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March 28, 2014

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

Re: D.T.C. 13-6 – Verizon IP Agreements

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is Verizon MA's Motion to Compel Responses by the Intervenors to Verizon MA's First Set of Information Requests (VZ-I 1-1 & 1-2 and VZ XO 1-1 & 1-2).

Thank you for your attention to this matter.

Sincerely,

Alexander W. Moore
Alexander W. Moore 

Enclosure

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

**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 COMPEL RESPONSES BY THE
INTERVENORS TO VERIZON MA'S
FIRST SET OF INFORMATION REQUESTS (VZ-I 1-1 & 1-2, VZ-XO 1-1 & 1-2)**

Pursuant to 220 C.M.R. § 1.06(6)(c)(4), Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) hereby moves to compel the Competitive Carrier Intervenor¹ and XO Communications Services, LLC (“XO”) (hereinafter collectively referred to as the “Intervenors”) to respond fully to Verizon MA’s information requests VZ-I 1-1, VZ-I 1-2, VZ-XO 1-1, and VZ-XO 1-2. Verizon MA’s requests seek information about *any* agreements that these Intervenor have entered that address the exchange of voice traffic in IP format. Information about those agreements is directly relevant to the policy questions before the Department in this proceeding, as evidenced by the very testimony the Intervenor have sponsored. Yet the Intervenor have refused to answer the requests posed, answering only that they have not entered any such agreements with an incumbent local exchange carrier (“ILEC”). The Department should compel the Intervenor to respond fully to these requests.

¹ The self-described Competitive Carriers that have intervened in this proceeding are CTC Communications Corp. d/b/a EarthLink Business; Lightship Telecom LLC d/b/a EarthLink Business; Choice One Communications of Massachusetts, Inc. d/b/a EarthLink Business; Conversent Communications of Massachusetts, Inc. d/b/a EarthLink Business; EarthLink Business, LLC (formerly New Edge Network, Inc. d/b/a EarthLink Business); Cbeyond Communications, LLC; tw data services llc; Level 3 Communications, LLC; and PAETEC Communications, Inc.

BACKGROUND

Verizon MA has demonstrated through its pre-filed testimony that VoIP providers have substantial, market-based incentives to enter into commercial agreements for the exchange of VoIP traffic in IP format. The existence and strength of those incentives are demonstrated by Verizon's own entry into IP VoIP commercial agreements with a variety of VoIP providers with varying business models. In addition, Verizon MA's witnesses explained how applying the legacy regime in 47 U.S.C. § 252 — which was designed for a different era with radically different marketplace facts — would harm and delay the transition to new IP-based networks. This testimony provides sound policy grounds for the Department to reject the arguments of the Intervenor that the Department should interpret § 252 to require the public filing and Department approval of the agreements between Verizon and Comcast.

To the extent the Intervenor has sponsored policy testimony — rather than legal briefs masquerading as expert testimony — they have sought to tell a different story. Part of their narrative is their claim that “competitive carriers have been exchanging voice traffic in IP on a large scale for, at least, the better part of a decade” and that they could “do the same with ILECs,” but that ILECs are not “willing participants in such negotiation.”² Sprint's witness similarly asserted that incumbent LECs “naturally want to delay the conversion to IP interconnection as long as possible.”³

Verizon MA, therefore, served the following discovery requests on the Intervenor on March 7, 2014.

² Malfara Rebuttal Testimony at 9-10.

³ Burt Testimony at 23.

VZ-I 1-1

Please identify, by title, effective date and the names of all parties, each agreement that each Intervenor has entered into with a service provider other than an affiliate concerning, providing for or governing the exchange in IP format of voice traffic going from you to the other party as well as voice traffic coming from the other party to you.

VZ-I 1-2

Please produce all agreements identified in response to VZ-I 1-1, including all attachments, exhibits and schedules.⁴

Verizon MA served substantively identical information requests on XO and Sprint.

On March 21, 2014, the Intervenors objected to these two requests and claimed that the “evidence of agreements between the Competitive Carriers and non-ILECs . . . is not pertinent to the legal issue before the Department.”⁵ The Intervenors responded only that “each” Intervenor “has not entered any agreement ‘concerning, providing for, or governing the exchange in IP format of voice traffic’ with an incumbent local exchange carrier.”⁶ XO’s response is even further qualified, stating that it has not entered into any agreement to exchange voice traffic in IP with an ILEC “in Massachusetts.”⁷ In contrast, Sprint — despite raising the same objection as the Intervenors — agreed to produce to Verizon MA the same “IP interconnection agreements” that Sprint agreed to produce in response to the Department’s own information requests to Sprint.⁸

⁴ Verizon MA’s First Set of Information Requests to Intervenors (Mar. 7, 2014).

⁵ Competitive Carriers’ Responses to Verizon-MA’s First Set of Information Requests at VZ-I 1-1 (Mar. 21, 2014). XO’s Responses to First Set of Information Requests of Verizon MA (March 27, 2014).

⁶ *Id.*; *see id.* at VZ-I 1-2 (incorporating by reference the response to VZ-I 1-1).

⁷ XO’s Response to VZ-XO 1-1.

⁸ Sprint Response to Verizon MA’s First Set of Information Requests at VZ-S 1-1 (Mar. 21, 2014); *see also* Sprint Response to Department’s First Set of Information Requests at D.T.C. 1-1 (Mar. 18, 2014) (raising the same objection but agreeing to produce documents).

Pursuant to 220 C.M.R. § 1.06(6)(c)(4), Verizon MA timely moves to compel complete responses to its information requests to the Intervenors numbered VZ-I 1-1, VZ-I 1-2, VZ-XO 1-1 and VZ-XO 1-2.

ARGUMENT

Discovery is intended to permit “the parties and the Department to gain access to all relevant information,” in order to “protect the rights of the parties[] and ensure that a complete and accurate record is compiled.”⁹ The “appropriate standard under which to consider [a] Motion to Compel discovery responses is whether the information requested is relevant or likely to lead to the discovery of admissible evidence.”¹⁰

The information Verizon MA seeks through its data requests readily satisfies that standard. The Department is faced with competing claims about the extent of agreements between VoIP providers to exchange VoIP traffic in IP format. Verizon MA’s witnesses have testified that Verizon is at the forefront of these efforts. Verizon has entered into six commercial agreements for IP VoIP interconnection with VoIP providers with a variety of business plans and continues to negotiate with many other providers. These commercial agreements and negotiations are evidence of the significant business incentives that will result in widespread IP VoIP interconnection absent regulatory intervention, let alone the legacy § 252 regime that was designed for a different era and that would hinder IP VoIP interconnection. In contrast, the Intervenors and Sprint contend that IP interconnection is already widespread among some providers and that incumbent LECs are the roadblock to further IP interconnection for VoIP traffic. The Intervenors should not be permitted to make those claims while withholding

⁹ 220 C.M.R. § 1.06(6)(c)(1).

¹⁰ Interlocutory Order on Verizon’s Appeal of Hearing Officer’s August 8, 2001 Ruling on Motions To Compel, D.T.E. 01-20, 2001 WL 1448568, at *7 (Mass. D.T.E. Aug. 31, 2001).

evidence in their possession that will either support or undermine them. Notably, Sprint has provided information about its agreements for IP interconnection with providers other than incumbent LECs.

In resolving the legal questions before it, the Department will likely need to address the parties' competing claims, which underlie their positions that their preferred statutory interpretation is consistent with sound public policy. If the Department concludes that the relevant provisions of § 251 and § 252 are ambiguous, it must look to considerations of public policy in adopting a reasonable interpretation of those statutory provisions.¹¹ Compelling the Intervenors to respond fully to VZ-I 1-1, VZ-I 1-2, VZ-XO 1-1, and VZ-XO 1-2 will ensure that the Department has a more complete and accurate record on which to base any public policy determinations to support its statutory interpretation.

¹¹ See, e.g., *Hartford Ins. Co. v. Hertz Corp.*, 410 Mass. 279, 285 (1991) (holding that, where a "statute is imprecise or ambiguous," a court should "give that provision a reasonable construction," based on, among other things, "the supposed problem to be corrected and the objective sought to be attained").

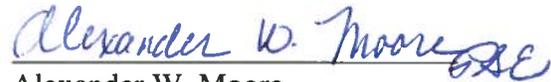
CONCLUSION

For these reasons, Verizon MA urges the Department to grant this motion to compel.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorneys,



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