

June 20, 2014

VIA EMAIL AND FIRST CLASS MAIL

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street
8th Floor, Suite 820
Boston, Massachusetts 02118-6500

Re: *Post-Hearing Reply Brief of Cox Rhode Island Telcom LLC ("Cox") and Charter Fiberlink MA – CCO, LLC ("Charter")*

Dear Secretary Williams:

On behalf of Cox Rhode Island Telcom LLC and Charter Fiberlink MA – CCO, LLC, enclosed please find our Post-Hearing Reply Brief for filing in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,



Alan M. Shoer
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Enclosure

cc: Service List (via U.S. Mail)



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

13-6 Service List

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.

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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	:	D.T.C. 13-6
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	:	

**POST HEARING REPLY BRIEF OF COX RHODE ISLAND TELCOM LLC
AND CHARTER FIBERLINK MA-CCO, LLC**

Cox Rhode Island Telcom LLC (“Cox”) and Charter Fiberlink MA - CCO, LLC (“Charter”) hereby submit this Post Hearing Reply Brief in order to respond to some of the points and arguments raised by Verizon in its Initial Post Hearing Brief.

Verizon’s Post Hearing Brief argues against a determination that several IP-to-IP interconnection agreements should be filed for review with the Department of Telecommunications and Cable (“DTC”) along several main themes. First Verizon suggests that requiring the agreements to be filed with state commissions would “harm” consumers and would impede the development of IP VoIP. VZ Brief at 12-18. Second, Verizon suggests that the Telecommunications Act of 1996 (the “Act”) interconnection requirements are inapplicable unless the VoIP service Comcast provides to end users is affirmatively classified as a “telecommunications service.” VZ Brief at 19-23. Cox and Charter respectfully disagree with both of Verizon’s suggestions based on the record developed in this proceeding and the legal framework in the Act that governs the interconnection of networks with an ILEC, such as

Verizon, as well as this Department's authority pursuant to G.L. c. 25C § 6A(e) and G.L. c. 159 §§ 12 and 13.

First, Cox and Charter take issue with Verizon's argument that a requirement to file IP-to-IP interconnection agreements with the Department would be "harmful" to consumers or the development of IP VoIP. While all parties appear to agree that "IP VoIP interconnection arrangements reflect the substantial and undisputed efficiencies that flow to VoIP providers from IP VoIP interconnection," VZ Brief at 15 (citations to testimony), it would be absurd to believe, as Verizon repeats, that the CLECs would prefer to avoid the immediate cost savings and efficiencies of moving to IP-to-IP interconnection so as to instead gain "regulatory points." That simply makes no rational business sense. Verizon's cynical view that the CLECs are "more interested in scoring regulatory points to tilt the playing field in their favor than actually establishing IP VoIP interconnection arrangements," Verizon Brief at 16, is nonsensical given the demonstrated and substantial cost savings and network efficiencies that are gained by moving quickly to IP to IP interconnection as soon as a carrier is technically and operationally able to do so.

Also, Verizon's "regulatory posturing" argument makes no sense, when at every step of the way through this proceeding the CLECs have pressed for a determination as soon as possible, while Verizon has pushed for delay repeatedly, even moving to have these proceedings "abated" so as to await further rulings from the FCC. As this Department has noted, the plain language of 47 U.S.C. § 252 and the FCC's prior determination make clear that it is state commissions that should determine whether a particular agreement is an interconnection agreement. Therefore, Verizon's argument that the CLECs seek to gain unfair regulatory "leverage" is inaccurate and disingenuous when Verizon itself has sought on several occasions to delay this Department's

determinations on the underlying legal issues of whether IP-to-IP interconnection agreements constitute Section 251/252 interconnection agreements.

Similarly, Verizon's claims that the CLECs' request for a determination by the Department that Sections 251/252 of the Act apply to an IP-to-IP interconnection agreement is somehow "harmful" to Massachusetts' consumers. Verizon Brief at 16. But this allegation ignores that the Department's proper role is to do what is being requested: to rule on the applicability of the Act to an interconnection agreement when there is a good faith dispute concerning whether the agreement in question is an "interconnection agreement" pursuant to Sections 251/252. Indeed, the Department recognized the legitimacy of this issue when it stated: "The Department has the expertise and statutory obligation to determine on a case-by-case basis whether an agreement should be filed as an interconnection agreement and, if so, whether the agreement should be approved or rejected."¹

The efforts to move networks to IP VoIP for the benefit of companies and consumers alike will be greatly assisted by a determination by the Department in this proceeding, as it will provide regulatory certainty to guide the carriers that seek to arrange for voice IP-to-IP interconnection with Verizon. A decision by the Department in this dispute will likewise enable consumers to benefit from the efficiencies and innovative services that will be available through IP technology, by facilitating the efforts of many companies (especially the smaller providers) who seek IP- to- IP interconnection with a large ILEC such as Verizon.

Second, Verizon raises an argument based on the Act's definitions of "information service," "telecommunications service" and "telecommunications carrier." Verizon Brief at 19-24. Putting aside the simple fact that the FCC has not yet made its determination on the

¹ May 13, 2013 Order Opening an Investigation at 11.

classification of VoIP service as an “information service” or a “telecommunications service,” which Verizon acknowledges, there are several reasons why Verizon’s argument fails.

As pointed out in our initial post hearing brief, the language of Section 251 is technology neutral, and its mandates do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks to provide services to their end users. And, as this Department has pointed out, if an agreement contains an ongoing obligation relating to 47 U.S.C § 251 (b) or (c) it must be filed under §252(a)(1).² Similarly, nothing in the statute *limits* a carrier’s statutory interconnection obligations to the exchange of *only* circuit-switched originated voice traffic. Indeed, to the contrary, the FCC has determined that “the interconnection obligations set forth in Section 251(c)(2) apply to packet-switched services as well as circuit-switched services.”³ And, an ILEC’s duty under Section 251(c)(2) to provide interconnection to a requesting telecommunications carrier at any technically feasible point within the [ILEC’s] network”⁴ also clearly encompasses IP-to-IP interconnection arrangements, especially where it is undisputed that IP-to-IP interconnection is “technically feasible.”

Furthermore, Section 251(c)(2) requires ILECs to provide interconnection “for the transmission and routing of telephone exchange service and exchange access.”⁵ The provision of VoIP service constitutes “telephone exchange service” or “exchange access” regardless of whether VoIP is classified as an information service or a telecommunications service. This is established within the plain terms of the statute. For example, the Communications Act defines the term “telephone exchange service” as “service within a telephone exchange, or within a

² May 13, 2013 Order Opening an Investigation at 11.

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385, ¶ 22 (1999) (“*Advanced Services Order*”), remanded on other grounds, *WorldCom, Inc. v. FCC*, 246 F.3d 690 (D.C. Cir. 2001).

⁴ 47 U.S.C. § 251(c)(2)(B).

⁵ 47 U.S.C. § 251(c)(2)(A).

connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.”⁶ Moreover, the FCC has determined that the term “telephone exchange service” is not limited to circuit-switched technology, and applies equally to packet-switched services.⁷ And, at least one court has agreed: “[I]t is clear that the FCC does not intend to limit telephone exchange service to traditional telephone services or technologies.”⁸

The same principles apply to exchange access service, a well-established service provided to other carriers and defined by the Act as the “origination or termination of telephone toll services.”⁹ Exchange access service is defined by the geographic end points of the call and does not turn on how the calls are priced, or the technology used, as confirmed by the Second Circuit Court of Appeals.¹⁰ CLECs that carry VoIP traffic – whether to their own customers or to VoIP providers – are clearly providing IXCs with the ability to place calls to, and receive calls from, retail VoIP customers in other telephone exchanges. That basic functionality satisfies the statutory definition of exchange access service – and hence the interconnection criteria under Section 251(c)(2) of the Act.

Therefore, the ILECs’ obligations set forth in Sections 251(b) and (c) also apply when the requesting carrier seeks interconnection to make *the ILEC’s* telephone exchange service or exchange access available to the requesting carrier’s subscribers. As the FCC has explained in an analogous context, “the fact that a telecommunications carrier is also providing a non-

⁶ 47 U.S.C. § 153(47)(A).

⁷ *Advanced Services Order* at ¶ 22; *see also Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC 385 at ¶ 22 (1999) (“*Advanced Services Remand Order*”).

⁸ *BellSouth Telecomm. Inc. v. Finley*, 2010 U.S. Dist. LEXIS 131839 at * 33 (E.D.N.C. Dec. 10, 2010).

⁹ 47 U.S.C. § 153(16).

¹⁰ *Global NAPs v. Verizon New England*, 454 F.3d 91, 98 (2nd Cir. 2000).

telecommunications service is not dispositive of its rights,”¹¹ and that same principle should guide the Department in the context of other CLECs that seek to gain opt in rights, if they wish to do so, to an IP-to-IP interconnection agreement with Verizon.

Moreover, the nondiscrimination principles codified in Section 251(c)(2) require ILECs to provide interconnection “that is at least equal in quality to that provided to itself or any subsidiary [or] affiliate.”¹² It is generally understood that many ILECs, including Verizon, currently provide voice IP-to-IP interconnection internally or to subsidiaries or affiliates. Accordingly, because ILECs maintain IP interconnection arrangements today for their own (or their affiliates’) use, the statute compels those entities to provide such arrangements under 251(c)(2) to other requesting carriers.

Simply put, the Department should not heed Verizon’s argument that the Department must determine whether Comcast’s IP VoIP service is an “information service” or a “telecommunications service.” Certainly, the FCC has extended various other provisions of Title II to VoIP without addressing the regulatory classification question, and the Department can do the same here without formally classifying VoIP as telecommunications or an information service. Cox and Charter understand that the classification of VoIP as a telecommunications service has potentially sweeping regulatory and jurisdictional implications. However, such a fundamental policy determination is not necessary to confirm the availability of IP-to-IP interconnection agreements for VoIP traffic within the meaning of Sections 251/252 of the Act.

Finally, Verizon’s argument that an IP-to-IP interconnection agreement cannot be an interconnection agreement under Section 251(c)(2) – if accepted – would eventually erode

¹¹ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, n. 39 (2007).

¹² 47 U.S.C. § 251(c)(2).

interconnection rights under Section 251 entirely as more and more carriers rely on IP networks to carry their voice traffic. This interpretation would allow Verizon to exploit its size and market power by demanding IP-to-IP interconnection only on terms acceptable to Verizon, with no ability of the requesting carrier to seek the important backstop protections afforded by the Act.

Respectfully submitted,

COX RHODE ISLAND TELCOM LLC and
CHARTER FIBERLINK MA-CCO, LLC

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Certificate of Service

I hereby certify that on this 20th of June, 2014, I served a copy of the foregoing Post Hearing Reply Brief of Cox Rhode Island Telcom LLC and Charter Fiberlink MA-CCO, LLC upon all parties of record by mailing a copy of said document by mail, postage prepaid regular via regular mail and via e-mail.

