

**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 MA'S MOTION FOR  
RECONSIDERATION AND CLARIFICATION**

The Competitive Carriers<sup>1</sup> oppose Verizon MA's motion for reconsideration and clarification dated November 15, 2013.

At the outset, as set forth in our Scheduling Proposal filed on Friday, November 22, the Competitive Carriers submit that the Department should resolve the issue before it at this stage — whether the Verizon/Comcast agreement is an “interconnection agreement” that must be filed for Department review under § 252 — expeditiously and efficiently on the basis of briefs and not through an extensive, prolonged, and expensive adjudication involving testimony, discovery, and a hearing.<sup>2</sup> The Hearing Officer has not decided that issue or set any parameters for future proceedings. Therefore, at this juncture, issues regarding discovery are irrelevant or at least premature.

Further, Verizon essentially asks that if discovery is permitted, the Department should prejudge that certain subject matter does not satisfy the broad and liberal standards for discovery

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<sup>1</sup> 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, LLC.

<sup>2</sup> By discussing the issue of discovery in opposition to Verizon's motion, the Competitive Carriers do not waive, but expressly reserve, their rights and positions set forth in their November 22 scheduling proposal.

in Department proceedings. “The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner.” 220 C.M.R. § 106(6)(c)(1). In establishing discovery procedures, the presiding officer is to be guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure. *Id.* § 106(6)(c)(2). The scope of discovery under those rules is familiar:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Mass. R. Civ. P. 26(b)(1).

The Department cannot and should not make that prejudgment. Instead, the Department may weigh the scope of discovery and the propriety of any particular requests in the event that discovery is permitted and in the context of particular requests and/or responses. In particular, given that Verizon and Comcast have been operating under their agreement since some point in time before Verizon announced the agreement in its February 2012 FCC filing,<sup>3</sup> there is a long course of dealing and undoubtedly an extensive history of discussions and negotiations regarding the agreement between the parties. It is extremely likely that relevant, discoverable information exists among those discussions and that course of dealing. The Department should not preclude discovery of that information in the event a procedural schedule that includes discovery is established.

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<sup>3</sup> *In re Connect America Fund*, WC Docket No. 10-90, Comments of Verizon, at 14 (filed Feb. 24, 2012) (<http://apps.fcc.gov/ecfs/document/view?id=7021865697>).

For the foregoing reasons, the Department should deny Verizon's motion.

Respectfully submitted,

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