LAW OFFICE OF ALAN D. MANDL
90 GLEZEN LANE
WAYLAND, MA 01778

Admitted in Massachusetts
and Rhode Island

Telephone: (508) 276-1365
Fax: (508) 276-0992
Email: alan@admlawoffice.com

April 10, 2014

BY EMAIL AND OVERNIGHT MAIL

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

Re: DTC 13-6
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

Dear Ms. Williams:

Enclosed please find for filing in the above matter an original and five (5) copies of the Opposition of Qwest Communications Company LLC d/b/a CenturyLink QCC to Motion for Summary Judgment.

Do not hesitate to contact me if the Department has any questions regarding this filing. Thank you for your assistance.

Very truly yours,

Alan Mandl

Enclosures
cc: Michael Scott, Esq., Hearing Officer
Service List

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	D.T.C. 13-6

OPPOSITION OF QWEST COMMUNICATIONS COMPANY LLC, D/B/A CENTURYLINK QCC TO MOTION FOR SUMMARY JUDGMENT

Qwest Communications Company LLC, now known as CenturyLink Communications LLC ("CenturyLink"), hereby files its Opposition to the March 28, 2014 Competitive Carriers' Motion for Summary Judgment. Summary judgment procedures are recognized by the Department [220 CMR 1.06(e)] and may be properly applied where pleadings and filings conclusively show that the absence of a hearing could not affect the decision. *Mass Outdoor Advertising Council v. Outdoor Advertising Board,* 9 Mass. App. 775, 785-786 (1980); *Petition of AT&T of New England, Inc.,* D.P.U. 95-131 (1996) at 6; *Hull Municipal Light Plant,* D.P.U. 87-19-A (1990) at 25.[1] At the same time, however, an agency or court may determine that, as a matter of discretion, a case is better decided on the basis of a complete record, including evidentiary hearings, and post hearing briefs. *Aronson v. Commonwealth,* 401 Mass. 244, 253 (1987) [citing 10A C.A. Wright, A.R. Miller and M. Kane, §2732.2 (1983)].[2]

[1] According to these authorities, the Department also examines whether there is any genuine issue of material fact and if the moving party is entitled to judgment as a matter of law.

[2] The *award* of summary judgment is not a discretionary action and requires that entitlement to summary judgment be established by the moving party. *AT&T Communications of New England, Inc.* D.P.U. 95-131 (1996) at 6.

The issue before the Department would be better resolved after evidentiary hearings and an opportunity for post hearing briefs. This investigation involves an issue of major public importance to telecommunications service providers across the country. It is the subject of national debate at the Federal Communications Commission ("FCC"). Given these circumstances, the Department should exercise its discretion and avoid a summary decision. Discretionary denial of summary judgment is especially appropriate where the issue for consideration by the Department is one of first impression. Resolution of this issue after evidentiary hearings will better assure a just result and facilitate appellate review. *Fine v. City of New York,* 71 F.R.D. 374 (S.D. N.Y. 1976).

The Department should assure that its rulings are founded upon a complete record, given that the FCC and regulatory agencies in other states will undoubtedly review the Department's actions in this matter in determining their own courses of action.[3] Furthermore, evidentiary hearings would afford the Department and the parties an opportunity to question the parties' witnesses, identify the exhibits on which its decision is based and make any necessary record requests to clarify or supplement the record. These additional steps would enable the Department to better shape and identify the record upon which its decision is based. In light of the fact that evidentiary hearings are due to be held in about three weeks, and given the pendency of discovery disputes[4], the Department should permit the record to fully develop before rendering its decision. This approach avoids the potential waste of resources and delays

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[3] Outside of the summary judgment context, the Department has recognized the need for clarity of analysis and findings where there is an important matter of first impression to be decided. *Boston Gas Co.,* D.P.U. 88-67 (1988) at 15. Similarly, the Department has declined to issue an advisory ruling in order to address an important issue on the basis of a complete evidentiary record. *Petition of Town of Stow,* D.P.U. 93-124-A (1994) at 12.

[4] For example, April 4, 2014 Competitive Carriers' Opposition to Verizon's Motion to Compel; April 4, 2014 XO Communications Services, LLC Opposition to Verizon's Motion to Compel.

that would occur if the Department were to deny summary judgment on the merits and then conduct evidentiary hearings.

For all of these reasons, the public interest would be better served by a prompt, discretionary denial of summary judgment and the conduct of the evidentiary hearings that are currently scheduled to begin within three weeks.

Respectfully submitted,

QWEST COMMUNICATIONS COMPANY LLC
n/k/a CENTURYLINK COMMUNICATIONS LLC

By its attorneys,

Alan D. Mandl
Law Office of Alan D. Mandl
90 Glezen Lane
Wayland, MA 01778
(508) 276-1365
Email: alan@admlawoffice.com

Adam L. Sherr, Associate General Counsel
CenturyLink, *pro hac vice*
1600 7th Avenue, Room 1506
Seattle, WA 98191
Telephone: (206) 398-2507
Email: adam.sherr@centurylink.com

Dated: April 10, 2014