



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

D.T.C. 13-6

August 9, 2013

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

**HEARING OFFICER RULING ON COMCAST PHONE OF MASSACHUSETTS, INC.
PETITION TO INTERVENE AND MOTION FOR LEAVE TO LATE FILE**

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. *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* (May 13, 2013) (“*Order Opening Investigation*”). This proceeding has been docketed as D.T.C. 13-6, and is a formal adjudicatory proceeding conducted under G. L. c. 30A and 220 C.M.R. § 1.00 *et seq.* of the Department’s Rules of Practice and Procedure.

On July 26, 2013, Comcast Phone of Massachusetts, Inc. (“Comcast”) filed a petition to intervene accompanied with a motion for leave to late file the petition. No participants have filed comments or oppositions to the motion or the petition.

I. THE DEPARTMENT GRANTS COMCAST’S MOTION FOR LEAVE TO LATE FILE THE PETITION TO INTERVENE

Under the Department’s procedural regulations, requests to have the Department take any action after commencement of an investigation shall be made by written motion, unless made during a hearing. 220 C.M.R. § 1.04(5). It is within the Department’s discretion whether to grant such motions. 220 C.M.R. § 1.06 (6). When exercising this discretion, the Department will typically balance the interest to be served in granting the request against the need for conducting an efficient hearing and the effect granting such motion may have on other parties.¹ *See, e.g., Investigation by the Dep’t of Telecomms. & Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep’t on June 16, 2006, to become effective July 16, 2006, by Verizon New England Inc. d/b/a Verizon Mass., D.T.C. 06-61, Order on Clarification and Partial Reconsideration at 7 (May 11, 2012).*

Comcast, in its motion for leave to late file,² asserts that it needed additional time to formulate its petition to intervene due to the confidential nature of the agreement at issue, that

¹ This is similar to, but less stringent than, the good cause standard the Department utilizes when considering a party’s motion to late file a pleading with a codified filing deadline or a party’s request to reopen an investigation. *See Pet. of New England Tel. & Tel. Co. for an alternative regulatory plan for the co.’s Mass. intrastate telecomms. servs.*, Order at 51-52, D.P.U. 94-50 (May 12, 1995) (“D.P.U. 94-50”) (citing *Boston Edison Co.*, D.P.U. 90-335-A at 4 (1992)) (“Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.”).

² In a previous Hearing Officer Ruling, the Department set a fourteen day from receipt of service deadline for Comcast, the previously unidentified signatory, to petition to intervene in the proceeding. *Investigation by the Dep’t 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*

the time that elapsed between the filing of its petition and the deadline to file set forth in the Department's ruling is minimal, and that neither the Department nor any party to the proceeding will be prejudiced by granting the motion. Comcast Motion at 1. The Department is mindful that it set the deadline to balance the interests of Comcast to have notice of and opportunity to participate in the proceeding against the Department's need to conduct an efficient proceeding. *Id.* The Department thus must determine whether allowing Comcast to late file its petition to intervene, on balance, outweighs the effect late filing has on parties to the proceeding or the ability for the Department to efficiently conduct this proceeding.

The Department finds Comcast's interest in petitioning to intervene in this proceeding outweighs the adverse effect, if any, that considering Comcast's petition may have on the parties to this proceeding or the Department ability to conduct this proceeding efficiently. Comcast as a signatory to the agreement with Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon MA") will have its legal rights, duties, or privileges with regard to the agreement determined in this proceeding, which may entitle Comcast to party status. *Investigation by the Dep't 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 Department for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Hr'g Officer Ruling on Pets. for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, Non-disclosure Agreements, and the Other Party to the Agreement* at 16 (June 28, 2013) ("June 28 Ruling"). Thus, Comcast's interest in participating in the proceeding is significant.

to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252, D.T.C. 13-6, Hr'g Officer Ruling on Pets. for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, Non-disclosure Agreements, and the Other Party to the Agreement at 16 (June 28, 2013) ("June 28 Ruling").

Moreover, Comcast's participation in the proceeding ensures for the Department that both of the signatories to the agreement at issue are aware of the proceeding and are exercising their participatory rights. No party is prejudiced by the Department's allowance of Comcast's motion, at least insofar as no participant in this docket has objected to Comcast's motion or petition to intervene. Finally, while the proceeding has been progressing, it is not at a stage where considering a petition to intervene would delay or otherwise adversely affect the progress of the investigation. Accordingly, the Department GRANTS Comcast's motion for leave to late file its petition to intervene.

II. THE DEPARTMENT GRANTS COMCAST'S PETITION TO INTERVENE

A petition to intervene must satisfy the substantive requirements of 220 C.M.R. § 1.03(1). Petitioners must establish that they are "substantively and specifically affected by the proceeding." 220 C.M.R. § 1.03(1)(b); G. L. c. 30A § 10. The Department has broad discretion in determining whether to grant petitions to intervene. *See, e.g., Pet. of Comcast Cable Commc'ns., LLC to establish & adjust the basic service tier programming, equipment, & installation rates for the communities in Mass. served by Comcast Cable Commc'ns., LLC that are currently subject to rate regulation*, D.T.C. 12-2, *Hr'g Officer Ruling on Pet. to Intervene* (Nov. 14, 2012) (municipality was not substantively and specifically affected by Department proceeding to reconsider basic cable rates where municipality was not subject to rate regulation.); *Investigation by the Dep't on its Own Motion into the Implementation in Mass. of the FCC's Order Reforming the Lifeline Program*, D.T.C. 13-4, *Hr'g Officer Ruling on Pets. for Intervention, Requests for Limited Participation Status, and Motion for Admission Pro Hac Vice* (providers of service under federal Lifeline program were substantively and specifically affected by Department investigation into a federal order reforming the program). Such a determination

is “based on individual facts establishing the ‘substantial and specific’ affect that the proceeding may have on the individual or entity seeking to intervene.” *Bd. of Health of Sturbridge v. Bd. of Health of Southbridge*, 461 Mass. 548, 558 (2012).

Comcast is a telecommunications services provider in Massachusetts and a Comcast affiliate provides interconnected Voice over Internet Protocol (“VoIP) services in the Commonwealth. Comcast Petition at 1. Comcast requests intervention claiming it has a significant interest in the Department’s interpretation of whether agreements, such as the one at issue in this proceeding, constitutes an “interconnect agreement” pursuant to 47 U.S.C. § 251. *Id.* at 2. Specifically, Comcast asserts that in Massachusetts it is a party to two interconnections agreements with incumbent local exchange carriers (“ILECs”) and to a VoIP traffic exchange commercial agreement. *Id.* The Department previously found that competitive telecommunications providers offering telecommunications services in Massachusetts may be substantively and specifically affected by this proceeding. *See* June 28 Ruling at 4-5. As such, the Department finds that Comcast may be substantially and specifically affected by this proceeding and the petition otherwise satisfies the requirements of 220 C.M.R. 1.03(1).

Accordingly, the Department GRANTS Comcast’s petition to intervene in the above referenced proceeding.

/s/ Kalun Lee
Kalun Lee
Deputy General Counsel,
acting as Hearing Officer

/s/ Michael Scott
Michael Scott
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NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.