return solely on intrastate operations was negative each year from 2004 through 2008, ranging from negative three percent to almost negative 10 percent. *See* Evidentiary Exhibit 60, "Calculation of Intrastate Rate of Return - FCC Basis;" Tr. (Vasington) at 985-897.

The substantial costs of complying with the Troubles Cleared - Residence metric or the standards in the Hypothetical Plan would only exacerbate Verizon MA's financial situation. For example, the cost of complying with the current metric alone would have increased Verizon MA's 2008 net operating loss by \*\*\* **BEGIN PROPRIETARY**\*\*\* **END** **PROPRIETARY** \*\*\* percent at the very minimum. *See* Verizon Rebuttal at 44. The effect of complying with the Hypothetical Plan would be commensurately greater.

Given Verizon MA's significant and sustained losses in Massachusetts and negative return on investment over a multi-year period of time, the Company simply does not have the financial ability to comply with an order requiring it to meet, on pain of financial penalty, the Troubles Cleared - Residence metric or the OOS and SA Troubles Cleared - Residence metrics in the Hypothetical Plan. Thus, the Department cannot impose these additional costs on Verizon MA consistent with M.G.L. c. 159, § 16, unless it also and at the same time provides the Company with a viable means to recover them. As demonstrated in Part IV.C. below, however, the Department has no such means at its disposal here. Accordingly, the Department must reject the AG's customer credits proposal and the Hypothetical Plan.

**C. Any order requiring Verizon MA to meet the current Troubles Cleared - Residence metric in Western Massachusetts or the analogous metric in the Hypothetical Plan would be confiscatory, and thus unlawful.**

The Department must reject the AG's proposed credits and the Hypothetical Plan because an order implementing either of those proposals would impose enormous additional costs on Verizon MA without affording it the opportunity to recover those costs in its rates. It would therefore be confiscatory, in violation of constitutional requirements. Both the U.S. and Massachusetts Constitutions prohibit the government from taking private property without just compensation. *See* Massachusetts Const., Pt. 1, Articles 10 and 12; U.S. Const., amend. V, XIV. As applied in the utility context, the courts have long recognized that the Takings Clause requires a regulator to set rates that permit the utility to recover its costs, along with a return of and on their investments commensurate with the risks of business. *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). Rates that fail to meet these criteria are confiscatory, and a utility cannot be compelled to provide service at confiscatory rates. *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923).

In evaluating whether the rates set by the regulator meet these standards, the regulator may consider only revenues from the services within its jurisdiction. *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 148-149 (1930). Accordingly, a state regulator, such as the Department, must establish rates that permit a carrier to earn a constitutionally adequate return on its *intrastate* services. *See id.*; *Smyth v. Ames*, 169 U.S. 466, 541 (1898).

The same principles are reflected in Massachusetts law. As the Supreme Judicial Court held in *Boston Gas Company v. Dep't. Pub. Utilities*, 367 Mass. 92, 98-99 (1975), "[t]here is a long accepted and often repeated principle that a regulated public utility ... is entitled to charge

rates which afford it the opportunity to meet its costs of service, including a fair and reasonable return on honestly and prudently invested capital....” In addition, “[i]f an item were improperly excluded from the rate base, the rates [resulting] would deny a return on that item and, to that extent, could be confiscatory and unlawful.” *See also, New England Tel. & Tel. Co. v. Dep’t. Pub. Utilities*, 371 Mass. 67 (1976) (failure to account for inflation following ratemaking decision resulted in confiscatory rates). Likewise, a regulated utility is entitled to “enough revenue not only for operating expenses but also for the capital costs of the business,” including debt service and dividends. *Mystic Valley Gas Co. v. Dep’t Pub. Utilities*, 359 Mass. 420, 424 (1971), quoting *Hope Natural Gas Co.*, *supra*, 320 U.S. at 603. Finally, as discussed above, M.G.L. c. 159, § 16, expressly requires the Department to consider the Company’s financial ability to comply with any remedial service quality order.

An order to meet the current Troubles Cleared - Residence standard or imposing the Hypothetical Plan would violate these fundamental requirements. While the Department has not set rates in this proceeding, approval of the above proposals would effectively force Verizon MA to incur substantial additional costs without any change in its rates. The result would be the same as if the Department had set rates that improperly excluded a portion of the rate base or disallowed a prudent expense; either way, Verizon MA’s rates would be insufficient to cover its costs and generate a reasonable return. Indeed, as demonstrated above, Verizon MA’s rate of return on investment on its intrastate operations in Massachusetts has been substantially negative for years, meaning that its revenues are not even sufficient to recover its current costs. Imposing even more costs on the Company would make this situation worse and would ensure that the Company will continue to earn a negative return on its intrastate services subject to Department jurisdiction.

Moreover, the Department has no means at its disposal to afford Verizon MA the opportunity to recover the additional costs that would be imposed. The Department has not noticed this proceeding as encompassing rate-making in general or consideration of Verizon MA's form of regulation and rate structure, nor has it taken sufficient evidence to properly consider and rule on such issues.<sup>20</sup>

The exogenous event provisions of the Company's regulatory plan do not afford it opportunity to recover the costs arising from these proposals. As Verizon MA testified, these costs arguably do not qualify as "exogenous" as defined in the plan, and the Department cannot commit to finding that they are exogenous prior to full notice, investigation and hearing. Nor would it pass constitutional or statutory muster to impose these additional costs on Verizon MA in this proceeding and open a subsequent proceeding to decide whether they are exogenous. The Department must ensure that the constitutional requirements are met at the time it imposes the additional costs. This is an application of the general principle that when the government takes property, it must make a "reasonable, certain and adequate provision for obtaining compensation at the time of the taking." *Preseault v. ICC*, 494 U.S. 1, 11, 110 S. Ct. 914, 108 L.Ed.2d 1 (1990) (citations omitted, emphasis added). Closer to home, M.G.L. c. 159, §16, requires the Department to consider the Company's financial ability to comply with an order "[b]efore making such order ...."

In any event, even if the Department could find these costs to be exogenous, and could make that finding in this proceeding, the size of the additional costs makes it highly unlikely that Verizon MA would be able to recover them through higher basic residential service rates.

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<sup>20</sup> The restrictions imposed by the nature of this proceeding may explain why the Department has never in the past adopted a "standard and penalty" plan such as the Hypothetical Plan in a service quality investigation under M.G.L. c. 159, §16, and outside of a comprehensive evaluation of the company's rate structure, as in D.P.U. 94-50 and D.T.C. 01-31. *See* Verizon Supplemental at 27-28, explaining that consideration of the Hypothetical Plan in this proceeding is not consistent with Department precedent. *See* further discussion in Part IV.D, below.

Verizon Supplemental at 42. As Verizon MA testified with respect to the Hypothetical Plan, “the costs of complying with the new OOS standards would be multiples greater than the direct salary and benefit costs of additional employees, and Verizon MA is facing robust and growing competition and declining lines. Trying to recover costs of that magnitude from a shrinking customer base in a highly competitive market is not a realistic prospect.” *Id.* at 43. No party has even attempted to make a contrary showing that Verizon MA would be able to recover such costs in its basic exchange service rates.<sup>21</sup>

**D. The Hypothetical Plan is not justified by evidence of inadequate service quality, and the terms of the Hypothetical Plan are inappropriate and lack evidentiary support.**

1. The Hypothetical Plan is not supported by substantial evidence.

As demonstrated above, Verizon MA provides just, reasonable and adequate service quality across Western Massachusetts as a whole, and there is no substantial evidence of inadequate service that could justify imposing a new, comprehensive service quality plan on either a regional or statewide basis. The only evidence in this case showing service quality underperformance in any way (other than with respect to individual customers) is that Verizon MA does not often meet the standard for the Troubles Cleared - Residence metric and that the average RPHL in six wire centers was higher than the Department’s former 4.0 standard.

Neither of these conditions warrants a finding of inadequate service throughout Western

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<sup>21</sup> The expected costs savings to Verizon MA resulting from the Department’s 2009 order in D.T.C. 07-9, requiring CLECs to reduce their access charges starting in June, 2010, does not qualify as recovery of such costs. First, because access charges are a cost input to a sufficiently competitive service -- retail toll service -- the cost changes would be passed through to end-user customers, not Verizon MA’s bottom line. *See id.*; Verizon Supplemental at 42, n. 15. Second, the cost savings to Verizon MA from the access rate reduction are smaller than the projected costs of complying with the Hypothetical Plan alone, much less are they sufficient to allow Verizon MA to recover all of its costs and earn a fair return on intrastate operations. *See* Response to Record Request 25.

Massachusetts or justifies adoption of the Hypothetical Plan, which by its terms would apply either across the entire region or the entire state.

As explained in Part III.A, above, service quality cannot reasonably be assessed by looking at Verizon MA's performance on a single metric, and the Company's inability to meet the Troubles Cleared - Residence metric alone does not support a finding of inadequate service quality on the whole. In addition, the terms of the Hypothetical Plan are comprehensive and govern all aspects of service quality; they are not limited to speed of repair alone. *See* Hypothetical Plan, Evidentiary Exhibit 16. Verizon MA's inability to meet the Troubles Cleared - Residence metric affords no basis for the host of terms in the Hypothetical Plan addressing other service quality issues, such as a new metric for Repeat Troubles, new provisions for penalties for failure to meet metrics in individual wire centers, new provisions for penalties for failing to satisfy a single metric in a month, and a shift from measuring performance as a 12-month rolling average to individual monthly results. *See* Verizon Supplemental at 6. Simply put, the subject matter scope of the Hypothetical Plan is far too broad.

Neither is the Plan warranted on the grounds that the RPHL in a few wire centers is allegedly too high. Even if the Department were to assess service quality in individual wire centers by reference to its statewide RPHL standard of 2.25 (which would be improper for the reasons stated in Part III.B, above), only 18 wire centers in Western Massachusetts exceeded that standard in 2009. The 45 other wire centers in the region satisfied the standard, many of them by a wide margin. *See* Baldwin Rebuttal at 16. Consequently, there is no evidence of inadequate service quality in any of those wire centers and no grounds on which to apply the Hypothetical Plan to Verizon MA's service quality performance in those wire centers. *See* Verizon

Supplemental at 7. Thus, the geographic scope of the Hypothetical Plan -- whether statewide or regional -- is far too broad.

In sum, there is no rational connection between the broad application of the Hypothetical Plan and the service quality inadequacies alleged here -- Verizon MA's inability to meet a single metric and purported excess RPHL in a few wire centers in Western Massachusetts.

2. The terms of the Hypothetical Plan are inappropriate and lack evidentiary support.

In addition to the absence of evidence supporting adoption of a new service quality plan for Western Massachusetts or the state, the specific terms of the Hypothetical Plan are inappropriate, for a number of reasons. Many of the terms of the Plan are unclear, some of the new metrics are inappropriate and not designed to address any failure of service shown in the evidence, the particular standards in the Plan are arbitrary, application of certain metrics at a wire center level is inappropriate and unprecedented, and the proposed penalties are out of proportion to the harm sought to be addressed.

a. The terms of the Hypothetical Plan are unclear and ambiguous.

Because the Hypothetical Plan was proposed by Department Staff and not by any party, there is no testimony explaining its provisions, and many of them remain unclear. For example, the Plan is ambiguous as to whether it applies to Western Massachusetts alone or to the entire state. *See* Verizon Supplemental at 8; Ev. Ex. 16. In addition, the Hypothetical Plan does not state whether it is intended to supplement or to replace the existing Service Quality Plan (and thus, as a consequence, whether its penalties are cumulative of the existing Plan). *Id.* It does not seem to include an SQI, although it provides for both "standard" and "target" levels of performance. And the Hypothetical Plan does not define any of its proposed metrics. *See* Verizon Supplemental at 9. Finally, the Hypothetical Plan leaves it unclear how penalties would

be paid and used, specifically whether penalties would be paid as a one-time customer rebate, and if so, which customers would receive the credit. *Id.* at 11. Given these ambiguities, it would be premature for the Department to adopt the Hypothetical Plan on the record now before it.

- b. There is no evidentiary basis for adopting the Percent Repeat Troubles metric in the Hypothetical Plan.

There is no basis in the record for adopting the “Percent Repeat Troubles (per 100 initial Trouble Reports within 60 days)” metric in the Hypothetical Plan. There is no such metric in the current Plan or in the plan of any other state where Verizon is an ILEC. Verizon Supplemental at 11. Verizon MA does not track this information, and there is no record evidence showing the rate of repeat trouble reports within 60 days of an initial report. *Id.* (Evidentiary Exhibit 52 reflects repeat reports in 30 days. Ms. Baldwin’s reliance on this data and Verizon MA’s related testimony at hearing as support for the proposed metric is thus misplaced. *See* Baldwin Response to Record Request #5, at 11, 12 and Attachment A.) Consequently, there is no basis for the Department to find that Verizon MA’s performance with respect to Repeat Troubles within 60 days is deficient and thus that a new metric on the issue is appropriate. Nor is it sufficient merely to revise the proposed metric to measure repeat troubles within 30 days. While Evidentiary Exhibit 52 provides evidence of Verizon MA’s 30-day repeat rate, there is no evidence before the Department providing any benchmark or standard by which to assess that performance other than Verizon MA’s internal range of 12% to 14%. *See* Tr. (Sordillo) at 762 (“Anything under 12 is excellent. Anything over 14 is an issue to us.”) The percentage of repeats based on the data in Ev. Ex. 52 fall within this acceptable range and offers no basis on which to impose a Repeat Troubles metric on Verizon MA.

- c. The record affords no basis for the specific standards the Department has proposed for the metrics in the Hypothetical Plan, which are thus arbitrary.

At the time the Hypothetical Plan was proposed, Staff explained that, “It’s not based on, I don’t believe, *the target levels and the standard levels, aren’t based on anything substantial at this moment*, within the hypothetical Western Mass. SQI.” Tr. at 341-342 (emphasis added). Subsequent to Staff’s candid assessment, no party has submitted evidence supporting the particular performance standards in the Hypothetical Plan. Given the lack of information on repeat reports in 60 days noted above, there is no evidence before the Department on which to find that the proposed 20% standard and 10% target for the Repeat Troubles metric are reasonable. Ms. Baldwin offered no support for this standard, choosing instead to propose a series of standards for a 30-day report rate metric, as noted above. Further, Ms. Baldwin’s claim that her standards for such a metric (ratcheting down from 12.5% to 9.5% over time) are consistent with Verizon MA’s internal guidelines is simply false; Ms. Baldwin’s standards are lower than Verizon MA’s. For example, in 2011, Ms. Baldwin would fine Verizon MA for a repeat rate of 11.5%, which the Company finds to be “excellent.” Tr. at 762.<sup>22</sup>

Likewise, there is no evidence supporting a conclusion that no more than 20% of all OOS and Service Affecting (“SA”) trouble reports may be cleared in more than 24 hours, as provided in the Hypothetical Plan. There is no rationale supporting the 20% standard, as opposed to say, the 40% standard in place for Troubles Cleared - Residence today, and Verizon MA has shown that even that standard is too low in light of current customer practices and preferences. *Id.* at 16. Contrary to Ms. Baldwin’s claim, the proposed 20% standard does not “comport with”

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<sup>22</sup> As a general matter, the Department should give no weight to Ms. Baldwin’s analysis of the Hypothetical Plan, because as noted above, she did not even consider Verizon MA’s financial ability to comply with that Plan, a fundamental error in light of M.G.L. c. 159, § 16. This omission allows Ms. Baldwin to blithely support imposing penalties at the wire center level on the grounds that they motivate Verizon MA to direct resources to small wire centers, *see* Response to Record Requests 3-5 at 12, and to propose multiplying the penalties under the Hypothetical Plan by a factor of 5. *Id.* at 17. But the Department cannot ignore the costs of compliance, and Ms. Baldwin’s facially insufficient analysis does not help the Department to meet its statutory obligations and standard of review for this investigation.

Verizon MA's internal goal of clearing 60% of residential reports within 24 hours -- it is obviously 20 percentage points higher. *Id.*<sup>23</sup>

Nor does the evidence of OOS standards in other states support adoption of the 20% standard here. As explained above, the Department cannot reasonably import a service quality metric or standard from another state without carefully considering the entire plan in that state and its service quality conditions, and the Department lacks such comprehensive information here. In addition, the OOS Troubles Cleared - Residence metric in the Hypothetical Plan is simply not comparable to those in the state plans summarized by Ms. Baldwin. Most of those state plans have exclusions for customer-requested appointments and for weekends and holidays, *see* Baldwin Rebuttal at 76; Verizon Supplemental at 18, while the current Massachusetts Plan and the Hypothetical Plan do not. Verizon Supplemental at 18. Moreover, no current state service quality plan requires Verizon (or any other large carrier) to meet OOS and SA standards in every wire center every month, requirements that make the Hypothetical Plan far more stringent than any other state's plan.

Finally, there is no basis for Ms. Baldwin's speculation that a falling report rate may free up resources to allow Verizon MA to improve its trouble report clearance performance, thereby justifying a higher standard than in the current Plan. *See* response to Record requests 3-5 at 13. As Verizon MA testified, in this environment of declining revenues, "resources are not 'freed-up;' they are eliminated. ... [N]o one should have any illusions that the challenge of restoring service in 24 hours will get any easier under any expected trends." Verizon Supplemental at 17. Ms. Baldwin's reasoning is misguided in another way, which also infects her proposals to ratchet

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<sup>23</sup> Also, there is no rationale for applying the same standard to both business and residential metrics. Doing so would be contrary to long-standing Department precedent and inconsistent with the evidence demonstrating the more critical need for fast restoration of service to business customers. *See* Verizon Direct at 27; Verizon Supplemental at 15.

ever-tighter the standards for the RPHL and Repeat Troubles metrics. *See* Response to Record Requests 3-5 at 9, 13. She seems to believe that in setting service quality standards, the Department should determine the highest level of performance that Verizon can possibly achieve, or which it might be able to achieve in the future based on speculative projection of presumed trends, and then penalize the Company for failing to provide that aspirational level of service. That standard is not only unreasonable, but it is flatly inconsistent with the provisions of M.G.L. c. 159, § 16, which require only that service quality be “just, reasonable, safe, adequate and proper,” not that it be the best possible. The Department cannot impose the Hypothetical Plan’s massive penalties on Verizon MA for failure to meet such standards.

The Hypothetical Plan does not state a new standard for the Network Trouble Report Rate, presumably because the Department did not intend to alter the RPHL standard and target in the current Plan. Ms. Baldwin, however, proposes to reduce the standard from 2.25 to only 1.30, and reduce it even further thereafter. *See* Response to Record Requests 3-5 at 9. That proposal has no merit. The facts that Verizon MA’s RPHL in some districts of the state is lower than 1.30 and that Verizon MA is taking steps to reduce its RPHL in Western Massachusetts provide no basis for changing the RPHL standard in the current Plan. As Verizon MA explained above and in testimony, “the notion that whatever Verizon MA or another company can achieve or aspires to achieve anywhere in the state or country, Verizon MA should be held accountable to achieve, with penalties if it fails .... has never been, and should not be, the basis for determining the level at which service quality is considered to be adequate.” Verizon Supplemental at 14. Further, Frontier’s settlement agreement requiring it to meet an RPHL standard of 1.03 in Illinois is not relevant here, because there is no evidence on record of the costs of compliance, the market conditions in Illinois or what other considerations Frontier received or gave up in the settlement.

*See id.* Given the context of the Frontier settlement, the Department cannot infer from Frontier's willingness to agree to this RPHL standard that such a standard is reasonable in Massachusetts.

- d. By measuring actual monthly performance, rather than rolling average, and applying service quality metrics at the wire center level, the Hypothetical Plan would subject Verizon MA to extremely harsh, unprecedented, penalties disproportionate to the harm to be addressed.

The Hypothetical Plan inappropriately replaces the rolling average methodology with individual monthly measurements. As Verizon MA's witnesses explained:

The rolling average smoothes out the peaks and valleys that can result from conditions beyond Verizon MA's control such as weather and seasonal demands, and it would be inherently unfair and inappropriate to subject Verizon MA to possible penalties based on a single month's performance. The rolling average allows the Department to view performance over time, and not just for one month, providing a clearer picture of the quality customers receive.

Verizon Direct at 28. Moreover, there is no merit to Ms. Baldwin's claim that the rolling average "masks" poor service quality. Under the current Plan, Verizon MA reports both the rolling average and its monthly actual results for all metrics, as well as the monthly actual RPHL in every wire center in the state, so the Department is fully able to monitor actual service quality. *Id.* Also, a rolling average would not "mask" lower-than-average service quality any more than it would "mask" better-than-average performance. *See id.* at 29.

Nor is it appropriate to subject Verizon MA to penalties for failing to meet service quality metrics at the wire center level. There is no evidence before the Department demonstrating any need or basis for such micro-management of Verizon MA's performance. That Verizon MA's RPHL in six (or even 18) wire centers is arguably higher than it should be offers no such support. Those local issues call for local solutions, and Verizon MA has submitted substantial, uncontroverted evidence that the best way to reduce RPHL in those areas is to close the open plant, which Verizon MA is now doing. Imposing metrics and penalties on Verizon MA at the

wire center level, for all wire centers in Western Massachusetts or possibly the state, in order to address this concern or to address the Company's inability to meet a single metric in the current Plan is overly heavy-handed, like using a sledgehammer to tap in a picture hook. In addition, subjecting Verizon MA to penalties for failure to meet metrics in individual wire centers is literally unprecedented:

No state has subjected an ILEC with a large service area to penalties for failure to meet service quality performance metrics at the wire center level, and the only state that has ever required Verizon MA to report metrics (other than trouble report rate) at a similarly disaggregated level on a regular basis, Florida, recently eliminated the requirement for exchange level reporting. [footnote omitted] States have thus consistently recognized that some variation in service quality over time and across wire centers is both inevitable and acceptable in light of the variation in conditions beyond the control of the carrier that affect service quality in different wire centers.

Verizon Supplemental at 20-21.

This last point cannot be overlooked. As explained in Part III.B, there are many very small wire centers in Western Massachusetts where, due to their size alone, service quality performance results are very volatile. In addition, as demonstrated in Part III.F, the rural nature of much of Western Massachusetts and its exposure to frequent damaging weather events mean that conditions in the region are significantly different than in other areas of the state, especially Boston and other urban areas. Given these differences, it would be inappropriate to apply a single, one-size-fits-all set of standards to every wire center in the state.

It is even more inappropriate to set those standards for individual wire centers at the same level as the standards that apply to the state or region as a whole, as the Hypothetical Plan would do. As Verizon MA testified:

The standard and target performance levels in the current Service Quality Plan were designed to be measures of adequate performance based on averages of performance over time and across wide geographic regions of the state or across the entire state. If a standard is to be developed on a wire center or monthly basis,

it should not be the same requirement as the statewide or regional average but must be more flexible. Unlike Lake Wobegon, where “all the women are strong, all the men are good looking, and all the children are above average,” in the real world some individual performances will be above the average of all such performances and some will fall below the average. Applying a statewide or regional average standard to individual wire centers as provided in the Hypothetical Plan would convert the average to a floor, since no wire center is allowed to underperform the standard and all wire centers must either meet or exceed it. For the same reason, if the Department wishes to develop a standard level of performance to measure the adequacy of service quality for particular months or in particular wire centers, then the statewide average standards in the current Service Quality Plan are far too stringent.

Verizon Supplemental at 21.

In combination, the terms of the Hypothetical Plan -- including the use of individual monthly data, the very high minimum statewide (or regional) service standards, application of those standards to individual wire centers and the terms imposing penalties for failure to meet any one of the five Maintenance metrics -- would subject Verizon MA to extraordinary penalties far out of proportion to the harm sought to be averted. For example, Verizon MA calculated that based on 2009 results, it would have incurred more than \$10 million in penalties under the Hypothetical Plan, and may also have incurred an addition \$9.9 million as well, depending on how that Plan is interpreted. *See* Verizon Supplemental at 32-34. These penalties would have been incurred for service quality which Verizon MA has demonstrated is just, reasonable and adequate under the Department’s current standards. In other words, the penalties would be imposed essentially for failure to meet one metric, Troubles cleared - Residence. Such disproportionate penalties are unreasonable and bear no rational relation to the harms the Plan seeks to avoid.

Finally, the penalty provisions of the Plan are unlawful for the reasons stated in Part III.A.1, above. Namely, the Department lacks statutory authority to impose penalties on telecommunications carriers such as Verizon MA for inadequate service quality.

3. Adopting the Hypothetical Plan in this proceeding would be inconsistent with Department precedent, and the Hypothetical Plan is beyond the scope of this proceeding.

Verizon MA explained in its Direct Testimony, at 75-78, the history of the Department's development of the current Service Quality Plan, and subsequently pointed out that the Department has historically developed such "standards and penalty" only in the context of an overall review of the form of regulation of Verizon MA. *See* Verizon Supplemental at 27-28. In contrast, the Department has never adopted such a plan in a service quality investigation under M.G.L. c. 159, § 16.

Since 1989, the Department has conducted four investigations of Verizon MA's (or its predecessor companies') service quality: D.P.U. 89-300; *Mission Hill* D.P.U. 96-30; *Athol, et al.*, D.T.E. 99-77; and *Middlefield*, D.T.C. 06-6. The investigation in D.P.U. 89-300 resulted in a finding that NET's service quality in five districts was "unacceptable and must be remedied." D.P.U. 89-300 at 379. The Department did not attempt to mandate particular remedies or action by NET to improve service quality, nor did it impose penalties on NET for failure to attain service quality standards. Rather, the Department left it to the company to determine how best to proceed, with regular reports to the Department on its progress.

In the *Mission Hill* case, the Department found inadequacies in NYNEX's policies related to extended service outages and ordered "That New England Telephone and Telegraph Company d/b/a NYNEX shall develop a major extended service outage plan, in compliance with the findings and directives contained in this Order, and file such a plan with the Department, for its review and approval ..." D.P.U. 96-30, at 32.

In the *Athol, et al.* case, the Department found that the company's service quality in the complainant towns was adequate, and only directed Verizon MA to "supplement its monthly

service quality reports with a separate section identifying service quality measures for the 30 communities in this docket,” and that “This supplement shall be included in the monthly service quality reports for twelve months ...” . *Athol, et al.*, D.T.E. 99-77, at 17-18.

Fourth, in the Middlefield investigation, the Department found that service in Middlefield was inadequate and directed as a remedy that Verizon MA “shall undertake a comprehensive analysis of the service quality and infrastructure issues discussed in this Order,” and to report the results of the analysis and the corrective action the Company planned to take. The Department further ordered that “Verizon shall report to the Department in a separate section of the QOS report, for an 18-month period, the number of customer trouble reports per 100 lines per month in Middlefield for the previous month, a brief description of the nature of each trouble report, and a comparison of Middlefield’s RPHL with the regional and statewide average RPHL for the corresponding month,” among other, related requirements. *Middlefield*, D.T.C. 06-6, at 18-19 (footnote omitted).

What is most notable about all of these cases is that the Department largely left it to the company to determine the appropriate means of addressing the service quality inadequacy identified by the Department, and the Department’s “remedy,” where relevant, was a reporting requirement and not a “standards and penalties” based SQI plan. Therefore, the Department’s precedent is clearly to use Section 16 investigations to determine whether service in a geographic area is adequate and, if it is not, to monitor the company’s self-designed efforts to remedy the situation, whereas the Department has, in contrast, developed “standards and penalties” plans only as part of overall incentive regulation plans. Since this proceeding is a Section 16 investigation, the only remedy that would be consistent with precedent is a requirement on Verizon MA to report its progress in addressing any service quality inadequacy identified by the

Department. Adopting the Hypothetical Plan in this case would be inconsistent with that precedent.

Moreover, adopting the Hypothetical Plan would be improper and unlawful even if this were not a § 16 case. Whether the Hypothetical Plan would apply statewide or only to Western Massachusetts, it would make fundamental changes to the existing Service Quality Plan and in the underlying regulatory incentive plan for Verizon MA. As Verizon MA testified:

The current Service Quality Plan applies statewide and measures performance across the state and at the SBU level. It does not measure service quality at the “district” level, such as for Western Massachusetts, nor does the Service Quality Plan impose potential penalties for failure to meet standards at that level. The Hypothetical Plan, however, would change the way in which Verizon MA’s service quality is regulated, by imposing metrics, standards and penalties at the district level, at least for one district and at the wire center level. That is a modification of the regulation of the Service Quality Plan in the Commonwealth and a modification of Verizon MA’s approved regulatory plan.

Verizon Supplemental at 32. But modification of the current Service Quality Plan is not within the scope of this proceeding for the reasons explained in Part IV.A.3 and in the Appeal of Verizon New England Inc. of Procedure Established to Address Proposed Service Quality Plan, dated April 12, 2010 (which was denied in the *Interlocutory Order on Appeal of Verizon New England* dated April 16, 2010). Thus, the Department has not afforded Verizon MA reasonable notice and opportunity to prepare and present evidence and argument regarding the Hypothetical Plan as required by M.G.L. c. 30A, and it should not and cannot consider the Hypothetical Plan or any other modification of the Department’s existing Service Quality Plan in this proceeding.<sup>24</sup>

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<sup>24</sup> The Department’s Competition Status Report, Ev. Ex. 16, raises additional due process concerns. Publication of that Report on February 12, 2010, and its use in this proceeding are inconsistent with Verizon MA’s due process right to a decision by “an impartial and disinterested tribunal,” *Amos Treat & Co. v. SEC*, 306 F.2d 260, 264 (D.C. Cir. 1962), and its right to a “full and fair hearing” under M.G.L. c. 30A, §10. The Report reaches a number of conclusions on matters that are at issue in this case, including service quality in Massachusetts and Western Massachusetts, the volume and character of service issues in rural areas and whether service quality is properly measured against absolute standards as in the current Plan or in comparison to other regions of the state. *See e.g.*, Report at vi, fifth bullet. To counter the natural inclination to render a decision in this

**E. The Hypothetical Plan and the AG’s proposed system of customer credits seek to address perceived service quality inadequacies in Western Massachusetts by creating greater incentive -- in the form of penalties -- for Verizon MA to provide better service, but lack of incentive is not a problem. These proposals therefore are not rationally connected to the facts before the Department.**

Ms. Baldwin suggests that Verizon MA does not have “economic incentives” to provide quality service in Western Massachusetts, and her proposal to penalize Verizon for failing to clear residential troubles within 24 hours is intended to provide that motivation. *See Id.* at 82, 84; *see also* Tr. (Baldwin) at 316 (alleging current Plan allows small towns to “get[] lost in the shuffle”). The Hypothetical Plan, especially in its penalty provisions and by imposing metrics and penalties at the wire center level, too apparently is based on the presumption that Verizon MA lacks motivation to provide adequate service quality, and it too is designed to provide the presumably missing incentive. Again, because the Hypothetical Plan was distributed by the Department staff at hearing, with no witness or party to sponsor it, and because no questions related to the Hypothetical Plan were asked of any witness at the hearing devoted to gathering evidence on the Hypothetical Plan, Verizon MA can only make assumptions as to its design and purpose.

But this presumption is inconsistent with the facts. Service quality in the region overall is good, and there is substantial evidence that Verizon MA’s need to preserve its customer base in the face of rising competition provides more than enough incentive for the Company to provide good service quality. *See* Verizon Direct at 81-90; Verizon Rebuttal at 29-32; Response to Information request AG-VZ 8-2. Verizon MA has lost a substantial number and percentage of

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proceeding consistent with the conclusions in the Report, those conclusions should have been excluded from evidence at a bare minimum. Their admission in evidence, *see* Tr. at 976, compounds the due process concerns.

access lines in Western Massachusetts in the past five years, at a faster pace than in the rest of the Commonwealth. Verizon Direct at 81. Verizon MA also discussed the explosion in wireless and cable telephony service and availability, the effect of that on Verizon MA's revenues, and the resulting incentive on Verizon MA to provide good service quality. *See* Verizon Direct at 82, 87; Tr. (Vasington) at 813-815. As a result of this competition, the vast majority of customers -- upwards of 90% -- have the option of taking their telecommunications business elsewhere.

Verizon Direct at 81; *see also* Tr. (Vasington) at 884. Consequently:

Verizon MA absolutely has market incentives to provide good service quality to customers throughout the state.

...

Today, customers can and do change their telephone provider based on any reason. When Verizon MA or Comcast or AT&T or Vonage do not meet customers' expectations, those customers take their business elsewhere, and that freedom of customer choice is the most powerful incentive mechanism possible in a market economy.

Verizon Direct at 81, 82. Mr. Vasington emphasized at hearing that, "the company is motivated more by competitive situations than it is by the plans in the regulatory incentive mechanism. ... [T]he primary incentives are presented by the market conditions we face." *See* Tr. (Vasington) at 591. Market-driven incentives, not regulatory requirements, explain why Verizon MA has not merely met but has outperformed the Department's standards and targets on many metrics in Western Massachusetts, including RPHL, Percent Installation Trouble Reports and all three Appointments Missed metrics, *see* Verizon Rebuttal at 6, and why Verizon MA revitalized the PCM, Open Plant and Quality Inspection programs in late 2007, even though the Company had consistently satisfied the RPHL metric in the Department's Plan for years.

The few service quality "shortcomings" (as measured by regulatory standards, but not necessarily customer expectations) in Western Massachusetts arise not from lack of motivation

on the part of Verizon MA but from a number of external constraints on Verizon MA's ability to provide service. Verizon MA explained in detail in Part IV.B, above, how the growth of competition and the resulting decline in revenues have forced the Company to reduce expenses and personnel over the years, making it more difficult to meet the 15-year old standards for the labor-intensive Troubles Cleared - Residence metric. *See also* Verizon Rebuttal at 36. Likewise, conditions of geography and weather make it difficult to serve some small, rural wire centers in Western Massachusetts. *See* Part III.F, above.

The Intervenors don't contest that competition in Western Massachusetts in general is robust. Mr. Baldwin even testified that in the landline sub-market alone, CLECs now control almost 40% of the access lines in the region. *See* Baldwin Rebuttal at 65; Tr. (Baldwin) at 130; Ev. Ex. 21. Rather, the AG asserts that competition does not extend to Verizon MA's stand-alone basic exchange service or to all wire centers in the region and therefore does not provide incentive for good service quality for that service and in those wire centers. *See* Baldwin Rebuttal at 55, 60, 65, 67-68. These theories are mere conjecture, and are not supported by the facts. Verizon MA explained that it "does not have different networks to provide basic and bundled service, and it ... cannot differentiate the quality of the network facilities on the basis of whether or not a particular customer receives service as part of a bundle or as a stand-alone product." Verizon Rebuttal at 31. As a result, with respect to "service quality incentives and challenges, there is no distinct product market." Tr. (Vasington) at 879. In response to the theory that wireline and wireless competition doesn't reach every customer or all wire centers, Verizon MA explained that it "does not manage its operations on a wire-center basis, according to the level of competition...." Verizon Rebuttal at 31. For example, Mr. Sordillo testified at

hearing that the level of competition in a given wire center has no bearing on the Company's decision on whether to replace cable in the area:

Q. Does the competitive nature or competitive maturity of the wire center that the cable is in, does that play a part in the company's decision-making to replace a cable?

A. I don't believe it does. I don't believe that we would take a cable in Newton and decide to replace that because it is Newton versus Palmer. I don't think that enters into it whatsoever. ... To directly answer your question, there would be no reason from a competition standpoint why we would decide to replace the cable. It would be service-oriented.

Tr. (Sordillo) at 810-811. Mr. Vasington explained more generally:

We are not saying that everywhere, every single customer has competitive alternatives. But the competition is so widespread and available to such a large portion of customers that there is no distinguishing factor in terms of the level of service quality that we provide on an operational basis to areas of the state that have, or specific geographic regions that may not have cable company competition or individual streets where wireless service many not be as pronounced as it was. I think conditions today have rendered moot that kind of concern.

Tr. (Vasington) at 872. Ms. Baldwin devised a table showing that the wire centers at the high end of the RPHL spectrum in Western Massachusetts generally, but not always, show less than average competitive activity in terms of regulated landlines. *See* Baldwin Rebuttal at 67. (Ms. Baldwin offered no such comparison with respect to wireless or other unregulated activity.) But that does not support a conclusion that the lack of competition in those wire centers drives higher report rates there. Rather, "[t]he more obvious logical conclusion to draw from that Table is that the same reasons why it is more challenging for Verizon MA to have a lower report rate in certain wire centers -- namely, topography, weather, density -- also make it more challenging for competitors to build their own facilities in competition with Verizon MA." Verizon Rebuttal at 32. In fact, the Department has acknowledged in the past that the high cost of service in rural areas coupled with the fact that Verizon MA's rates for dial-tone service are the same throughout

the Commonwealth, is a “potential disincentive for competition in rural areas.” See D.T.C. 99-77, *Athol Investigation*, Order dated March 2, 2001, at 37-38.

The only conclusion that reasonably can be drawn from this record is that Verizon MA’s need to preserve its customer base and its revenues provides more than enough motivation for it to provide good service quality to all of its customers in Western Massachusetts, and that any service quality shortcomings in the region are not due to lack of incentive but to the constraints on Verizon MA described above. The Hypothetical Plan and the AG’s customer credits proposal fundamentally misread this situation. They seek to give Verizon MA additional incentive where none is necessary, and they do nothing to alleviate the conditions that do contribute to the few alleged shortcomings in service quality that have been identified in this investigation. Indeed, by imposing additional financial burdens on Verizon MA, these proposals would just make matters worse. Consequently, they have no rational connection to the alleged harms they seek to address, and the Department cannot approve them.

V. **CONCLUSION**

For the reasons stated above, the only rational conclusion on the evidence before the Department is that Verizon MA provides just, reasonable and adequate telephone service quality across Western Massachusetts and that no remedial action by the Department is necessary or appropriate in this proceeding.

Respectfully submitted,

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Dated: June 18, 2010