



CITY OF SOMERVILLE, MASSACHUSETTS  
LAW DEPARTMENT

February 27, 2012

Honorable Board of Aldermen  
City Hall  
93 Highland Avenue  
Somerville, MA 02143

Re: Board Order Number 192499

Review of Department of Telecommunications and Cable Regulations to Determine  
What Right City May Have in Dealing with Utility Companies and Protections Afforded  
to Utility Companies, Specifically Verizon

Dear Honorable Board Members:

You have asked this office to review the Massachusetts Department of Telecommunications and Cable (“DTC”) regulations to determine what rights the city may have relative to utility companies. It is my opinion that a written complaint or petition may be filed with the following entities setting forth the nature of the complaint and factual circumstances: Department of Public Utilities and Department of Telecommunications and Cable.

The DTC is responsible for the “general supervision of telephone and telegraph companies subject to chapter 166 and community antenna television systems as defined in section 1 of chapter 166A”. *G.L. c. 25C, s. 1*. The Department of Public Utilities (“DPU”) is charged with the “general supervision of all gas and electric companies...” *See G.L. c. 164, s. 76; G.L. c. 159, s. 16*.

The two departments were established in 2007 in a re-organization of the former Department of Telecommunications and Energy (DTE). DTC regulations cover matters such as cable licensing, *207 CMR 2.00*. DPU regulations govern pole attachments and utility service, billing and rates. *See 220 CMR 1.00 et seq.*

State law establishes standards of acceptable performance for preparation and restoration of service outages. *G.L. c. 164, ss. 1J, 85B; DPU 10-02; 220 CMR 19.00*. DPU regulations require gas and electric companies to ensure that they restore service in a safe and reasonably prompt manner in the event of an outage. *220 CMR 19.03*. The Department “shall open a full investigation upon petition of the Attorney General or by the city council in an affected city...to

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determine whether a Company violated the Department's standards." 220 CMR 19.05(1). Such petition must be filed no later than 90 days after the violation has been remedied.

DPU has established technical service quality guidelines for gas and electric companies. *DPU 04-116-A-D*. Customers of a utility may submit formal complaints to the Consumer Division of the DPU relative to service quality and outages. Complaints as to the "quality or price of the gas or electric sold and delivered" may also be filed in writing by "the attorney general...the mayor of a city...where a gas or electric company is operated, or of twenty customers thereof..." *G.L. c. 164, s. 93*.

As to so-called double utility poles, *G.L. c. 164, s. 34B* requires that a utility company engaging in the removal of an existing pole and installation of a new pole in place thereof "shall complete the transfer of wires, all repairs, and the removal of the existing pole from the site within 90 days of the installation of the new pole." DPU and DTC entered into a memorandum of agreement relative to agency jurisdiction regarding double poles. A complaint concerning double poles may be forwarded to both agencies, although, one agency may exercise jurisdiction over the complaint depending upon the entity or entities which own the subject pole.

You have also asked this office to review what protections are afforded to utility companies, specifically Verizon. It is my opinion that courts have recognized that utilities may be protected from local regulation to the extent that it is inconsistent with and pre-empted by the Commonwealth's regulatory scheme for public utilities.

With respect to the protections afforded to public utilities, courts have held that a municipality lacks the authority to fine utility pole owners for failing to remove a pole within the ninety-day statutory period following installation of a replacement pole due to the comprehensive nature of *G.L. c. 164*, finding an implied legislative intent to preempt municipalities from enacting legislation on the subject. *Boston Edison Company v. Town of Bedford*, 444 Mass. 775 (2005). The Supreme Judicial Court has invalidated local ordinances which are inconsistent with the state's regulatory scheme for public utilities. *Boston Gas Company*, 402 Mass. 702, 703 (1995). Statutory oversight of public utilities and telecommunications companies is placed within the respective department's jurisdiction as identified above.

Please contact me with any additional questions.

Very truly yours,

Jason D. Grossfield  
Assistant City Solicitor

cc: Joseph A. Curtatone, Mayor