

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' SCHEDULING PROPOSAL

The issue pending at this stage of the proceeding is whether the Verizon/Comcast agreement submitted by Verizon is an “interconnection agreement” that must be filed for Department review and approval pursuant to 47 U.S.C. § 252. *See Investigation by the Dep’t of Telecomms. & Cable on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Mass. is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Dep’t for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Order Opening an Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA’s Motion to Dismiss or Stay the Proceeding, at 1-2 (May 13, 2013) (“Order Opening Investigation”).*<sup>1</sup>

The Competitive Carriers<sup>2</sup> submit that the Department can and should resolve this issue without the need for an extensive, prolonged, and expensive adjudication involving testimony, discovery, and a hearing. Instead, the Department should make this straightforward

<sup>1</sup> <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/end132open136.pdf>

<sup>2</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.



Agreement is an Interconnection Agreement, Verizon MA would be required to file it with the Department for approval pursuant to 47 U.S.C. § 252(e).

*Id.*, Hearing Officer’s Ruling on Petitions for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, and the Other Party to the Agreement, at 2 (June 28, 2013).<sup>4</sup>

On May 13, 2013, the Department of Telecommunications and Cable (“Department”) opened an investigation upon its own motion, to determine whether an agreement between Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) and an unidentified party providing for the exchange of Voice over Internet Protocol (“VoIP”) traffic in Internet Protocol (“IP”) format (“IP Agreement”) is an “Interconnection Agreement” under 47 U.S.C. § 251.

*Id.*, Hearing Officer Ruling on Comcast Phone of Massachusetts, Inc. Petition to Intervene and Motion for Leave to Late File, at 1 (Aug. 9, 2013) (“*Comcast Intervention Order*”).<sup>5</sup>

On May 13, 2013, the Department opened an investigatiopn on its own motion, to determine whether an agreement entered into by Verizon MA and providing for the exchange of Voice over Internet Protocol (“VoIP”) traffic in IP format (“IP Agreement”) is an “Interconnection Agreement” as contemplated under 47 U.S.C. § 251.

*Id.*, Hearing Officer Ruling Verizon MA Motion for Abeyance, at 2 (Nov. 4, 2013) (“*Order Denying Abeyance*”).<sup>6</sup>

Therefore, what is *not* at issue at this stage is the substantive review of the agreement (*i.e.*, whether it is discriminatory, whether it is not consistent with the public interest, convenience or necessity, etc., under § 252(e)(2)). Also, what is *not* at issue is a general or theoretical inquiry into the circumstances under which agreements must be filed. For now, what is at issue is whether *this particular agreement* must be filed for such review. That can be readily determined from the documents already on file.

<sup>4</sup> <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/rulptninterconf.pdf>.

<sup>5</sup> <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/rulcastphninter.pdf>

<sup>6</sup> <http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/rulvzmtnabeyance.pdf>

2. *The issue before the Department can be resolved by reference to the agreement on file.* It is apparent that the Verizon/Comcast agreement on file with the Department is an “interconnection agreement” subject to § 252 review. The FCC has held that “an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection that must be filed pursuant to section 252(a)(1).” *Qwest Communications Int’l Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Dkt. 02-89, Memorandum Opinion and Order, FCC 02-276, 17 FCC Rcd. 19337, ¶ 8 (2002) (emphasis omitted).<sup>7</sup> The FCC has further stated that “agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).” *Id.* n.26 (emphasis added). Importantly, courts and state commissions have interpreted the phrase “relating to” broadly and held that the § 252(a)(1) filing requirement is not limited solely to agreements involving the specific mandates in 47 U.S.C. §§ 251(b) and (c). *See, e.g., Qwest Corp. v. Pub. Utils. Comm’n of Colo.*, 479 F.3d 1184, 1192-97 (10th Cir. 2007), *affirming Qwest Corp. v. Pub. Utils. Comm’n of Colo.*, 2006 WL 771223, at \*4 (D. Colo. Mar. 24, 2006) and *Qwest Corp. v. Pub. Serv. Comm’n of Utah*, 2005 WL 3534301, at \*7-9 (D. Utah Dec. 21, 2005). Rather, the plain language of 47 U.S.C. § 252(a)(1) provides that even those agreements the incumbent LEC voluntarily negotiates “without regard to the standards set forth in subsection (b) or (c) of section 251 . . . shall be submitted to the State commission under subsection (e) of this section.” 47 U.S.C. § 252(a)(1) (emphasis added); *see also Qwest Corp.*, 2005 WL 3534301, at \*5; *In re Qwest Corp.*, 2004 WL 2567420, at \*3 (Utah P.S.C. Sept. 30, 2004).

<sup>7</sup> [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/FCC-02-276A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-02-276A1.pdf).

That the Verizon/Comcast agreement satisfies this standard is evident from the agreement on file, and no further factual development is needed. As the Department has found, “[T]he parties to the agreement are known, an agreement has been reached, and the end goals of the agreement are being achieved.” *Order Denying Abeyance* at 8. Specifically, the Department found that Verizon and Comcast are “exchanging traffic in accordance with the agreement, a fact which Verizon MA has repeatedly made public.” *Id.*<sup>8</sup>

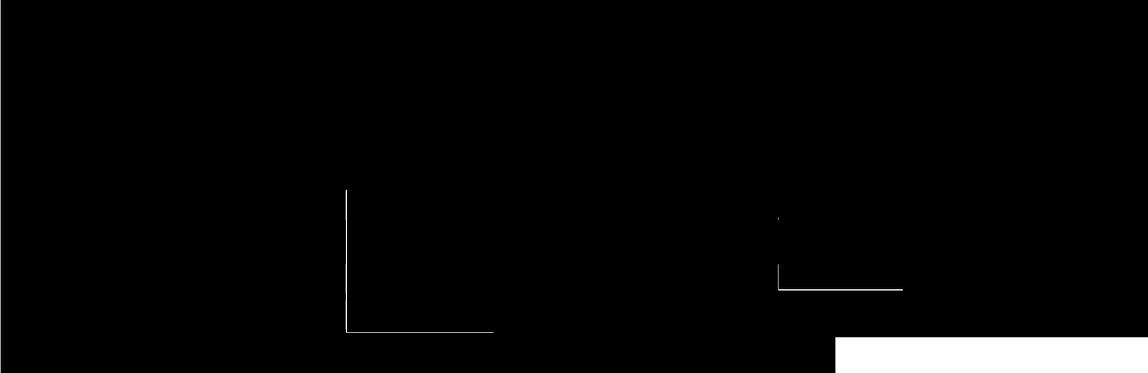
The agreement under which Verizon and Comcast admittedly are operating contains numerous obligations and provisions relating to § 251(b) or (c) that make it an interconnection agreement subject to § 252. Examples of such provisions include:

**[BEGIN HIGHLY CONFIDENTIAL]**<sup>9</sup>

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

<sup>8</sup> Verizon announced that it had entered the agreement in an FCC filing in February 2012, approaching two years ago. *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>).

<sup>9</sup> The Competitive Carriers have redacted and marked as Highly Confidential certain portions of this filing in light of Verizon’s claim that the entire agreement constitutes Highly Sensitive Confidential Information, viewable only by a limited set of individuals, mainly outside counsel and outside consultants. This does not signify that the Competitive Carriers agree that all or any part of the agreement is properly so designated. The Competitive Carriers reserve all rights on this issue.

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[END HIGHLY CONFIDENTIAL]

*3. Resolving the issue before the Department on briefs is the appropriate procedure.*

As set forth above, it is apparent on the face of the agreement that it contains obligations between Verizon and Comcast that satisfy the criteria for an “interconnection agreement.” Accordingly, it is both feasible and desirable to resolve the issue of whether the agreement must be filed for Department review by resort to the documents themselves. Filing testimony, serving and responding to discovery, and holding a hearing are neither necessary nor appropriate. It is necessary only to examine the documents on file to ascertain that they contain [BEGIN

HIGHLY CONFIDENTIAL]   
  
  


[END HIGHLY CONFIDENTIAL]

Testimony, discovery, and a hearing are not necessary to determine that *this agreement* is subject to the filing requirement under § 252. A lengthy adjudicatory process will only add undue time and expense and will make inefficient use of the Department’s resources. The Department may decide the question at hand — whether the Verizon/Comcast agreement must

be filed for Department review under § 252 — efficiently and effectively on the basis of the documents already on file and briefs to be submitted as set forth above.<sup>10</sup>

\* \* \* \* \*

For the foregoing reasons, the Department should decide the issue that is relevant at this stage of the case — whether the Verizon/Comcast agreement must be filed for Department review under § 252 — on the basis of the agreement itself and briefs to be filed in accordance with the schedule set forth above.

Respectfully submitted,

Handwritten signature of Gregory M. Kennan in blue ink, with initials (JK) at the end.

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<sup>10</sup> To the extent there is concern that a proceeding based solely on briefs is not provided by the Department's rules, the rules provide for their waiver in a particular case for good cause shown. 220 C.M.R. 1.01(4). Good cause for deciding the relevant issue at this stage of the case on the basis of the filed agreement and briefs consists of the considerable savings of time, effort, and resources by the Department and parties that will be realized by this efficient procedure in contrast to a proceeding involving testimony, discovery, hearings, and post-hearing briefing extending well into 2014.