

**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) DTC Docket No. 13-6
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)
_____)

SPRINT'S INITIAL POST-HEARING BRIEF

Sprint Communications Company L.P.
Sprint Spectrum L.P.
Nextel Communications of the Mid-Atlantic, Inc.
Virgin Mobile USA, L.P.

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Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc., and Virgin Mobile USA, L.P. (collectively “Sprint”) file this Initial Post-Hearing Brief¹ in support of their position that those certain agreements submitted to the Department of Telecommunications and Cable (the “Department”) by Verizon New England d/b/a Verizon MA (“Verizon MA”) which are the focus of the above captioned investigation constitute “interconnection agreements” pursuant to Sections 251 and 252 of the Telecommunications Act.²

Examination of such agreements hinges on whether they create an (1) ongoing obligation and (2) that obligation is related to certain statutorily prescribed duties – including interconnection and reciprocal compensation for all voice traffic.

As explained herein, there can be no doubt that the agreements under investigation (the “IP Interconnection Agreements”) are interconnection agreements under Sections 251 and 252 of

¹ Evidentiary hearings on this matter were held on April 30 and May 1, 2014, and the transcripts of those two hearing days will be cited as 1Tr. and 2Tr., respectively.

² Telecommunications Act of 1996, Pub L No 104-104, 110 Stat 56 (1996) (the “Act”).

the Act, are required to be filed by Verizon MA with the Department, and must be made available for adoption by competing carriers.

I. INTRODUCTION

Sprint commends the Department for initiating its investigation of the IP Interconnection Agreements. It is essential that competitive voice service providers, like Sprint, are able to interconnect to exchange all forms of voice traffic in Internet Protocol (“IP”) under the statutory framework established by the Act, which framework includes safeguards to prevent Incumbent Local Exchange Carriers (“ILECs”) from discriminating against other carriers regarding the terms of interconnection. State commissions have been given primary authority, under Section 252 of the Act, to review agreements between ILECs and requesting carriers and determine whether the terms and conditions contained therein are offered in a competitively neutral manner.

The Department’s investigation comes at a critical time for the industry. The pace of technological change and network evolution is accelerating. The telecommunications industry as a whole is moving toward IP technology. Wireless carriers like Sprint are moving towards technologies that will enable the initiation of wireless calls in IP format (generally called Voice over LTE, or Vo-LTE). *See* 2Tr. p. 146, lines 6-9. Companies like Sprint must ensure that their networks incorporate technological advancements so that services are delivered efficiently and effectively. The ability to connect to the networks of other carriers in IP format is essential to that effort.

Sprint has provided competitive voice services, both wireline and wireless, in Massachusetts for many years, and interconnects with Verizon MA today under the terms of interconnection agreements approved by the Department. Sprint competes vigorously with

Verizon Communications Inc. (“Verizon”) and its affiliates in every facet of the communications business – wireless and wireline, wholesale and retail – and the industry is constantly changing. The reality of today’s competitive market is that Verizon remains a powerful force even as the number of its retail time division multiplexing (“TDM”) customers is reduced.³ As much as ever, Verizon understands that its dominant market position can be fortified by dictating its competitors’ rates, terms and conditions for interconnection. Verizon’s joint marketing arrangements with Comcast Corporation (“Comcast”) further entrench its position as the dominant carrier in the market and, when coupled with IP interconnection arrangements not made available to competing carriers through the 251/252 process, raise competitive concerns. It is essential for the Department to ensure that interconnection is available to all market participants on non-discriminatory terms as required under the Act.

In its *Order Opening Docket*, the Department provided an overview of the statutory obligation imposed on ILECs to file interconnection agreements (“ICAs”) with state commissions, and the state commissions’ duty to approve or reject such agreements. *Order Opening An Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA’s Motion to Dismiss or Stay the Proceeding, Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England 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, 9-12 (May 13, 2013)(“*Order Opening Docket*”). The Department also noted that it is not preempted by any action or statement of the Federal Communications Commission (“FCC”), or

³ The number of retail TDM customers is not the ultimate test of Verizon’s market power. One must look at Verizon’s ubiquitous connectivity to all competing carriers in Massachusetts and the number of customers that Verizon serves via broadband and VoIP service. See Sprint Exhibit 2 at p. 7, line 17 – p. 8, line 13. Furthermore, a carrier has monopoly control over the termination of traffic to its customers. 2Tr. p. 69, lines 4-6 (“You have a monopoly on termination of traffic to your customers. Monopoly is market power.”), and 2Tr. p. 150, lines 1-8.

otherwise, from determining that the exchange of voice traffic in IP format is subject to sections 251 and 252 of the Communications Act, 47 U.S.C. §§ 251 and 252. *Order Opening Docket* at 10, fn. 6. The Department identified “the central question presented” as “whether the identified agreement is an interconnection agreement under 47 U.S.C. § 251.” *Id.* at 9. And whether an agreement constitutes an ICA hinges on whether it is “[a]n agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to right-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation.” *Order Opening Docket* at 11 (quoting *In re Qwest Commc’ns Int’l Inc. Pet. For Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Sec. 252(a)(1)*), WC Docket No. 02-89, Mem. Op. and Order, FCC 02-276, ¶ 10 (Oct. 4, 2002)(“2002 *Qwest Order*”)(emphasis in original).

The Department’s resolution of the case at bar should provide Sprint and other carriers with that to which they are entitled by law: the availability on a non-discriminatory basis of terms and conditions for IP interconnection in an interconnection agreement subject to Sections 251/252 of the Act. This will ensure that Sprint and other competitive carriers can engineer their networks and interconnect with Verizon MA in a way that is efficient and forward looking. As demonstrated below, the IP Interconnection Agreements are interconnection agreements as that term is defined in the Act, and Verizon MA’s failure to make such terms available to other carriers through the statutorily prescribed process is discriminatory, violates the Act, is contrary to the public interest, and cannot be tolerated. For those reasons described below, the Department must find that the IP Interconnection Agreements are interconnection agreements under the Act.

II. INTERCONNECTION REQUIREMENTS OF THE TELECOMMUNICATIONS ACT OF 1996

A. Sections 251 and 252 of the Act Impose Obligations on Verizon MA to Facilitate Fair and Efficient Competition by Carriers Like Sprint

1. Section 251

Section 251 of the Act (in conjunction with the FCC's rules) establishes a system of obligations imposed on a sequentially narrowing class of carriers. First, Section 251 imposes a very basic requirement on all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 USC § 251(a)(1). The term "telecommunications carrier" includes the former monopoly carriers like Verizon MA, competitive landline providers like Comcast Phone of Massachusetts, Inc. (both individually and collectively with Comcast Corporation "Comcast") and other intervenors, and wireless providers like Sprint.

Second, Section 251(b) imposes additional obligations on "local exchange carriers," or "LECs," a category that includes both former monopoly landline carriers like Verizon MA and competitive local exchange carriers ("CLECs") like Comcast. Under this provision, LECs must resell their services, provide number portability and dialing parity, allow access to rights-of-way, and enter into reciprocal compensation arrangements with requesting carriers. *See* 47 USC § 251(b)(5).

Third – and most important for this case – Section 251(c) imposes the most stringent obligations on "incumbent local exchange carriers," or "ILECs," like Verizon MA, including the obligation to provide for the:

facilities and equipment of any requesting telecommunications carrier, interconnection with [the ILEC's] network (A) for the transmission and routing of telephone exchange service and exchange access.

47 USC § 251(c)(2)(A). The FCC has interpreted this interconnection obligation as follows:

The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic.

In the Matter of Implementation of the Local Competition Provisions in the Telecomms Act of 1996, 11 FCC Rcd 15499, at ¶ 172, First Report & Order (1996) (“*First Report and Order*”). ILECs have market power with respect to interconnection and have the motivation and ability to exercise their market power over competitors requesting interconnection. Sprint Exhibit No. 1, p. 27, line 18 – p. 28, line 3; and *see* 2Tr. p. 12, line 6 – p. 13, line 8, 2Tr. p. 68, line 11 – p. 71, line 7, and 2Tr. p. 150, lines 1-8. While Congress placed on all carriers the obligation to interconnect, it placed upon ILECs the requirement to interconnect at any technically feasible point within the ILEC’s network, to provide interconnection equal in quality to that provided by the ILEC to itself, any subsidiary or any other party, and on rates, terms and conditions that are just, reasonable and non-discriminatory. 47 USC § 251(c)(2)(A) - (D). Recognizing the ILECs’ market power, Congress drafted Sections 251(c)(2)(A) – (D) to mitigate or neutralize that market power in an effort to establish interconnection that is procompetitive and in the public interest.

a. The FCC’s implementing rules

The FCC adopted 47 CFR § 51.305 to flesh out ILECs’ obligation to offer “interconnection” to requesting carriers under Section 251(c)(2). That rule compels ILECs to provide “any technically feasible” interconnection, identifies several points that are *per se* technically feasible, and provides that the identified list is not exclusive. 47 CFR § 51.305(a)(2). The rule also provides that a carrier may not obtain interconnection solely for non-Section 251(c) purposes. 47 CFR § 51.305(b).

2. Section 252

Section 252 establishes a procedural process by which Section 251 duties are incorporated into enforceable contract terms. Once a requesting telecommunications carrier asks an ILEC for Section 251 services, the parties are obligated to negotiate and may enter into a binding, voluntary agreement. 47 USC § 252(a)(1). If parties do not agree on all terms, either party may petition the state public utilities commission, such as the Department, for compulsory arbitration of open issues. 47 USC § 252(a). Among the statutory rights awarded to carriers under the Act is the right to a state commission arbitration decision within 270 days from the date of a *bona fide* request. 47 U.S.C. § 252(b)(4)(C).

As the Ninth Circuit stated:

Under this new scheme, the state commissions are “‘deputized’ federal regulators,” *MCI Telecomm. Corp. v. Ill. Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000) and are confined to the role that the Act delineates.

Pac Bell v Pac-West Telecomm, Inc., 325 F3d 1114, 1126 n.10 (9th Cir 2003); *see also AT&T v Iowa Utils Bd*, 525 US 366 (1999). For this reason, courts show significant deference to a state commission’s resolution of factual disputes. *Mich Bell Tel Co v MFS ntelenet of Mich, Inc.*, 339 F3d 428, 433 (6th Cir 2003). It is well settled that state commissions may interpret the Telecommunications Act, including Sections 251 and 252, and reviewing courts will, where doubt exists, show deference to state commissions as they are charged with administering the Act. *See e.g. Centennial Puerto Rico License Corp. v. Telecomms. Regulatory Bd. Of P.R.*, 634 F.3d 17, 26 (1st Cir. 2011). As the Department itself noted, Congress vested in state agencies, such as the Department, authority to enforce and administer Sections 251 and 252 of the Act. *Order Opening Docket* at 7. This includes the “direct authority to determine whether an agreement is an interconnection agreement.” *Order Opening Docket* at 10. Additionally, state commissions have the authority to establish or enforce in an arbitrated agreement other

requirements of state law, commission rules, or considered policy determinations that a commission would follow in matters wholly within its jurisdiction, consistent with federal law. *S New England Tel Co v Comcast Phone of Conn, Inc*, 718 F.3d 53, 58 (2d Cir 2013) (“*SNET v. Comcast*”).

Once an agreement is reached, whether by arbitration or negotiation, it must be submitted to a state commission for approval. 47 U.S.C. § 252(a)(1) and (e)(1). State commissions are required to make copies of such filed agreements available for public inspection within ten days of the approval of an agreement. *Id.* at § 252(h). ILECs are obligated to make available to requesting carriers, upon the same terms and conditions, any interconnection agreement to which it is a party. *Id.* at § 252(i).⁴ The obligation to file interconnection agreements traditionally has been broadly interpreted as a means of ensuring that local markets are competitive and that interconnection is available on just, reasonable and nondiscriminatory terms. *See First Report and Order*, at 15583-84. The FCC considers Section 252(i) to be “a primary tool of the 1996 Act for preventing discrimination under section 251[.]” and recognizes that “the primary purpose of section 252(i) [is] preventing discrimination [.]” *Id.* at ¶¶ 1296 and 1315.

The role of the state commissions under Section 252 has proven essential over the past 18 years since the passage of the Act. Sprint Exhibit No. 2 at p. 2, line 20 – p. 3, line 16. The presence of state commissions, like the Department, as regulatory backstops has thwarted carriers, and especially ILECs, from avoiding the obligations imposed under Section 251 of the Act. *Id.*

⁴ The FCC has interpreted Section 252(i) as being limited to the adoption of the entire agreement, not mere sections thereof. 47 C.F.R. § 51.809(a); *see also In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No.01-338, Second Report and Order, 19 FCC Rcd, 13494 (2004) (“*Second Report and Order*”).

3. **The types of agreements that must be filed with a state commission under the Act includes any agreement pertaining to rights, duties or obligations arising under the Act.**

While the Act requires “interconnection agreements” to be filed, that obligation would lack meaning without a finite understanding of which agreements are subject to the Act’s filing requirement. Fortunately, the FCC has settled this question. Over a decade ago, the FCC found “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 agreement that must be filed pursuant to section 252(a)(1).” *2002 Qwest Order* at ¶ 8. The FCC’s interpretation of the Act was intentionally and appropriately broad. By indicating that agreements creating ongoing obligations **pertaining** to rights and obligations arising under Section 251 are themselves interconnection agreements under the Act, the FCC broadly construed the Act consistent with the pro-competitive, anti-discriminatory framework of the Act. *Id.*

In reaching its conclusion, the FCC expressly rejected a more “cramped reading.” Qwest urged the FCC to adopt an interpretation of the Act that would limit interconnection agreements to merely the schedule of charges and description of services to which such charges apply. *Id.* The FCC indicated that it did not “believe that section 252(a)(1) can be given the cramped reading that Qwest proposes.” *Id.* Reviewing specifically whether dispute resolution and escalation provisions are *per se* outside the scope of Section 252(a)(1), the FCC found that “provisions **relating** to the obligation set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements.” *Id.* at ¶ 9 (emphasis added). Reasoning that because such provisions relate to the quick and effective resolution of disputes regarding Section 251(b) or (c)

obligations, such terms must be “offered and provided on a non-discriminatory basis” in order to prevent discrimination by ILECs as Congress intended. *Id.*

The construct the FCC established in the 2002 *Qwest Order* is clear and intentionally broad. Agreements **pertaining** or **relating** to the rights and obligations set forth in Sections 251(b) or (c) of the Act are interconnection agreements that must be filed with a state commission under the Act. The FCC’s decision in the 2002 *Qwest Order* goes further to indicate “that the states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard.” *Id.* at ¶ 12. The foregoing makes abundantly clear that the FCC interprets the Act to create an extremely broad obligation to file any and all agreements that contain an ongoing obligation relating or pertaining to section 251(b) or (c) rights and obligations, and the state commissions are tasked, in the first instance, with determining whether such a contract is an interconnection agreement. The Act and the FCC’s interpretation thereof, reserves to the state commissions, not ILECs, the discretion to determine whether an agreement is an interconnection agreement that must be filed and made available to other carriers. The requirement to file should be broadly applied to ensure the Act’s intent is followed. A broad application of the filing requirement, erring on the side of caution, leaves room for a determination that an agreement filed by an ILEC is not a Section 251/252 interconnection agreement. But to allow ILECs the discretion to determine which agreements must be filed with state commissions is tantamount to leaving the fox guarding the chicken coop.

4. Section 252 requires the Department to advance policy goals

Further guidance to state commission on how to analyze agreements under Section 252 has been offered by appellate courts. When a state commission applies Section 252, it must remember the policy goals that underlie Section 251. As the Sixth Circuit observed:

Interconnection agreements are quasi-governmental agreements used to accomplish the goal of the Telecommunications Act by fostering competition in local telecommunications markets. As we held earlier, the Commission has the authority under the Act to approve rates and terms of interconnection agreements in order to advance the goal of greater competition.

Quick Commc'ns, Inc v Mich Bell Tel Co, 515 F3d 581, 587 (6th Cir 2008). Similarly, the Eighth Circuit noted:

[I]f a provision of the Act is vague we are inclined to interpret the provision in a manner that promotes competition. It is undisputed that Congress passed the Act with the intention of eliminating monopolies and fostering competition.

WWC License, LLC v Boyle, 459 F3d 880, 891 (8th Cir 2006). As a result, the Department should resolve open questions in this case with an eye toward advancing Congress's goals of fostering competition and eliminating ILEC market power over interconnection. The Department can only fulfil its role as an instrument for implementation and advancement of the Act's goals by recognizing that it has the authority to require the filing of the IP Interconnection Agreements, that the filing of those agreements is necessary to ensure Verizon MA is not able to discriminate in favor of its business partner, Comcast, and that the right of other carriers to adopt the IP Interconnection Agreements – a right arising under and guaranteed by the Act – is neither trampled nor compromised.

III. IP INTERCONNECTION IS REQUIRED UNDER THE ACT

A. Section 252 provides the Department with jurisdiction and authority to determine whether the IP Interconnection Agreements are interconnection agreements under the Act

The Department should affirm that interconnection in IP is subject to Sections 251 and 252 of the Act to the same extent as TDM interconnection. The Department has already accurately concluded that it has the jurisdiction and authority to determine that the exchange of voice traffic in IP format is subject to sections 251 and 252 of the Communications Act, 47 U.S.C. §§ 251 and 252. *Order Opening Docket* at 10, fn. 6. As discussed below, the Department

also has the jurisdiction and authority to declare that the IP Interconnection Agreements are interconnection agreements under the Act, require the filing of the IP Interconnection Agreements with the Department, and require the IP Interconnection Agreements be made available for adoption by other carriers. This being said, the Department does not have to conclude that IP interconnection is subject to Sections 251/252 for it to determine that the IP Interconnection Agreements are interconnection agreements as the test for that determination is whether there is an ongoing obligation that pertains to rights and obligations under Section 251.

1. The Act and the FCC's rules extend to IP Interconnection

The Department's authority to review the IP Interconnection Agreements emanates from Sections 251 and 252 of the Act. Section 251(c)(2) obligates Verizon MA – as an ILEC – to provide “the facilities and equipment” for interconnection with its network. The Act is, on its face, technology neutral – there is no reference to TDM, IP, or any other specific technology. Sprint Exhibit No. 1 p. 11, line 1 – p. 13, line 3. Nor do the limitations that follow speak to any particular technology. Instead, interconnection must be “technically feasible,” and “at least equal in quality to that provided by the local exchange carriers to itself or to any subsidiary [or] affiliate.” 47 USC § 251(c)(2)(B)-(C). There is nothing in that language that would distinguish TDM technology from IP technology. Sprint Exhibit No. 1 p. 11, lines 3-15.

The FCC's rules – if anything – go farther than Section 251(c) to bring new technologies into play. FCC Rule 51.305 incorporates the same “technically feasible” standard mandated by Congress, with no limitation on technology. 47 C.F.R. § 51.305. The FCC provided a list of technically feasible points, but that list, based on 1996 technology, was not made exclusive. 47 C.F.R. § 51.305(a). Instead, the FCC “anticipate[d] and encourage[d] parties and the states, through negotiation and arbitration, to identify additional points of technically feasible interconnection.” *First Report & Order*, ¶ 212. Furthermore, FCC Rule 51.305(c) provides:

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

47 CFR § 51.505(c) (emphasis added). In the underlined sentence, the FCC recognized that there could be multiple protocol standards that are technically feasible.⁵

The FCC affirmed in the *CAF Order* that “section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.” *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at ¶ 1342 (released Nov. 18, 2011) (“*CAF Order*”) (emphasis added); *see also CAF Order*, ¶ 1335 (Negotiation “of interconnection requirements under the Communications Act [] does not depend upon the network technology underlying the interconnection whether TDM, IP or otherwise.”), *Id.* at ¶ 1381 (“We agree with commenters that “nothing in the language of [s]ection 251 limits the applicability of a carrier’s statutory interconnection obligations to circuit-switched voice traffic” and that the language is in fact technology neutral.”)(emphasis added); *see also* Sprint Exhibit No. 1 at p 11, line 1 – p. 13, line 3.

⁵ As elucidated at the hearing, every major communications system in use in America today shares fundamental similarities in the nature of their traffic transmission. Both TDM and IP networks transmit their traffic in digital format (i.e. ones and zeroes). 2Tr. p. 28 – 29 (“Q: Are you aware of any common communications technology in use in America today, that’s not a bunch of ones and zeroes?; A: None in use today.”). While IP technology does allow some efficiencies over other technologies, is it simply another form of digital communications, and in that regard s is not entirely dissimilar to those that preceded it. *See generally* CC Exhibit 3.

While the FCC agreed to take further comment on IP Interconnection issues, the FCC unequivocally directed carriers to negotiate in good faith without regard to technology or protocol:

[E]ven while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.

CAF Order, ¶ 1011 (emphasis added). When it ordered good-faith negotiations, the FCC plainly invoked Section 251, which includes an obligation to negotiate in “good faith.” *See* 47 USC § 251(c)(1). The FCC equally plainly indicated that good-faith negotiations for interconnection in IP are subject to the Act. There is simply no logical basis upon which to assert that although carriers’ negotiations for interconnection in IP are subject to the good-faith negotiation requirements of the Act, the product of such negotiations are not themselves interconnection agreements under the Act. Nevertheless, it is just such illogic that underlies Verizon MA’s position in the case at bar. The Department should hold that the Act and the FCC’s rules and orders compel a finding that IP interconnection is within the scope of Section 251.

2. Three state commissions have decided that IP interconnection is within the scope of Section 251

Given the clarity of federal law, it is not surprising that three state commissions have already arbitrated the issue of IP interconnection and another has implemented rules ensuring that it can arbitrate demands for IP interconnection. Sprint Exhibit No. 1 at p. 13, line 5 – page 19, line 2. In 2013, the Michigan Public Service Commission (“MPSC”) arbitrated a dispute between Sprint Spectrum L.P. and Michigan Bell Telephone Company d/b/a AT&T Michigan (“AT&T Michigan”) and issued an order requiring AT&T Michigan to interconnect with Sprint in IP. *In the matter of petition of Sprint Spectrum L.P. for arbitration pursuant to Section 252(b) of*

the Telecommunications Act of 1996 to establish interconnection agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan, Case No. U-17349, Order December 6, 2013 (“MPSC Decision)(attached to Sprint Exhibit No. 1 as Exhibit JRB-3). The MPSC found that the interconnection requirement of Section 251(c)(2) of the Act extends to IP interconnection. MPSC Decision at 7 (“[T]he Commission finds that pursuant to 251(c)(2)(A), an ILEC, such as AT&T Michigan, not only must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection, but also IP interconnection, with the local exchange carriers network – for the transmission and routing of telephone exchange service and exchange access.”)(emphasis added).

The MPSC recognized the FCC’s position that the Act is technology neutral and interconnection obligations are unchanged by technology choice. MPSC Decision at 4-5. Furthermore, the MPSC found that the FCC has not disallowed state commissions from resolving IP interconnection disputes or even cautioned them in that regard, and that state commissions are free to address question related to IP interconnection so long in so doing a commission does not violate federal law. *Id.* at 5. The MPSC went on to reject AT&T Michigan’s arguments that a carrier requesting IP interconnection is not a telecommunications carrier. *Id.* at 7. As additional grounds supporting its conclusions, the MPSC concluded that AT&T’s actions would violate the anti-discrimination provisions of the Act, Section 251(c)(2)(C), if it were to permitted to provide IP interconnection to one carrier while denying IP interconnection to other requesting carriers. *Id.* at 9.

In 2012, the Puerto Rico Telecommunications Regulatory Board (“PRTRB”) arbitrated a demand by a competitive carrier (Liberty Cablevision) to obtain IP interconnection from an ILEC (Puerto Rico Telephone). *In the Matter of Liberty Cablevision of Puerto Rico, LLC*

Petition for Arbitration, PRTRB Docket No JRT-2012-AR-0001, Report & Order (Sept. 25, 2012) (attached to Sprint Exhibit No. 1 as Exhibit JRB-1). Puerto Rico Telephone had argued, predictably, that the PRTRB was without jurisdiction and authority to do so. *Id.* Not convinced, the PRTRB recognized the FCC’s clear commitment to the promotion of IP-based services, and determined that “Liberty’s request for a means to drive IP-to-IP interconnection negotiations to conclusion is consistent with the FCC’s perspective.” *Id.* at 14. The PRTRB also found that “Liberty’s request is reasonable, not prohibited by federal law, consistent with the FCC’s guidance regarding promotion of IP broadband networks, and consistent with the Board’s duty to promote competition, investment, and interconnection in Puerto Rico.” *Id.* at 15.

The Public Utilities Commission of Ohio (“PUCO”) reached a similar conclusion late last year. *In the Matter of the Commission’s Review of Chapter 4901:1-7, of the Ohio Administrative Code, Local Exchange Carrier-to-Carrier Rules*, Ohio Commission Case No. 12-922-TP-ORD, Finding & Order (Oct. 31, 2012) (attached to Sprint Exhibit No. 1 as Exhibit JRB-2). Rejecting arguments made by AT&T, Cincinnati Bell, and other ILECs, the PUCO adopted rules that will allow it to arbitrate demands for IP interconnection. *Id.* at 4. The PUCO found that “federal law is technology neutral,” and that no federal law prohibits the Commission from implementing the FCC’s expectation that parties will negotiate in good faith for IP interconnection. *Id.* at 5.

The Department should heed the conclusions reached by the commissions in Michigan, Puerto Rico and Ohio and find that Verizon MA’s IP Interconnection Agreements are subject to the requirements of Sections 251 and 252. Not a single state commission presented with this issue has determined that IP interconnection is not subject to Sections 251/252 of the Act.⁶

⁶ See Sprint Exhibit 1, p. 13, line 5 – p. 19, line 2 (noting prior state commission decisions, including the Illinois commission’s decision not to decide the particular issues relating to IP interconnection).

3. The Second Circuit's *SNET v. Comcast* decision provides additional support for the Department exercising jurisdiction

The Second Circuit has quite recently explained why a state commission need not wait for definitive FCC action to decide an issue like the one being considered by the Department in the instant docket. The court stated:

Accordingly, Congress included a savings clause in the TCA (Telecommunications Act of 1996) to protect state experimentation with interconnection obligations. In that regard, “Congress expressly left with the states the power to enforce ‘any regulation, order, or policy of a State commission that ... establishes access and interconnection obligations of local exchange carriers; ... is consistent with the requirements of this section; and ... does not substantially prevent implementation of the requirements of this section and the purposes of this part.’” *Global Naps, Inc.*, 427 F. 3d at 46 (quoting 47 U.S.C. § 251(d)(3)(A)-(C)). The TCA, then, permits state commissions to regulate interconnection obligations so long as they do “not violate federal law and until the FCC rules otherwise.” *See Iowa Network Servs., Inc. v. Qwest Corp.* 466 F.3d 1091, 1097 (8th Cir. 2006).

SNET v. Comcast, at 58. Accordingly, the Second Circuit affirmed a decision of the Connecticut DPUC⁷ to regulate transit service even though the FCC has not definitively determined that transit is an interconnection obligation of ILECs like Verizon MA. The reasoning of the Second Circuit in *SNET v. Comcast* is directly applicable to the matter before the Department and should persuade the Department that it can order IP interconnection (as other state commissions have done) even if it considers there to be an absence of definitive FCC action. The Department has long had a policy of encouraging competition and combatting manipulation of the market by dominant carriers, and as indicated in *SNET v. Comcast*, the Act protects the Department’s authority to enforce its policies.

⁷ The agency formerly known as the Department of Public Utility Control (“DPUC”) was renamed the Public Utilities Regulatory Authority (“PURA”).

IV. POLICY CONSIDERATIONS SUPPORT THE DEPARTMENT'S EXERCISE OF AUTHORITY OVER IP INTERCONNECTION

Strong policy considerations weigh in favor of the Department requiring Verizon MA to comply with the Act and file the IP Interconnection Agreements. The FCC has set an “express goal of facilitating industry progression to all-IP networks, and ensuring the transition to IP-to-IP interconnection is an important part of achieving that goal.” *CAF Order*, ¶ 1335. Transitioning of service provider networks to IP without taking the necessary steps to implement IP interconnection between carriers is nonsensical. The FCC further noted in the *CAF Order* that ILECs may have incentives to refuse reasonable interconnection to other network operators, and negotiations between ILECs and requesting carriers are not equivalent to traditional commercial negotiations. *CAF Order*, ¶ 1337.

If the Department accepts Verizon MA’s arguments and declines to fulfill its statutory role, Verizon MA will have an incentive to delay or restrict IP interconnection while at the same time continuing to deploy its own IP network and interconnect only with carriers of its choosing. Competitors unable to reach reasonable commercial terms will be deprived of their statutory rights to recourse via the Department. Sprint Exhibit No. 1 at p. 19, line 10 – p. 20, line 2. A decision by the Department to exercise its jurisdiction over IP interconnection will ensure that Massachusetts is at the forefront of IP compatible network deployment.

The Department’s exercise of jurisdiction is also necessary to ensure that Verizon MA cannot exploit its market power to maintain inefficient networks for its own financial gain. 2Tr. p. 124, line 17 – p. 126, line 12; 2Tr. p. 150, lines 1-8; *see also* DTC to Sprint Record Request No. 1. As Mr. Burt explained, Sprint incurs significant expenses to maintain TDM interconnection with Verizon MA. *Id.* With IP interconnection, virtually all of those expenses can be eliminated. *Id.* Yet as long as Verizon MA is permitted to delay or avoid interconnecting

in IP for calls to its TDM customers, and allowed to continue to extract considerable revenues for TDM interconnection, it will do so. If the Department allows negotiations to occur on a commercial basis, without a regulatory backstop as suggested by Verizon MA, Verizon MA will not be incented to allow *all* carriers to enjoy the efficiency of IP Interconnection on reasonable terms, and will be able to discriminate amongst carriers as the instant case illustrates it has already done by interconnecting in IP with Comcast, but not other carriers. *Id.*

These policy considerations should give the Commission comfort that the right interpretation of federal law is also the right result for Massachusetts consumers. *See, e.g., WWC License, LLC v Boyle*, 459 F3d 880, 891 (8th Cir 2006) (“First, all else being equal, if a provision of the Act is vague we are inclined to interpret the provision in a manner which promotes competition. It is undisputed that Congress passed the Act with the intention of eliminating monopolies and fostering competition.”).

V. THE RECORD ESTABLISHES THAT THE IP INTERCONNECTION AGREEMENTS ARE INTERCONNECTION AGREEMENTS UNDER THE ACT

As stated earlier herein, a contract is an interconnection agreement if it contains ongoing obligations relating or pertaining to interconnection or reciprocal compensation. *2002 Qwest Order* at ¶ 8. Illustrative of its broad reading of the statute, the FCC concluded that even “agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements.” *Id.* at ¶ 9.

Applied to the matter at bar, the rights and duties arising out of Sections 251 (b) and (c) that are implicated by the IP Interconnection Agreements are those relating to interconnection and reciprocal compensation. The FCC defines interconnection as “the physical linking of two networks for the mutual exchange of traffic.” *First Report and Order* at ¶ 176. Section

251(c)(2) of the Act requires ILECs to provide requesting carriers interconnection for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the ILEC network, that is at least equal in quality to that provided by the ILEC to itself, any subsidiary, affiliate or other party to which the ILEC provides interconnection, and on rates, terms and conditions that are just, reasonable and non-discriminatory. 47 U.S.C. § 251(c)(2)(A) – (D). If the IP Interconnection Agreements contain ongoing provisions that pertain or relate to interconnection, they constitute interconnection agreements under the Act.

Reciprocal compensation is a duty imposed by the Act on all local exchange carriers. Specifically, the Act requires all local exchange carriers “to establish reciprocal compensation arrangements for the transport and termination of telecommunications.” 47 U.S.C. § 251(b)(5). The FCC explained that the use of the term “telecommunications” as used in Section 252(b)(5) of the Act “encompasses communications traffic of any geographic scope (*e.g.*, “local,” intrastate,” or “interstate”) or regulatory classification (*e.g.*, “telephone exchange service,” “telephone toll service,” or “exchange access”).” *CAF Order* at ¶ 761. And since the FCC has ruled that Interconnected VoIP service is “telecommunications” under the Act, *see In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 06-94, Report and Order and Notice of Proposed Rulemaking, at ¶ 35 (rel. June 27, 2006)(Interconnected VoIP service is telecommunications)(“*Universal Service Contribution Methodology*”), it is inescapable that the reciprocal compensation obligations of the Act apply to VoIP traffic. *See also CAF Order* at ¶954 (“VoIP services can be encompassed by section 251(b)(5).”). Thus, as with interconnection, if the IP Interconnection Agreements contain ongoing provisions that

pertain or relate to reciprocal compensation, they constitute interconnection agreements under the Act.

It should be noted that the FCC further defined in its rules the transport and termination obligations found in the Act. The FCC defines Transport as “the transmission and any *necessary* tandem switching of telecommunications traffic ... from the interconnection point between the two carriers to the terminating carrier’s end office switch ... *or equivalent facility*.” 47 C.F.R. § 51.701(c)(emphasis added). The FCC defined Termination as “the switching of telecommunications traffic at the terminating carrier’s end office switch, *or equivalent facility*, and delivery of such traffic to the called party’s premises.” 47 C.F.R. § 51.701(d)(emphasis added). In each instance, the emphasis provided within the definition illustrates that particular facilities or functions within the TDM network architecture need not be replicated or occur for transport and termination to occur in an IP network. The definitions acknowledge the TDM architecture prevalent when the rules were drafted, but the rules are technology neutral. Thus, the FCC’s definition of reciprocal compensation,⁸ too, is technology neutral.

The discussion below illustrates that the IP Interconnection Agreements contain ongoing provisions relating or pertaining to (or directly implicating) interconnection and/or reciprocal compensation, and are therefore interconnection agreements under the Act.

A. Verizon’s and Comcast’s VoIP services are Interconnected VoIP Services

As an initial matter, it must be noted that the record firmly establishes that both Verizon’s and Comcast’s VoIP services are Interconnected VoIP services as that term is defined by the FCC’s rules. *See* 47 C.F.R. § 9.3. During cross-examination it was established that Verizon

⁸ “[A] reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier’s network facilities of telecommunications traffic that originates on the network facilities of the other carrier.” 47 C.F.R. § 51.701(e). It should further be noted that establishing bill and keep arrangements is adequate to satisfy the obligations arising under Section 251(b)(5) of the Act. *See also* 47 C.F.R. § 51.713.

MA's FiOS service enables real-time, two-way voice communications, 1Tr. p. 25, line 14 – p. 26, line 9; requires a broadband connection from the customer's home, 1Tr. p. 105, lines 9-12; requires internet protocol-compatible customer premises equipment, 1Tr. p. at 105, line 13 – p. 106, line 12; and enables calls placed to and received from the public switched telephone network, 1Tr. 106, lines 13-16. *See also* CC-5. Similarly, the record establishes that Comcast's VoIP services (XFINITY Voice, for residential customers and Comcast Business for business customers (collectively herein "XFINITY")) meet the definition of an Interconnected VoIP service. *See* 1Tr. p. 25, line 14 – p. 26, line 9; and CC-6 and CC-7.

The significance of these services meeting the definition of Interconnected VoIP services is that they should be regulated as such. *See generally Universal Service Contribution Methodology* at ¶ 35. The record is abundantly clear that the base service provided by FiOS and XFINITY is a voice service distinct from the many features with which it is bundled and sold. 1Tr. p. 165, line 10 – p. 166, line 1; and 1Tr. p. 173, lines 1-15. And regardless of the bundling of the Interconnected VoIP service (voice) with many other services, or the sale of such Interconnected VoIP service in a package, it remains an Interconnected VoIP service and remains telecommunications. Sprint Exhibit 2, p. 12, line 1 – p. 13, line 9. While Sprint's position remains that the regulatory classification of a retail voice service is irrelevant to whether it is subject to Sections 251/252 – Sprint contends the Act applies regardless of such classification, there can be no doubt that the voice component of FiOS and XFINITY is telecommunications according to the FCC's rules and orders and is subject to Section 251/252 of the Act.

B. The obligations in the IP Interconnection Agreements are ongoing

The record establishes that [BEGIN HIGHLY SENSITIVE CONFIDENTIAL]

[END HIGHLY SENSITIVE CONFIDENTIAL] Based on the foregoing, there can be no dispute that the IP Interconnection Agreements are ongoing.

- C. **The obligations in the IP Interconnection Agreements relate or pertain to interconnection and/or reciprocal compensation**
1. **The VoIP-to-VoIP Agreement contains provisions relating or pertaining to interconnection and/or reciprocal compensation¹⁰**

The VoIP-to-VoIP Agreement contain numerous provisions that implicate Sections 251(b) and (c) of the Act. **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

- a. **Interconnection**

⁹ The Department should note that the Traffic Exchange Agreement is sometimes referred to as the “TEA.” *See e.g.* 2Tr. p. 109, line 17.

¹⁰ It is not Sprint’s intention to illustrate each and every instance in which a provision of the IP Interconnection Agreements is relevant to the analysis required under the 2002 *Qwest Order*. Sprint provides examples that it believes are persuasive. The Department or other Intervenors may have additional examples that are illustrative and persuasive.

[END HIGHLY SENSITIVE CONFIDENTIAL]

The Department can review the TDM interconnection agreement between Verizon MA and Comcast (“VZ-CMCST ICA”) for an example of the separation of technical details from actual contract terms contained in an interconnection agreement.¹² For instance, in the VZ-CMCST ICA reference is made to a separate “Joint Grooming Process/Plan” that is not part of the agreement itself. VZ-CMCST ICA at § 10.1. That Joint Grooming Process/Plan allows the parties to define and detail – separate and apart from the confines of the interconnection agreement – their “agreement on physical architecture,” standards to ensure applicable grades of service, duties and responsibilities with respect to administration and maintenance of trunk groups, additional interconnection points, and end office to end office trunks. VZ-CMCST ICA § 10.1(a)-(g). The parties “will exchange information to achieve desired reliability ... [and] ...

¹¹ The details of what technological and architectural terms are contained in the **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

[END HIGHLY SENSITIVE CONFIDENTIAL]

¹² The Department’s rules allow it to review any materials in its own public records, so it is free to review any interconnection agreements it has on file. 1Tr. p. 130, line 12-14; *see also* 220 C.M.R. §1.10(2) and (3). The Department can also find the Verizon-Comcast interconnection agreement at Verizon MA Exhibit 3 (response to CC-VZ 1-3).

work cooperatively to apply sound network management principles to alleviate or to prevent congestion ...” VZ-CMCST ICA §9.1. Comcast has the right to select among any of four (4) different methods of interconnection. VZ-CMCST ICA § 4.3.1. These examples are merely illustrative of the fact that the more finite technical details that fully effectuate interconnection agreements between carriers are often left to the business units and engineers rather than contained in their entirety in the interconnection agreement between the Parties.

[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]

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¹³ **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

[END HIGHLY SENSITIVE CONFIDENTIAL]

b. Reciprocal Compensation

[END HIGHLY SENSITIVE CONFIDENTIAL]

2. The Traffic Exchange Agreement contains provisions relating or pertaining to interconnection and/or reciprocal compensation

Like the VoIP-to-VoIP Agreement, the Traffic Exchange Agreement is an ongoing contract containing provisions relating or pertaining to interconnection and/or reciprocal compensation. **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

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a. Interconnection

¹⁴ **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

[END HIGHLY SENSITIVE CONFIDENTIAL]

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¹⁵ While not a point Sprint addresses herein, the Department **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

[END HIGHLY SENSITIVE CONFIDENTIAL]

¹⁶ In addition, and as noted above **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]**

[END HIGHLY SENSITIVE CONFIDENTIAL]

b. Reciprocal Compensation

¹⁷ It may also be noted that since the [BEGIN HIGHLY SENSITIVE CONFIDENTIAL]

[END HIGHLY SENSITIVE CONFIDENTIAL]

3. **The Settlement Agreement contains provisions relating or pertaining to interconnection and/or reciprocal compensation**

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¹⁸ [BEGIN HIGHLY SENSITIVE CONFIDENTIAL]

[END HIGHLY SENSITIVE CONFIDENTIAL]

[END HIGHLY SENSITIVE CONFIDENTIAL]

The preceding discussion illustrates that IP Interconnection Agreements individually and collectively constitute interconnection agreements pursuant to the standard established in the 2002 *Qwest Order*. As such, those agreements are subject to the panoply of requirements imposed by the Act, including that they be filed and made available for adoption by competing carriers.

VI. THE DEPARTMENT MUST PREVENT VERIZON FROM CONTINUING TO VIOLATE SECTIONS 251(C)(2) AND 251(i)

Section 251(c)(2) of the Act requires ILECs to provide interconnection to requesting carriers and imposes certain further obligations regarding the nature of such interconnection. The record is clear that the rights arising under Section 251(c)(2) are imperative to the functioning of a competitive market. Sprint Exhibit No. 1 at pgs. 25-28. Many of the requirements of Section 251(c)(2) have been discussed at length *supra*. A point not discussed above, however, is whether Verizon MA, by failing to file and permit adoption of the IP Interconnection Agreements is violating the rights and obligations arising under Section 251(c)(2)(C) and (D), Section 252(e) and Section 252(i). The Act requires Verizon MA to provide, for any requesting telecommunications carrier, interconnection that is at least equal in quality to that provided by Verizon MA to itself or any other carrier. 47 U.S.C. § 251(c)(2)(C). A closely related requirement imposed on ILECs by the Act is the obligation to provide

interconnection with Verizon MA's network, for any requesting carrier, on rates, terms and conditions that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 251(c)(2)(D).

Another right afforded by the Act is that it requires that LECs, which includes ILECs, "shall make available any interconnection ... provided under an agreement approved under this section ... to any other requesting telecommunications carrier upon the same terms and conditions ..." 47 U.S.C. § 252(i). And as Section 252(e)(1) requires the submission of interconnection agreements to state commissions for approval, the Act creates a comprehensive system under which competitive carriers:

- Are assured the rates, terms and conditions of interconnection are just, reasonable and nondiscriminatory, and of equivalent quality (Section 251(c));
- Can review the interconnection terms of other carriers in the market (whose interconnection agreement must be submitted for approval by a state commission) and make a reasoned and informed decision on whether currently available terms adequately match its needs (Section 252(e)(1)); and
- Can adopt an existing interconnection agreement, thereby significantly reducing transaction costs (Section 252(i)).

These three sets of rights are tightly interwoven and a failure by an ILEC to comply with any one of them has the net effect of depriving a carrier of all three of them.

[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]

[END HIGHLY SENSITIVE CONFIDENTIAL]

VII. THE RECORD ILLUSTRATES COMPELLING REASONS FOR THE DEPARTMENT TO EXERCISE ITS JURISDICTION

A. The Department's exercise of jurisdiction over IP interconnection will encourage proliferation of competition, advanced services and broadband

The interconnection of carriers' networks in IP is an issue of tremendous importance. The Supreme Court has recognized that interconnection between networks is important to competition because such interconnection "ensures that customers on a competitor's network can

call customers on the incumbent's network, and *vice versa*." *Talk America v. Michigan Bell*, 131 S. Ct. 2254, 2258 (2011). The National Broadband Plan recognizes that IP interconnection for voice services is important to the deployment of broadband networks: "Without interconnection, a broadband provider ... is unable to capture voice revenues that may be necessary to make broadband entry economically viable." *Id.* at 49, Recommendation 4.10. Further, IP interconnection will almost certainly accelerate consumer adoption of broadband services in Massachusetts because between the sizable reduction in the cost of providing voice services and the enabling of new features altogether, consumers will have added incentives to subscribe to broadband services. *See* DTC to Sprint Record Request No. 1, and 2Tr. p. 44, line 20 – p. 45, line 13. Finally, the public is better served when unnecessary interconnection costs are eliminated altogether as such costs provide no benefit whatsoever for the public, and in fact are contrary to the public interest because without them competitors could better utilize limited financial resources on product development, network expansion, price reductions, etc., all of which are in the public interest. For these reasons the Department should take all reasonable and permissible steps to ensure that carriers seeking IP interconnection for the exchange of voice traffic are able to obtain such interconnection from Verizon MA so such carriers are able to maximize the dramatic reductions in cost available from using IP rather than TDM networks.

The availability of IP interconnection has not kept pace with the deployment of IP in internal networks. Similarly, the record demonstrates that while some progress has been made with IP voice interconnection among competitive carriers, little to no progress has been made with incumbent LECs. The reason for this lack of progress is that ILECs have adopted an anticompetitive interpretation of the Act and have resisted IP voice interconnection with competitors. *See* National Broadband Plan at 49. The fact is that a transition to IP networks

cannot meaningfully begin until ILECs acknowledge their basic IP voice interconnection obligations and begin to negotiate reasonable IP voice interconnection agreement under the process delineated by Sections 251 and 252 of the Act. There is immediate benefit to IP interconnection in that it enables certain end user features sooner than later, e.g. high-definition voice. *See* 1Tr. p. 171, lines 13-21. The longer IP interconnection is delayed the longer users of IP-based voice services are deprived of gaining the full benefit of the technology, which lessens the motivation of users to switch from TDM to IP-based services.

B. Without Department Action Verizon MA will continue to be incentivized to collect funds for TDM facilities that it sells to carriers seeking IP interconnection

Much of the conversation regarding IP interconnection focuses on the efficiency of the protocol and the cost-savings that can be captured due to the efficiencies available through use of IP technology for interconnection. *See* 2Tr. p. 124, line 12 – p. 126, line 12; Sprint Exhibit 1 at p. 26, line 11 – p. 27, line 2. Those cost savings can be significant. DTC to Sprint Record Request No. 1. It must also be acknowledged that at the same time a carrier lowers its costs by implementing more efficient IP interconnection, the ILEC is most often losing interconnection revenues from that carrier.

An efficient means of interconnection is to interconnect at points where both carriers already have facilities to deliver traffic. IP not only allows carriers to interconnect at different points than ordinarily the case in TDM, but it is generally accepted that fewer points of interconnection are required. 2Tr. p. 45, lines 21-24. By utilizing its existing IP facilities, a carrier is able to achieve millions of dollars of annual cost savings. 2Tr. p. 125, lines 15-23. Those cost savings represent DS-1equivalents or other facilities that a carrier like Sprint no longer needs to purchase. 2Tr. p. 124, line 21 – p. 125, line 14. And much of those avoided costs represent interconnection expenses that would otherwise be paid to an ILEC, like Verizon MA.

Id., see also 2Tr. p. 126, lines 22-24. Additionally, some of the costs could be for expenses incurred for facilities purchased to avoid higher rates and costs for the same facilities provisioned by an ILEC like Verizon MA. See DTC to Sprint Record Request 1.

Indeed, the record shows that IP interconnection can replace expensive Feature Group D trunks, TDM trunks for CLEC local traffic, and TDM trunks for wireless traffic. 1Tr. p. 132, line 23 – p. 133, line 10. Not only can carriers interconnecting in IP avoid the expensive trunks that are required in TDM interconnection, but IP interconnection requires fewer interconnection facilities in general. 1Tr. p. 133, lines 11-18. Carriers such as Sprint and the CLEC intervenors desire to interconnect with Verizon MA in IP to realize these significant cost savings, **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL]

Verizon MA has admitted that there can be benefits to exchanging traffic in IP even if such traffic was originated in TDM. 1Tr. p. 124, lines 1-4. Such benefits, Verizon MA acknowledged, can include financial incentives. 1 Tr. p. 124, lines 18-22. Further, Verizon MA has admitted that there is no technical difference to Verizon MA if the traffic passed to Verizon MA originates in VoIP or originates in TDM and is converted to VoIP. 1 Tr. p. 141, lines 19-23. Despite these admissions, Verizon MA is candid that it is not seeking to reach IP interconnection with other carriers for its TDM customer-base. 1 Tr. p. 82, line 24 – p. 83, line 20. It is not negotiating any agreements that involve both TDM and IP traffic. 1 Tr. p. 87, lines 7-11. And,

Verizon MA makes clear that carriers with which it has reached agreements to exchange traffic in IP are still required to maintain two sets of facilities – TDM and IP – to handle their traffic exchanged with Verizon. 1 Tr. p. 89, line 11 – p. 90, line 14.

That Verizon MA is only willing to offer IP interconnection for VoIP originated and terminated traffic is made all the more clear from Verizon MA's descriptions of IP Interconnection as "IP VoIP Interconnection" throughout its testimony. *See* Verizon MA Exhibit 1, p. 13, lines 19-2- (discussion of Verizon's incentives to "enter into IP interconnection arrangements for VoIP traffic"); Verizon MA Exhibit 2, p. 4, line 17 (discussing Verizon pursuing "IP VoIP interconnection" arrangements), and *Id.* at 5; *see also* Verizon MA Exhibit 5 (letters inviting carriers to negotiate interconnection agreements, but only for VoIP traffic), and 1Tr. p. 80, lines 11-13 ("This offer as we've said, was to initiate a commercial interconnection arrangement for the exchange of VoIP traffic."). There can be no mistake that Verizon MA sees IP interconnection only applying to VoIP traffic.

The above discussion illustrates that the savings of IP interconnection reflect a proverbial double-edged sword for ILECs. Competitive carriers stand to save money from such interconnection, and those savings come directly out of the ILECs' pocketbooks. Any profit maximizing firm would be expected to examine its own savings versus its lost profits when determining whether to enter into such an arrangement. Regardless of the outcome of such examination, the scenario itself makes obvious why Congress did not leave it to ILECs to determine whether an agreement is an interconnection agreement. An ILEC may be "motivated to discriminate against some competitors by unilaterally offering terms to one competitor that it seeks not to reveal or make available to other competitors via the process delineated in the Act." Sprint Exhibit 1 at p. 28, lines 16 – 18. The record before the Department illustrates that Verizon

MA's actions reflect just such a situation, and Verizon's self-imposed 'IP interconnection for VoIP traffic only' – approach is untenable. The Department must not allow Verizon MA's discrimination to stand.

C. **There remains an acute need for a regulatory backstop and Verizon desires to prevent the Department from serving in that role**

The Department should recognize that Verizon MA's proposed approach to IP interconnection that eliminates the Department's oversight is at best ill-advised. It is persuasive that while Verizon MA claims that regulation is unnecessary because Verizon MA has "strong incentives" to negotiate IP voice interconnection agreements, Verizon MA can identify only eight (8) interconnection agreements to support its claim. The record establishes that there are well over 133 competitive carriers in Massachusetts alone, and Verizon has agreements with merely 8 in the entire country. And of that 8, only 3 are either local exchange carriers or wireless carriers. It stretches credulity to point to such a poor track record as support for the Department abstaining from exercising its jurisdiction to correct a market failure, but that is in fact Verizon MA's position.

The record also establishes that among the first things [BEGIN CONFIDENTIAL]

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Verizon and most other carriers – including Sprint – disagree over whether there will be a regulatory backstop to ensure that the procompetitive safeguards of Section 251 are available to competitive carriers seeking IP interconnection. It is Sprint’s position that IP interconnection should be available upon request and subject to Sections 251/252.

It cannot be denied that the Act has had a tremendous procompetitive impact on the industry. This was in large part accomplished through the rights and duties arising under Section 251(c). That section obligates ILECs to negotiate in good faith, requires ILECs to provide interconnection at any technically feasible point within the carrier’s network, forces ILECs to

provide interconnection that is at least equal in quality to that provided to the ILEC itself, any subsidiary, affiliate or any other party, and ensures that the rates, terms and conditions of interconnection are just, reasonable and non-discriminatory. Without these safeguards, the competition that Verizon MA points to in support of its position that Sections 251 and 252 are not required would not exist.

The obligation to negotiate in good faith and provide interconnection ensures that an ILEC's voice competitors have a reasonable opportunity to negotiate and interconnect with the ILEC and prevents the ILEC from using its market power inappropriately. Due to the substantial number of ILEC customers, interconnection with the ILEC remains a necessity. In Massachusetts, the record shows that Verizon MA has approximately 1.8 million customers. This does not include Verizon's wireless customers. Clearly interconnection with Verizon MA remains as essential today as it was in 1996, and the need to connect in IP is no less essential.

It is not only the duty to negotiate in good faith, and the Department's role in ensuring the integrity of that duty, that is essential to fostering and maintaining a competitive market. Another right arising under Section 251 that is essential to the competitive market is the technically feasible; equal in quality; and just, reasonable, and nondiscriminatory safeguards. These safeguards ensure that Verizon MA cannot manipulate the market in favor of itself, its affiliates or chosen competitors – such as Comcast. A requesting carrier that does not receive interconnection from Verizon MA that is at least equal in quality to that enjoyed by Comcast under the IP Interconnection Agreements is being discriminated against. 2Tr. p. 122, line 14 – p. 124, line 12. This discrimination will begin to be evident in the market when IP enabled services such as HD Voice or Presence are available for customers of only certain networks, but not others. 2Tr. p. 44, line 20 – p. 45, line 13, and 1Tr. p. 126, line 23 – p. 127, line 2.

Without the Department's involvement in the role that Congress assigned to it – as a regulatory backstop to ensure the integrity and availability of the rights and obligations arising under the Act – there can be no doubt that market participants like Sprint will suffer. And one consequence is that new and innovative services will not be available from the widest possible number of providers. The Department has long been an advocate in promoting competition, and Sprint urges the Department to continue in that role.

As the Department recognized in its *Order Opening Docket*,

“Congress gives state commissions, such as the Department, direct authority to determine whether an agreement is an interconnection agreement ... The FCC determined to provide only limited guidance as to whether a particular agreement qualifies as an [sic] interconnection agreement ... because 47 U.S.C. § 252 requires the filing process to occur within state commissions. The FCC is reluctant to interfere with the process of state commissions and believes that state commissions, based on the statutory role provided by Congress and their experience, are “well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an ‘interconnection agreement,’ and if so, whether it should be approved or rejected.” ... The plain language of 47 U.S.C. § 252 and the FCC’s prior determination make clear that it is state commissions, such as the Department, that should determine whether a particular agreement is an interconnection agreement ... [I]t is the FCC’s position that state commission should determine in the first instance what sort of agreements fall within the scope of the statutory standard. 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. *Order Opening Docket* at 10-11.

The need for the Department to continue to fulfil its statutory role is still acute. The Act relies on the Department to fulfil such role, and the record bears out that the need for the Department to serve as a regulatory backstop is as acute and necessary today as it was when the Act was drafted.

VIII. CONCLUSION

For the reasons stated herein, the Department should find the IP Interconnection Agreements are interconnection agreements under the Act. In so concluding, the Department

must order the IP Interconnection Agreements to be filed with the Department as required under Section 252(e), and, if approved by the Department, made available for adoption under Section 252(i).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Benjamin J. Aron", written over a horizontal line.

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