

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

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

DTC Docket No. 13-6

**OPPOSITION TO MOTION TO ABATE OR DISMISS
AND MOTION TO REOPEN**

Sprint¹ urges the Department of Telecommunications and Cable (the “Department”) to recognize that Verizon New England d/b/a Verizon Massachusetts’s (“Verizon”) latest motions, its Motion to Dismiss or, in the Alternative, Renewed Motion to Abate This Proceeding (“Motion to Abate or Dismiss”) and Motion to Reopen the Record and Accept an Additional Exhibit (“Motion to Reopen”) are merely further baseless attempts to steer the Department’s attention away from the case actually being litigated and towards some as-of-yet un-docketed case that Verizon would prefer to be litigating. There is a single question to be answered in the case at bar: whether Verizon’s agreements with Comcast constitute interconnection agreements that must be filed with the Department under Section 252 of the Telecommunications Act.²

Motion to Abate or Dismiss

As it did in its testimony, throughout the hearing, in post-hearing briefs, and in post-hearing motions – including its instant motion – Verizon attempts to put other participants in this

¹ Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc., and Virgin Mobile USA, L.P. (collectively “Sprint”).

² 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 Inc., d/b/a Verizon Massachusetts is an Interconnect 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 Docket No. 13-6, at pgs. 1 – 2 (May 13, 2013)(“Order Opening Investigation”).

docket on trial. Verizon yet again makes accusations about other carriers' willingness to negotiate IP interconnection agreements. Verizon rattles this saber noisily, no doubt hoping to drag others down this false path and away from the actual matter at hand: whether the Verizon/Comcast agreements are subject to the requirements of Section 252 of the Act. As Sprint has explained multiple times, it is likely that parties are awaiting the outcome of this case to determine if the contract terms offered by Verizon are as favorable as the terms contained in the Verizon/Comcast agreements. If so, the parties are entitled to opt into the Verizon/Comcast agreements under Section 252(i) of the Act.

Moreover, Verizon disingenuously feigns shock that carriers might participate in a regulatory proceeding on whether the Verizon/Comcast agreements are required to be filed with the Department while also exploring IP interconnection with Verizon independently. Not only is this not shocking, but it is prudent for a carrier to explore interconnection arrangements directly while also seeking a determination that existing interconnection arrangements must be made available for review and possible opt-in under Section 252(i) of the Act. Such conduct is in furtherance of rights and obligations guaranteed by and arising under the Act. The Act guarantees non-discriminatory treatment, so carriers would be remiss if they were not seeking to ensure that the terms Verizon has offered to Comcast are not substantially different from those Verizon offered them. It is for this reason that Sprint negotiated with Verizon while also participating in the matter at bar. Verizon's affected rancor over Sprint's pursuit of dual solutions is entirely transparent and, at this late stage, quite tedious.

Yet again Verizon disingenuously argues that Sprint intentionally kept Mr. Burt "entirely in the dark" regarding the status of Verizon and Sprint's IP negotiations. Motion to Abate or Dismiss at 2 – 4. Mr. Burt's pre-filed testimony described his job duties. Nothing about that

description could lead anyone reasonably to conclude that Mr. Burt would be involved in IP interconnection contract negotiations. Furthermore, Verizon was directly aware of the people that were involved in negotiating with Verizon. Despite these facts, Verizon proceeded to cross-examine Mr. Burt on whether he had personal knowledge of the highly confidential negotiations even though Verizon already knew Mr. Burt was not participating in the negotiations.

The truth is that if Verizon was truly interested in having testimony regarding the particulars of its negotiations with Sprint placed on the record it could have done so. In the instant docket, Verizon issued subpoenas to the Competitive Carriers seeking to force certain officers to appear at the hearing. Verizon knew **exactly** who at Sprint was involved in negotiating the agreements that it now attempts inappropriately to include in the record, yet it issued no subpoena to compel that person(s) to appear. It declined to do so because when it comes down to brass tacks Verizon prefers the theatrics of baseless accusations to the scrutinizing lens of the Department's analysis.

Verizon knows that cross-examination of Sprint's negotiators would show that Verizon steadfastly refused to agree to the applicability of Sections 251/252 of the Act and that such refusal was a substantial impediment to the parties reaching agreement. A review of Section 23 of the agreement itself bears this out. All of this illustrates the accuracy of Mr. Burt's testimony: that ILECs like Verizon are offering only a Hobson's choice in IP negotiations. ILECs offer IP interconnection only so long as parties agree to forgo 251/252 rights. For many market participants that is unacceptable. It is also a violation of the Act.

The issue relative to Sprint's negotiations with Verizon or other ILECs is not whether Sprint is willing and able to enter into such agreements. The issue is whether the largest market participants can avoid their obligations under federal law by reaching interconnection

agreements that are not filed with state commissions and not made available to other carriers. Sprint's participation in this docket, and the policy position it has maintained consistently throughout, is that ILECs must not be allowed to avoid their obligations under federal law. The policy underpinning the Act is to promote competition by removing the transaction costs embedded in interconnection negotiations and increasing competition in the retail market by reducing or eliminating competition in the interconnection/wholesale market. The Act also requires ILECs to offer interconnection terms to all carriers on an equal basis. It is these central tenets of the Telecommunications Act that Verizon is circumventing and asking the Department to allow it to continue doing so via abeyance or dismissal.

That Sprint reached an IP interconnection agreement with Verizon ("VZ-SPT IP ICA") has no bearing on whether the Verizon/Comcast agreements must be filed under the Act. If anything, the VZ-SPT IP ICA reinforces that certain competitive issues about which Mr. Burt testified remain unchecked: the VZ-SPT IP ICA does not afford Sprint rights under sections 251/252 of the Act and is not on file with the Department and being made available for examination and adoption by other carriers as required by the Act. Furthermore, the VZ-SPT IP ICA further illuminates at least one, if not more, of the discriminatory issues that Sprint highlighted in its Initial Brief.³

All of this is beside the point, however. The status of Verizon's negotiations with the participants in this docket is not relevant to the Department's inquiry. Mr. Burt's real-time knowledge of Sprint's progress in IP negotiations is not relevant to the Department's inquiry. Verizon's decision not to seek to subpoena for cross-examination the Sprint personnel with whom it negotiated an IP interconnection agreement with Sprint is not relevant to the Department's inquiry. And the fact that Verizon now has an IP interconnection agreement with a

³ See Sprint Initial Brief at 39-40.

mere 9 of the hundreds of carriers in the market – even if the numbers continue to belie Verizon’s position that the market is functioning efficiently, is also not relevant to the Department’s inquiry. Frankly, the portion of the record that is actually relevant to whether the Verizon/Comcast agreements are subject to Section 252 of the Act is quite small. The Department must ignore Verizon’s repeated attempts to distract the Department from the issue actually being litigated, and it should dismiss the Motion to Dismiss or Abate.

Motion to Reopen

Verizon has also filed a Motion seeking permission to reopen the record and introduce what it describes as “an additional exhibit.” What Verizon proposes is entirely unjustified. The hearing is long since concluded. The standard for introduction of new information is whether it “would be likely to have a significant impact on the decision.” The decision in the matter at bar will settle a single question: whether the Verizon/Comcast agreements are interconnection agreements under the Telecommunications Act. Extraneous contracts, like the VZ-SPT IP ICA, cannot have any bearing on the Department’s interpretation of the nature of the Verizon/Comcast agreements, and thus cannot “have a significant impact on the decision.”

Verizon has spent a considerable amount of time and effort presenting testimony and arguing a case that is not currently docketed at the Department. Verizon has attempted to litigate the issue of whether it is *good policy* for IP interconnection agreements to be subject to the protections and requirements of Sections 251/252 of the Act. Verizon’s efforts notwithstanding, the case before the Department involves a legal question, not the policy question which Verizon continues to trumpet as a distraction.

Sprint did not object to Verizon’s production of the VZ-SPT IP ICA as part of the discovery process, although it was entitled to do so. The discovery process is bounded by rules

far broader than the standard for the introduction of evidence, and fights over the production of discovery are often unproductive. Sprint observes that the document is not obviously responsive to any of the discovery propounded in this case. Nevertheless, production of the document has occurred and, covered as it is by protective agreements, Sprint chose not to take issue with its production.

As for the introduction of the VZ-SPT IP ICA as evidence, rather than simple production as a continuing discovery obligation, it simply cannot be said that it is likely to “have a significant impact on the decision.” It will not. The record already contains a number of IP interconnection agreements besides the few that are actually the subject of the matter at bar. Some were produced by Verizon and some by other parties. None of them are relevant. It cannot be claimed credibly that entry of another entirely separate and unrelated IP interconnection agreement as evidence will have a significant impact on the Department’s determination of whether the Verizon/Comcast agreements are interconnection agreements under the Act.

The scope of the case at bar is finite. It is a narrow, focused inquiry into the nature and character of a group of contracts between Verizon and Comcast. The case at bar will answer legal questions, not policy questions. Verizon demanded a full evidentiary process including testimony and a hearing. It made this demand even while other participants pointed out that the nature of the question to be investigated did not lend itself to the evidentiary process demanded by Verizon. The parties presented to the Department a full and complete record. Some, including Sprint, would argue that the record developed before the Department is largely extraneous to the single question to be answered in this docket, but that Verizon’s procedural rights have been vindicated by the opportunity to develop that extraneous record. Whatever

process Verizon was due has been afforded. The “evidence” Verizon seeks to introduce belatedly is irrelevant to the Department’s determination of the case. Verizon’s Motion to Reopen should be dismissed.

WHEREFORE, Sprint requests that Verizon’s Motions be denied.

Respectfully submitted,

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