

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

DTC 13-6

**COMPETITIVE CARRIERS' OPPOSITION TO VERIZON'S
MOTION TO STRIKE REBUTTAL TESTIMONY**

The Competitive Carriers¹ oppose Verizon's motion to strike the rebuttal testimony of Joseph Gillan and James Burt. Verizon seeks to exclude portions of both witnesses' rebuttal testimony on the same grounds as in its January 21, 2014 motion to strike portions of the same witnesses' direct testimony.

Verizon's second motion is as meritless as its first. It should be denied for the reasons set forth in the Competitive Carriers' and Sprint's oppositions to Verizon's earlier motion, and the Hearing Officer respectfully is referred to those filings for more detail. To recap: This is not a jury trial, so whatever rules may be applicable to expert testimony in a jury trial context do not apply here (Competitive Carriers' Opposition at 1-2; Sprint's Opposition at 1-2). Verizon's legal arguments are incorrect and/or unsupported (Comp. Carr. Opp. at 2-3; Sprint Opp. at 1-2). Mr. Gillan's framing of his opinions in terms of the relevant legal factors is permissible (Comp. Carr. Opp. at 3-4). This motion, like Verizon's earlier motion, serves to delay and distract and drive up the cost of resolving the issues in this case (Comp. Carr. Opp. at 4-6).

¹ CTC Communications Corp. d/b/a EarthLink Business; Lightship Telecom LLC d/b/a EarthLink Business; Choice One Communications of Massachusetts, Inc. d/b/a EarthLink Business; Conversent Communications of Massachusetts, Inc. d/b/a EarthLink Business; EarthLink Business, LLC (formerly New Edge Network, Inc. d/b/a EarthLink Business); Cbeyond Communications, LLC; tw data services llc; Level 3 Communications, LLC; and PAETEC Communications, Inc.

Even if Verizon were right on the law (which it is not), Mr. Gillan did not commit the sins of which he is accused. Verizon's characterizations of Mr. Gillan's testimony typically are incorrect or exaggerated. For example:

Page 7. Mr. Gillan observes that there is no dispute that the existing Verizon MA-Comcast ICA is an Interconnection Agreement that was filed in accordance with § 252. He then compares the existing agreement to one of the agreements at issue in this proceeding, and suggests that because of the similarities between the existing agreement and the other agreement, the other agreement also should be filed. His opinion is expressly framed as a "logical conclusion," and, indeed, that is what it is.

Pages 8-9. Mr. Gillan's testimony follows up his answer on p. 8, lines 4-11, comparing the VoIP-to-VoIP and Traffic Exchange Agreements. His follow-up answer sets forth facts related to interconnection and traffic exchange, what is occurring within the network, and other facts. His conclusion, based on the stated facts and constituting only three lines of the answer, is that any differences are not significant and do not excuse the VoIP-to-VoIP Agreement from the filing requirement.

Page 22, lines 1-9. The testimony here provides facts relative to the nature of the retail VoIP service and how the service does not change when the format of the traffic exchange is IP rather than TDM. This statement constitutes facts relevant to legal criteria, and is permissible.

Pages 23-24. On p. 23, Mr. Gillan provides facts describing the nature of telephone networks as geographically distributed computing systems, then relates those facts to his understanding regarding exempt protocol processing categories. Again, his testimony framed in light of legal criteria is proper.

On page 24, Mr. Gillan's answer to the first question sets forth facts showing that protocol conversions commonly occur between networks using different technologies, such as wireless and wireline, digital and analog, and IP and circuit-switched networks. In his answer to the second question, Mr. Gillan testifies to the fact that protocol conversions that assure end-to-end interoperability do not provide any new capability to the customer. That these facts are germane to a legal issue does not make Mr. Gillan's testimony regarding those facts improper.

In its two motions, Verizon ignores a practical reality: decades of working in the highly-regulated telecommunications industry as a regulator, employee of and regulatory and economic consultant to telecommunications companies and trade organizations, and lecturer on regulatory, economic, and policy matters to government regulators, have given Mr. Gillan an expertise in the legal and regulatory requirements that govern that industry. It would be odd indeed if he had not developed that expertise. His expertise may be helpful to the Hearing Officer and Department in their decision-making. Even if Verizon's arguments had legal merit, which they do not, Verizon is unrealistic and unhelpful in trying to deny the Hearing Officer and Department the opportunity to benefit from that expertise. The Hearing Officer is quite capable of evaluating the witnesses' testimony in light of all the evidence in the case, and giving it appropriate weight.

The Hearing Officer should deny Verizon's motion.

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Respectfully submitted,



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