

EXHIBIT H

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 13-6

REBUTTAL TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF
THE COMPETITIVE INTERVENORS

1 **I. Introduction**

2

3 **Q. Please state your name, business address and occupation.**

4

5 A. My name is Joseph Gillan. My business address is P. O. Box 7498, Daytona
6 Beach, Florida 32116. I am an economist with a consulting practice specializing
7 in telecommunications.

8

9 **Q. Are you the same Joseph Gillan who filed direct testimony on or about**
10 **January 15, 2014?**

11

12 A. Yes.

13

14

**Joseph Gillan Rebuttal Testimony
On Behalf of the Competitive Intervenors**

1 **III. Protocol Conversion**

2

3 **Q. Has Verizon explained why the agreements at issue in this proceeding are not**
4 **interconnection agreements subject to § 252?**

5

6 A. No, not directly. In its testimony (p. 27), Verizon discusses which calls that it and
7 Comcast exchange in IP format are converted from TDM protocol and which are
8 not. Apparently, this is the evidence that Verizon claimed in its letter to Secretary
9 Williams dated November 26, 2013 that it was entitled to offer “showing that
10 VoIP is an information service,” possibly because it “offers the capability to
11 perform a net protocol conversion.”

12

13 **Q. To begin, does it necessarily matter whether (or not) the retail VoIP service is**
14 **an information service to decide whether these agreements are subject to §**
15 **252?**

16

17 A. No. The purpose of interconnection is to provide for the transport of termination
18 of telecommunications (notably, not telecommunications services) to another
19 carrier, either local or long distance. When transport and termination is provided
20 to a long distance carrier, it is referred to as exchange access. This would indicate
21 that the relevant service(s) to be considered are not the retail services offered to
22 end-users, but the underlying transport and termination service offered in the
23 Traffic Exchange and VoIP-to-VoIP Agreements.

24

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1 The FCC has made clear that all voice calls (at least if exchanged in TDM format,
2 whether they are VoIP or not) are covered by § 251(b)(5). As such, any call
3 exchanged in TDM format, including VoIP-to-VoIP calls, is a traffic exchange
4 subject to § 252, which indicates that the regulatory classification of the retail
5 VoIP service is immaterial to whether § 252 applies. After all, the nature of the
6 retail VoIP service does not materially change when the format of the traffic
7 exchange changes from TDM to IP (a point that Verizon effectively concedes
8 when it points out VoIP has flourished in an environment of TDM traffic
9 exchange).

10

11 **Q. Does Verizon state that it would offer a VoIP-to-VoIP Agreement to carriers**
12 **whose retail service is not an information service?**
13

14 A. Yes. In response to discovery (CC-VZ 1-11, attached as Exhibit JPG-4), Verizon
15 stated its willingness to negotiate a VoIP-to-VoIP agreement is “not contingent
16 upon how the other provider characterizes its retail services.” This answer further
17 underscores the fact that IP transmission simply does not transform a service into
18 an information service, given Verizon’s willingness to interconnect and provide
19 transport and termination in IP format to carriers that do not even offer an
20 information service. This is certainly consistent with FCC decisions that have
21 explicitly concluded that “the fact that Internet Protocol is used exclusively as

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1 transport for the traffic has no bearing on whether these voice and data services
2 are appropriately considered telecommunications service.”⁹

3

4 **Q. Does a protocol conversion make a service an information service?**

5

6 A. No. The FCC has long understood that not all protocol conversions transform a
7 telecommunications service into an information service. After all, telephone
8 networks (for many years) have been little more than geographically distributed
9 computing systems, containing equipment and facilities that need to interoperate.
10 In 1997, consistent with its decisions prior to the passage of the federal
11 Telecommunications Act, the FCC exempted the following three categories of
12 protocol processing from being deemed information services:

13

- 14 1) involving communications between an end user and the
15 network itself (e.g., for initiation, routing, and termination of
16 calls) rather than between or among users;
17
- 18 2) in connection with the introduction of a new basic network
19 technology (which requires protocol conversion to maintain
20 compatibility with existing CPE); and
21
- 22 3) involving internetworking (conversions taking place solely
23 with the carrier’s network to facilitate provision of a basic

⁹ *In the Matter of Compass Global, Inc. Apparent Liability for Forfeiture*, Notice Of Apparent Liability For Forfeiture, FCC 08-97, File No. EB-06-IH-3060, NAL/Acct. No. 200832080083, FRN No. 0009690256, (rel. April 9, 2008), ¶¶ 17 and 18. Emphasis added.

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1 network service, that result in no net conversion to the end-
2 user).¹⁰
3

4 **Q. Are differing protocols commonly used to manage telecommunications**
5 **networks?**
6

7 A. Yes. There is nothing remarkable about a (so-called) net protocol conversion,
8 particularly if the conversion is occurring between networks that use different
9 technologies (such as a wireless to wireline call, or between a digital and an
10 analog network, or between a network using IP technology and a circuit-switched
11 network).

12
13 **Q. Are IP-to-TDM (or TDM-to-IP) conversions exempt protocol conversions?**
14

15 A. Yes. These types of internetworking protocol conversions have to do with
16 assuring end-to-end interoperability of telephone service between an IP
17 architecture and traditional network, they do not provide a new capability in the
18 hands of the customer.

19
20 **Q. Does Verizon concede that the protocol conversion between IP and TDM is**
21 **unavoidable as the industry introduces this new technology?**
22

23 A. Yes. The Verizon testimony (pages 40-41) recognizes:

¹⁰ See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order on Reconsideration, Federal Communications Commission CC Docket No. 96-149, 12 *FCC Rcd* 2297; 1997 *FCC LEXIS* 1602 (FCC 97-52) (rel. Feb. 19, 1997), at ¶ 2.

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1 [F]or a call between a VoIP customer and a POTS customer, there
2 is no way to avoid the conversion. Incumbent LECs aren't
3 requiring a conversion. The different protocols being used to serve
4 the two customers involved in the call require a conversion. Until
5 all customers are served by VoIP and POTS is eliminated, those
6 conversions will continue to be necessary.
7

8 The conversion between TDM and IP is an internetworking conversion (and/or
9 occurs to maintain compatibility with existing CPE). It does not transform a call
10 into an information service.
11

12 **Q. If IP-TDM conversion was considered an information service, would that**
13 **logic produce absurd results?**
14

15 A. Yes. If Verizon claims that a VoIP call to a traditional TDM-based telephone
16 subscriber is an information service because of the protocol conversion, then that
17 exact same protocol conversion would occur any time a traditional TDM
18 customer calls a VoIP customer, albeit in reverse (that is, the call would start in
19 TDM and terminate at an IP end-point). This would mean that every traditional
20 TDM customer who places a call to a VoIP customer is suddenly subscribing to
21 an information service, even though none of the customer's service features have
22 changed, and the customer has no way to know anything about the technology
23 being used to serve the called number.
24