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September 9, 2014

Catrice Williams, Secretary  
Department of Telecommunications & Cable  
1000 Washington Street, Suite 820  
Boston, Massachusetts 02118-6500

**Re: D.T.C. 13-6 – Agreement of Verizon New England Inc.**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the public versions of Verizon MA's Second Supplemental Response to the Competitive Carriers' Information Request 2-6, a Motion to Reopen the Record and Accept an Additional Exhibit and Verizon MA's Motion to Dismiss or, in the Alternative, Renewed Motion to Abate this Proceeding. Both motions and the attachment to the Supplemental Response contain Highly Sensitive Confidential information and are being submitted directly to the Hearing Officer. A Motion for Confidential Treatment is also enclosed herewith for filing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alexander W. Moore".

Alexander W. Moore

Enclosures

cc: Michael Scott, Hearing Officer (2)  
Service List (electronic mail)

**Verizon New England Inc.  
d/b/a Verizon MA**

**Commonwealth of Massachusetts**

**D.T.C. Docket No. 13-6**

**Respondent:** Counsel/Sherri Schlabs  
**Title:** Acting Director – Global  
Wholesale Services

**REQUEST:** Competitive Carriers to Verizon, Set #2

**DATED:** March 5, 2014

**ITEM:** CC-VZ 2-6

Please produce copies of the five "IP VoIP interconnection agreements" (*i. e.*, those Verizon has entered into with "Vonage, BroadVox, InterMetro, Bandwidth.com and Millicorp") referred to in Verizon's rebuttal testimony, page 4.

**RESPONSE:**

Objection: The information sought in this request is proprietary and confidential to the non-Verizon MA contracting parties listed above. Notwithstanding this objection, Verizon MA is exploring whether it will be possible for it to produce responsive information in a timely manner, subject to appropriate confidentiality protections.

**SUPPLEMENTAL RESPONSE:**

Notwithstanding Verizon MA's objection, consistent with our contractual obligations, Verizon MA has sought consent from the five contracting parties listed above to produce the requested documents subject to appropriate confidentiality protections. BroadVox, Bandwidth.com, and Millicorp each have consented to Verizon MA producing copies of the agreements. The HIGHLY SENSITIVE CONFIDENTIAL agreements are attached.

**SECOND SUPPLEMENTAL RESPONSE**

Notwithstanding Verizon MA's objection, consistent with our contractual obligations, Verizon MA has sought consent from Sprint to produce the Verizon-Sprint agreement subject to

appropriate confidentiality protections. Sprint has consented to Verizon MA producing copies of the agreement. The HIGHLY SENSITIVE CONFIDENTIAL agreement is attached.

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

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

D.T.C. 13-6

**MOTION TO REOPEN THE RECORD  
AND ACCEPT AN ADDITIONAL EXHIBIT**

Pursuant to 220 C.M.R. 1.11(7) and 220 C.M.R. 1.11(8) of the Department's Rules of Practice and Procedure, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon MA") hereby moves the Department to reopen the record in the above proceeding and to accept an additional exhibit. As grounds for this motion, Verizon MA states that, subsequent to the hearing in this matter, Verizon and Sprint have entered into an agreement for the exchange of voice traffic between Sprint wireless customers and Verizon interconnected VoIP services customers (i.e. Verizon's FiOS Digital Voice customers) in IP format ("Sprint IP Agreement").<sup>1</sup> That agreement is highly relevant to material issues before the Department – including Verizon MA's evidence that it is willing to enter into IP VoIP interconnection agreements and Sprint's assertions that it could not obtain such an agreement with Verizon MA. Thus, good cause exists for admitting the Sprint IP Agreement in the record.

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<sup>1</sup> The Sprint IP Agreement is attached to the Second Supplemental Response of Verizon MA to CC-VZ 2-6, submitted herewith.

The Department's rule at 220 C.M.R. 1.11(7) states, in part, that "[t]he Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of the hearing, such time to be determined by the [Department]." And the Department's standard for reopening a proceeding is well-settled. As stated in *New England Telephone*, D.T.E. 01-20-Part A-C at 9 (2004):

The Department's procedural rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part: "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. *Machise v. New England Telephone and Telegraph Company*, D.P.U. 87-AD-12-B at 4-7 (1990); *Boston Gas Company*, D.P.U. 88-67-Phase II, at 7 (1989); *Tennessee Gas Pipeline Company*, D.P.U. 85-207-A at 11-12 (1986).

Verizon MA has demonstrated in this proceeding that there is no problem with IP VoIP interconnection in Massachusetts and that Verizon MA stands ready, willing and able to enter into such agreements, as evidenced in part by the growing number of such agreements it has already reached.<sup>2</sup> That Verizon MA has entered into its ninth IP VoIP agreement – and with a leading opposition party to this proceeding no less – confirms the availability of IP interconnection in the Commonwealth on just and reasonable terms.

The Sprint IP Agreement also refutes claims made by Sprint in this case. Sprint has asserted that ILECs in general "want to delay the conversion to IP interconnection as long as possible" and "want [IP interconnection] on their own terms, not on just, reasonable and

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<sup>2</sup> See e.g., VZ Direct at 35 (identifying four agreements); VZ Reb. at 6 (identifying two additional agreements); Supplemental Response to CC-VZ 2-6 (attaching copies of IP VoIP agreements); Apr. 30 Hg. Tr. at 21:9-14 (identifying yet two more agreements, for a total of eight).



WHEREFORE, Verizon MA hereby requests that the Department enter the Sprint IP Agreement, submitted herewith, into evidence as Verizon Exhibit 8.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorneys,



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Dated: September 9, 2014

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

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

D.T.C. 13-6

**VERIZON MA'S MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, RENEWED MOTION TO ABATE THIS PROCEEDING**

Verizon MA moved on May 19, 2014 to abate this proceeding because there is no IP interconnection problem in Massachusetts for the Department to address. The evidence at hearing showed that Verizon MA had entered into eight IP VoIP interconnection agreements between its wireline incumbent LECs and other providers. Verizon MA and the other Verizon ILECs now have nine IP VoIP interconnection agreements. Verizon's latest agreement is with Sprint – an intervenor in this case and the most active participant at the hearing. The Verizon-Sprint deal makes clear that any provider willing to negotiate in good faith – as required by the FCC – can obtain an IP VoIP interconnection agreement with Verizon. The Department should not let the gamesmanship continue and should dismiss or abate this case.

Since the hearing, Verizon and Sprint have entered into an agreement for the exchange of voice traffic between Sprint wireless customers and Verizon interconnected VoIP services customers (i.e. Verizon's FioS Digital Voice customers) in IP format.<sup>1</sup> This is in addition to the agreement that Verizon Wireless and Sprint entered into for the exchange of voice traffic in IP

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<sup>1</sup> See letter from Alexander W. Moore to Catrice Williams, dated August 6, 2014. The agreement itself is attached to the Second Supplemental Response of Verizon MA to CC-VZ 2-6 dated September 8, 2014.

format, which was discussed during the hearing.<sup>2</sup> In all, the Verizon ILECs have nine, nationwide IP VoIP interconnection agreements (and Verizon Wireless has three) and we are negotiating others. As we have explained, however, two of the intervenors – CBeyond and PAETEC – have refused Verizon’s invitations to enter into the good-faith negotiations that the FCC requires unless Verizon agrees with their regulatory position.<sup>3</sup> Level 3 has introduced unexplained delay into negotiations, and Earthlink and TW Data Services have not actively pursued them.

The facts speak for themselves. Verizon MA is negotiating and entering into commercial IP VoIP interconnection agreements with providers of all shapes and sizes – without any regulatory mandate to do so. Verizon is doing this because in today’s marketplace the company has strong business incentives to pursue IP VoIP interconnection. The Department should not spend any more of its limited resources on this case. The marketplace is working and there is no interconnection problem to solve.

If nothing else, the Department should reject Sprint’s speculative testimony in light of this new agreement. To further its position in this case, Sprint kept its fact witness – the only fact witness that any of the intervenors presented – entirely in the dark about the agreement Sprint had reached with Verizon Wireless for IP VoIP interconnection and the status of Sprint’s negotiations with the Verizon wireline companies. He was unaware of the status of negotiations between Sprint and Verizon’s wireline entities<sup>4</sup> and did not speak to the employees responsible for those negotiations before submitting his pre-filed testimony or appearing at the hearing.<sup>5</sup>

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<sup>2</sup> See e.g. Apr. 30 Hg. Tr. at 182:3-7.

<sup>3</sup> See Verizon MA Hearing Ex.6.

<sup>4</sup> See *id.* at 155:18-156:4 (Burt).

<sup>5</sup> See *id.* at 157:19-158:3 (Burt).

Instead of testifying about actual facts, Sprint's witness speculated about possible harms if companies could not obtain IP VoIP interconnection agreements with Verizon.<sup>6</sup> But Verizon has proven again that companies can negotiate commercial agreements for IP VoIP interconnection with Verizon based on just and reasonable terms. The same Sprint witness was unable to identify how Verizon allegedly was delaying IP VoIP interconnection agreements, except to say that Verizon and Sprint took different positions on IP interconnection.<sup>7</sup> But in the ordinary course of business companies work out differing positions in commercial negotiations all the time, which is exactly what happened here.<sup>8</sup> Sprint's conduct, including its decision to keep its witness uninformed of its negotiations and agreements with Verizon and its decision to delay completing an agreement with the Verizon wireline companies until after the hearing even though **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [REDACTED]

[REDACTED]

**[END HIGHLY SENSITIVE CONFIDENTIAL]**, raises the substantial question whether Sprint acted as it did solely to be able to claim at hearing that it didn't have an agreement with Verizon MA and could not reach one.

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<sup>6</sup> See e.g. Direct Testimony of James R. Burt at 26:7- 27:14.

<sup>7</sup> See May 1 Hg. Tr. at 55:3-56:9.

<sup>8</sup> For example, Sprint's witness identified only a single term in Verizon's template IP interconnection agreement **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END HIGHLY SENSITIVE CONFIDENTIAL]** See Attachment to Second Supplemental Response of Verizon MA to CC-VZ 2-6, § 23.1.

Moreover, Sprint's continued assertion in this case that there is a "general refusal of ILECs to interconnect in IP" simply is not true.<sup>9</sup> Sprint's own actions prove just the opposite and continue to demonstrate that Sprint does not want to exchange VoIP traffic through inefficient, legacy Section 252 interconnection agreements. In addition to Sprint's two IP VoIP interconnection agreements with Verizon, Sprint has an agreement with AT&T that led Sprint to abandon its efforts in three states to include IP interconnection terms in Section 252 interconnection agreements.<sup>10</sup> In fact just this month Sprint informed the Indiana commission that it has resolved the IP interconnection issue and has removed it from its arbitration with AT&T.<sup>11</sup>

Sprint's pattern of behavior is not just unfortunate regulatory gamesmanship – rather, Sprint has repeatedly tried to mislead the Department about the state of IP interconnection agreements and negotiations, and has succeeded in wasting a tremendous amount of Department time and resources. Sprint's actions are worthy of admonishment by the Department.

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<sup>9</sup> See *id.* at 51:6-8.

<sup>10</sup> See May 1 Hg. Tr. at 81:10-23, 86:20-87:16, 88:22-89:11 (Burt); see also Joint Submission at 1-2, *Request for Commission Approval of an Interconnection Agreement Between Sprint Spectrum L.P. and AT&T Michigan*, Case No. U-17569 (Mich. Pub. Serv. Comm'n filed Feb. 25, 2014) (Moore Decl. Ex. K); Stipulation of Dismissal of Count V of Plaintiffs' Complaint, *SprintCom, Inc. v. Scott*, No. 1:13-cv-06565 (N.D. Ill. filed Feb. 28, 2014) (Moore Decl. Ex. L); Joint Motion for New Hearing Dates and Suspension of Prehearing Activity, *Sprint Spectrum, L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable Laws for Rates, Terms and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a AT&T Indiana*, Cause No. 44409-INT 01 (Ind. Util. Reg. Comm'n filed Feb. 28, 2014) (Moore Decl. Ex. M).

<sup>11</sup> Joint Submission Concerning the Schedule for this Proceeding, *Sprint Spectrum, L.P.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable Laws for Rates, Terms and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a AT&T Indiana*, Cause No. 44409-INT 01 (Ind. Util. Reg. Comm'n filed Aug. 11, 2014)

The remaining intervenors either presented no evidence or presented witnesses who offered legal briefs in the guise of testimony. They offered no facts to support claims that Verizon MA somehow delayed or impeded IP VoIP interconnection. As we explained in our prior motion to abate, where parties that seek regulatory action fail to support their allegations with relevant facts, attempt to create the appearance of a problem by not trying to negotiate just and reasonable resolutions, and demonstrate that they have no interest in the relief that they seek, there is no reason for the Department to act.

The intervenors no doubt will suggest, as they did in response to Verizon's pending motion to abate, that this motion is "another Verizon attempt at delay." But Verizon is not the party seeking to delay IP VoIP interconnection. Verizon is the one making it happen. Verizon has waited months for some companies – including some of the intervenors in this proceeding – to respond to its contractual offers in negotiations, even as those same companies falsely complain that Verizon is delaying the process or refusing to interconnect in IP. The very existence of this proceeding continues to harm Massachusetts consumers by providing the intervenors with an incentive not to negotiate and reach agreements – despite FCC requirements that they negotiate in good faith – in order to manufacture "evidence" of a need for regulatory action.

## CONCLUSION

For these reasons, the Department should dismiss this proceeding or, in the alternative, grant Verizon's May 19, 2014 motion for abeyance.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorneys,



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Dated: September 9, 2014

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

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Investigation by the Department on its Own Motion to	)	
Determine whether an Agreement entered into by Verizon	)	
New England Inc., d/b/a Verizon Massachusetts is an	)	D.T.C. 13-6
Interconnection Agreement under 47 U.S.C. § 251	)	
Requiring the Agreement to be filed with the Department	)	
for Approval in Accordance with 47 U.S.C. § 252	)	
	)	

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**MOTION FOR CONFIDENTIAL TREATMENT**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) hereby requests that the Department of Telecommunications and Cable (“Department”) protect from public disclosure and provide confidential treatment for the attachment to Verizon MA’s Second Supplement Response to CC-VZ 2-6, filed herewith. In support of this Motion, Verizon MA states that the document contains confidential, proprietary, competitively sensitive information under Massachusetts law and is therefore entitled to protection from public disclosure. As further grounds for this motion, Verizon MA states the following.

1. M. G. L. c. 25C, § 5, provides in part that:

Notwithstanding clause Twenty sixth of section 7 of chapter 4 and section 10 of chapter 66, the [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.

In determining whether certain information qualifies as a “trade secret,”<sup>1</sup> Massachusetts courts have considered the following:

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<sup>1</sup> Under Massachusetts law, a trade secret is “anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement.” Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court (“SJC”), quoting from the Restatement of Torts, § 757, has further stated that “[a] trade secret may consist of any formula, pattern, device

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and its competitors;
- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972). The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has “the right to keep the work which it had done, or paid for doing, to itself.” Similarly, courts in other jurisdictions have found that “[a] trade secret which is used in one’s business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one’s competitors were compelled.” Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

2. The information addressed in this Motion constitutes confidential, competitively sensitive, proprietary information that is entitled to protection under Massachusetts law. The attachment to Verizon MA’s Second Supplemental Response to CC-VZ 2-6 is the IP VoIP

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or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers.” J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970).

interconnection agreement between Verizon and Sprint Spectrum, L.P. In this respect, it is no different than the “May 30 Documents” that the Department found should be afforded confidential treatment (*see* Hearing Officer Ruling dated June 28, 2013) and were properly designated as Highly Sensitive Confidential pursuant to the Protective Agreement (*see* Hearing Officer Ruling dated January 31, 2014). The attachment submitted herewith should be afforded the same treatment for the same reasons.

3. Namely, the information at issue – the terms of the enclosed document – is highly valuable to Verizon MA, and knowledge of the specific terms on which Verizon is willing to exchange traffic with one carrier in IP format would confer a valuable business advantage on other carriers (Verizon MA’s competitors) who may also seek to exchange traffic in IP format – namely, a leg up in contract negotiations with Verizon MA. If the Department finds in this investigation, as it should, that the agreements at issue here are not subject to state commission approval under section 252, then competitors would not be entitled to such an advantage in commercial negotiations and would not otherwise have access to that information. The Department should afford that information confidential treatment in order to preserve Verizon MA’s rights in the event of that outcome on the merits.

4. In sum, the information for which Verizon MA seeks protective treatment is confidential, competitively sensitive and proprietary information that is not otherwise available to other carriers, and would be of value to them. There is no compelling need for public disclosure of any of this information. Verizon MA, however, is at risk of suffering competitive disadvantage if this information is made public.

5. Verizon MA is serving the enclosed document (together with this motion) on the other parties to this proceeding pursuant to the Protective Agreement among the parties.

WHEREFORE, Verizon MA respectfully requests that the Department afford the document submitted herewith confidential treatment and exclude it from the public record in this case.

Respectfully submitted,

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Dated: September 9, 2014