

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

_____)	
Complaint of Global NAPs, Inc. Against)	
Verizon for Denial of Issuance of)	D.T.E. 03-29
Collocation Access Cards)	
_____)	

INITIAL BRIEF OF VERIZON MASSACHUSETTS

The Complaint filed by Global NAPs, Inc. (“GNAPs”) on January 14, 2003, is frivolous and irresponsible. In a world where heightened security is now a fact of life, GNAPs seeks to evade *any* responsibility to aid in protecting the security of critical network facilities and equipment of Verizon MA and other collocated carriers - or in preserving the safety of their employees.

In its Complaint,¹ GNAPs objects to Verizon MA’s security requirement that collocated carriers provide certification of drug screening tests and criminal background checks of its new employees and contractors before Verizon MA issues them photo identification (“ID”) badges and access cards.² GNAPs’ Complaint, at ¶¶ 4-5, 16-18.

¹ No other competitive local exchange carrier (“CLEC”) has filed a formal complaint with the Department regarding Verizon MA’s certification requirements for issuing access credentials necessary to gain entry to collocated central offices (“CO”). Indeed, other carriers testified in D.T.E. 02-8 that they had implemented similar procedures of their prospective employees. *See e.g.*, D.T.E. 02-8, Qwest Exh. 1, at 20; WorldCom Exh. 1, at 13.

² Existing CLEC employees who have valid, unexpired access cards and ID badges are grandfathered and, therefore, exempt from the new requirements for drug screening tests and background checks for felony convictions provided that they renew their access cards and ID badges prior to their expiration. Verizon MA’s Answer to GNAPs’ Complaint, at ¶¶ 4 and 5. GNAPs claims that Verizon MA’s practice is to required CLEC certification of drug testing and background checks for new employees and renewing employees whose credentials had expired, but not for timely renewal applications. GNAPs’ Reply to DTE-GN 1-3. But Verizon notified GNAPs of its certification requirement in a carrier notice dated July 2002. Verizon MA’s Answer

GNAPs also objects to providing employees' and contractors' Social Security numbers, and date and place of birth - despite the fact that GNAPs' employees previously provided this information to Verizon MA on their application forms for access credentials. GNAPs' Complaint, at ¶¶ 4, 15. Those requirements are comparable to Verizon MA's long-standing practices for its own employees and vendors.

The record in this case establishes that GNAPs has *no* security standards, *no* formal employee screening procedures, and conducts *no* background checks or drug tests of its own employees or vendors - a highly questionable and reckless practice in today's environment of increased security concerns. Yet, GNAPs suggests that it alone should determine, without any checks or verification process, the individuals who may access Verizon MA's COs. This is irresponsible - and further demonstrates the reasonableness of and need for Verizon MA's security measures. Accordingly, the Department should soundly reject GNAPs' arguments. To do otherwise would seriously compromise Verizon MA's ability to protect its own and CLECs' equipment and personnel, and ensure network reliability.

GNAPs fails to show any legitimate legal, regulatory, or economic impediment to complying with Verizon MA's security requirements. Verizon MA's security measures apply to all collocators on a non-discriminatory basis and are as stringent as those the Company maintains on its premises for its own employees or authorized vendors. This is reasonable and complies fully with the Federal Communications Commission's ("FCC") directives. Moreover, contrary to GNAPs' allegations, no state or federal law precludes

to GNAPs' Complaint, Attachment 2. Verizon subsequently reiterated that requirement in a letter dated January 10, 2003, responding to GNAPs' December 9, 2002, letter notice under the parties' interconnection agreement. GNAPs' Complaint, Exhibits 1 and 2.

Verizon MA from obtaining the requested information from CLECs as a means of providing additional protection for its equipment and CO premises.

GNAPs has failed to provide any basis for its claims, and it is not entitled to the relief requested in its Complaint. Accordingly the Department should direct GNAPs to comply fully with Verizon MA's security procedures for the issuance of Verizon MA's non-employee access credentials and reject GNAPs' Complaint, with prejudice.

I. ARGUMENT

A. Verizon MA's Security Measures Are Just, Reasonable and Comply Fully with FCC Guidelines.

In its *Advanced Services Order*,³ the FCC ruled that incumbent local exchange carriers ("LEC") may require reasonable security arrangements to create a more secure CO environment for itself and collocated carriers. *Advanced Services Order*, ¶ 46. The FCC expressly stated that:

incumbent LECs may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized vendors. To the extent existing security arrangements are more stringent for one group than for the other, the incumbent may impose the more stringent requirements.

Id. at ¶ 47. Accordingly, the FCC would permit security arrangements that apply equally to Verizon MA's and collocators' employees.

As part of its efforts to enhance existing security methods, Verizon MA revised its Collocation Access Card and Photo ID Application, effective on August 1, 2002, to include the following pre-screening process for collocators:

³ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, 14 FCC Rcd 4761, at ¶ 46 (March 31, 1999) ("*Advanced Services Order*").

- (1) collocator certification that it has conducted a criminal background check of felony convictions of its employee and/or contractor dating back not less than 7 years in the county of residence, or previous county of residence; and
- (2) collocator certification that it has conducted employee drug screening to scan for the presence of controlled substances.

Verizon MA's Answer to GNAPs' Complaint, Attachment 1. This places the responsibility on collocators for certifying compliance with those requirements for new employees and agents applying for access credentials from Verizon MA. D.T.E. 02-8, Tr. 103, 128-29. It also applies to applicants renewing expired photo ID badges and access cards.⁴

Verizon informed CLECs of the new certification requirements in an Industry Letter issued in July 2002. Verizon MA's Answer to GNAPs' Complaint, Attachment 2. Verizon sent that letter to all CLECs by electronic mail, and made it publicly available via posting on Verizon's Wholesale Website. D.T.E. 02-8, Tr. 573, 612. Verizon MA also discussed those requirements in D.T.E. 02-8, which is the Department's investigation to reexamine collocation security procedures following the events of September 11, 2001. *See e.g.*, D.T.E. 02-8, Exh. VZ MA 1, at 5.

Verizon MA's requirement that GNAPs conduct drug screening testing and criminal background checks of felony convictions for its employees and agents not only applies equally to all collocators, but is also comparable to Verizon MA's existing practices for its own employees. *See* D.T.E. 02-8, Exh. VZ MA 1, at 5; Tr. 96, 101, 110, 128-29; Exh. Qwest-VZ 1-20; Exh. Qwest-VZ 1-21. Likewise, this reflects Verizon MA's increase from a five to seven-year period for new employees' criminal

⁴ By contrast, existing CLEC employees who renew their access cards and photo ID badges prior to expiration are not subject to these new certification requirements. D.T.E. 02-8, Tr. 103.

background checks.⁵ D.T.E. 02-8, Tr. 127. Verizon MA’s certification requirement for collocators is, therefore, reasonable, non-discriminatory, and in accordance with FCC rules.

The fact that GNAPs “does not currently require drug testing of its employees” does not diminish – indeed, it underscores – the reasonableness of Verizon MA’s certification requirement for collocators in Massachusetts.⁶ Moreover, that requirement does not contravene the letter or intent of the FCC’s rules governing the incumbent LEC’s provision of collocation or the prohibition against barriers to entry under the Telecommunications Act of 1996 (the “Act”), as GNAPs incorrectly asserts. *See e.g.*, 47 C.F.R. § 51.323; 47 U.S.C. § 253.

The FCC has found that incumbent LECs’ use of comparably stringent security arrangements is appropriate. As a matter of law, the Department lacks the authority to overturn FCC rules allowing Verizon MA to impose security arrangements on collocators’ employees and agents that are as stringent as those required of Verizon MA’s own employees. Accordingly, contrary to GNAPs’ claims, Verizon MA’s practices are clearly warranted and not precluded under state or federal law. D.T.E. 02-8, Exh. VZ MA 2, at 23.

⁵ It should be noted that past criminal convictions would not necessarily disqualify an individual from gaining access to collocated facilities. D.T.E. 02-8, Tr. 203. This would depend on several factors, such as the nature and date of the offense, and whether there were any mitigating circumstances (*e.g.*, self-defense). D.T.E. 02-8, Tr. 204-205.

⁶ *See* GNAPs’ Complaint, at ¶ 6. GNAPs stated that it undertakes “rigorous employment screening procedures prior to hiring employees, including but not limited to extensive interviews as well as background and reference checks.” *Id.* However, in its Complaint and responses to Information Requests, GNAPs has failed to provide any information as to those “rigorous” procedures. To the contrary, GNAPs has stated that it has no written employment policies, no written employment application, no written code of business conduct, and no written guidelines for GNAPs’ employees working on collocated equipment in Verizon MA’s collocated COs. GNAPs’ Replies to VZ-GN 1-6, 1-7 and 1-8. Likewise, GNAPs conducts no criminal background checks of its employees and has no written policies regarding drug use or other illegal activities. *Id.*

B. CLEC Certification of Drug Screening Tests for its Employee Applicants Does Not Unduly Infringe on Employees' Rights Under State or Federal Law.

GNAPs contends that requiring certification of drug tests for GNAPs' employees applying for collocation photo ID badges or access cards from Verizon MA would unduly infringe on those employees' privacy rights. Its claim is without merit.

Neither the federal nor Massachusetts constitution gives employees an absolute right to be free from employer drug testing. *Jackson v. Liquid Carbonic Corp.*, 863 F.2d 111, 115 (1st Cir. 1988). Rather, Massachusetts courts have applied a balancing test that weighs "the employer's legitimate interest in determining the employees' effectiveness in their jobs" against "the seriousness of the intrusion on the employees' privacy." *Bratt v. International Business Machines Corp.*, 392 Mass. 508, 520-21, 467 N.E.2d 126 (1984). Verizon MA's security measures, which apply to its own and CLEC employees alike, are appropriate and reasonable and do not infringe on the employee's privacy, as GNAPs contends.⁷

Verizon MA's legitimate interests in the security of its COs and the safety-sensitive nature of the employees' occupation requiring heightened alertness and care clearly outweigh any perceived employee privacy concerns. Thus, Verizon MA's drug screening certification requirement for collocators' employees is reasonable and

⁷ See e.g., *Folmsbee v. Tech Tool Grinding & Supply, Inc.*, 417 Mass. 388, 390, 394, 630 N.E.2d 586 (1994), in which the Massachusetts Supreme Judicial Court ("SJC") held that the employer's drug testing policy did not violate the employee's right to privacy under Massachusetts General Laws Chapter 214, section 1B, based on the safety risks involved and the need for employees to be well trained, constantly alert and precise in working with the necessary technical and/or hazardous equipment. The SJC also rejected the employee's claims under the Massachusetts Civil Rights Act (G.L. c. 12, §§ 11H and 11I) and under Article 14 of the Massachusetts Declaration of Rights and the Fourth Amendment of the U.S. Constitution because the case involves a private employer. *Id.* at 391, citing *Bally v. Northeastern University*, 403 Mass. 713, 717 n.3, 532 N.E.2d 49 (1989). See also *Webster et al v. Motorola, Inc.*, 418 Mass. 425, 430-33, 637 N.E.2d 203 (1994) and *Cort v. Bristol-Myers Co.*, 385 Mass. 300, 431 N.E.2d 908 (1982).

necessary and not barred under state or federal law, as GNAPs erroneously alleges. It is also consistent with Verizon MA's current hiring practices for its own employees. Verizon MA's Replies to GN-VZ 1-5 and 1-7.

C. CLEC Certification of Criminal Background Checks for its Employee Applicants Does Not Unduly Infringe on Employees' Rights Under State or Federal Law.

Contrary to GNAPs' claims, Verizon MA is not legally prohibited from requiring criminal background checks relating to felony convictions for its own new employees or CLEC employees in Massachusetts. The only restrictions are that employment applications cannot request the following information: (1) "an arrest ... in which no conviction resulted;" (2) a first conviction for a specified list of misdemeanors; or (3) "any conviction of a misdemeanor where the date of such conviction ... occurred five or more years prior to the date of such application for employment." G.L. c. 151B, § 4(9)(i), (ii), (iii). By distinguishing between arrest and conviction records,⁸ Massachusetts statutes strike an appropriate balance between the needs of employers and job applicants alike.

Verizon MA's certification requirement of a criminal background investigation for collocators' employees and agents applying for access credentials or renewing expired access credentials is limited to felony convictions. Verizon MA's Answer to GNAPs' Complaint, Attachment 1. This is consistent with the type of information requested on Verizon MA's employee applications⁹ and complies with applicable

⁸ For guidelines relating to the Criminal Offender Record Information ("CORI") system, *see e.g.*, G.L. c. 6, §§ 168 and 803 C.M.R. §§ 2.03, 2.04, 3.01.

⁹ *See* Verizon MA's Reply to GN-VZ 1-1, Attachments A and B. As explained in that Reply, Verizon MA uses its hiring practice criteria to determine whether to issue a collocation photo ID badge or access card to an individual with a felony conviction within the past seven years. The factors to be considered include the following: (1) the severity of the offense; (2) the time elapsed

restrictions under Massachusetts law. Therefore, requiring collocators' certification of background checks for new employees requesting access to collocated facilities in Verizon MA's COs is in accordance with state statutes and constitutes a reasonable security measure permissible under FCC rules. GNAPs' effort to avoid this requirement is completely unwarranted and should be rejected by the Department.

D. CLEC Provision of Social Security Numbers and Other Information Regarding its Employee Applicants Does Not Unduly Infringe on Employees' Rights Under State or Federal Law.

While collocators' certification of employees' drug screening tests and criminal background checks is a *new* requirement effective on August 1, 2002, Verizon MA has a long-standing practice of requiring collocators' employees to provide Social Security number, place of birth and date of birth on new and renewal applications. In a December 9, 2002, letter appended to the Complaint, GNAPs asserts that it "has no objection to providing information that was required on the previous application." Nevertheless, GNAPs recently refused to provide its employees' Social Security number, place of birth and date of birth on new collocation access applications and renewals - despite the fact that it previously provided this same information. GNAPs provided no explanation for its change in position.

In its Complaint, GNAPs contends that the federal privacy statute (5 U.S.C. § 552 *et seq.*) protects the disclosure of individual Social Security numbers. GNAPs' Complaint, at ¶ 15. GNAPs' argument is incorrect. That statute applies only to records

since the completion of the sentence; (3) evidence of rehabilitation (*e.g.*, successfully held other jobs); and (4) job relevance (*i.e.*, the relationship of the offense to the position for which the individual has applied). *Id.*

held by the federal government and does not prevent employers from requesting employees' Social Security numbers.¹⁰ See 5 U.S.C. §§ 552a(a)(1), 552a(b), 552a(e).

Because Verizon MA lawfully requests such information of its own employees,¹¹ the Company is justified in requesting collocators' employees to provide the identical information in accordance with the FCC's "most stringent" rules for security arrangements. Verizon MA's Reply to GN-VZ 1-12. In addition, GNAPs should be estopped from asserting in its Complaint that such information is protected because GNAPs willingly and knowingly provided such employee information on previous applications for photo ID badges and access cards without raising this alleged privacy claim.

Moreover, GNAPs' claim that providing Social Security number information for its employees raises "the potential for abuse" is a red herring. GNAPs' Reply to DTE-GN 1-6. Verizon MA has taken reasonable steps to ensure the confidentiality of information provided by CLEC employees applying for photo ID badges and access cards.

As Verizon MA explained, CLEC employee records are maintained in a password protected database, to which personnel in Verizon's Collocation Care Center ("CCC") and Corporate Security Department have restricted access. Verizon MA's Reply to DTE-VZ 1-1. Verizon MA uses that information solely for security purposes, *e.g.*, in

¹⁰ The Massachusetts Supreme Judicial Court upheld the requirement that individuals provide their Social Security numbers on driver's license applications. *Ostric v. Board of Appeal*, 361 Mass. 459, 462, 280 N.E.2d 692 (1972). That information is also requested of applicants for credit cards, bank loans and accounts, insurance policies, etc.

¹¹ See *e.g.*, G.L. c. 62E, § 2; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

processing collocation ID badges and access card applications¹² or permitting access to collocated facilities in case of access card or card reader malfunction.¹³ Verizon MA's Reply to DTE-VZ 1-2. Accordingly, Verizon MA's requirement is reasonable, and the Department should reject GNAPs' claims.

E. GNAPs' Own Conduct Justifies the Need for Imposing Verizon MA's Security Requirements on CLEC Employees Applying for Non-Verizon Photo ID Badges and Access Cards.

GNAPs admits that it conducts no drug testing or background checks of felony convictions for prospective employees. *See* GNAPs' Replies to VZ-GN 1-11 and DTE-GN 1-2 and 1-4. GNAPs indicates that such screening is unnecessary because most of its employees are recruited "through internal referrals and word-of-mouth from trusted sources" or based on "pre-existing personal relationships." *Id.*; *see also* GNAPs' Reply to DTE-GN 2-4. GNAPs' hiring practices are unacceptable from a security perspective and should *not* be the standard used for determining reasonable security measures regarding Verizon MA's collocated COs.

¹² *See generally* Verizon MA's Reply to GN-VZ 1-10. For new CLEC employees, Verizon MA may use Social Security number information, as well as date and place of birth data, to determine whether an applicant was involved in any prior instances of suspected or actual misconduct on Verizon MA's premises while employed by another carrier. Verizon MA's Replies to GN-VZ 1-11 and GN-VZ 1-14. When processing renewal applications, Verizon MA uses Social Security number information to ensure that the renewal applicant is the same person as the original applicant. Verizon MA's Reply to DTE-VZ 2-1. This is a necessary and reasonable security measure because Verizon MA has no direct face-to-face contact with renewal applicants, and no photos are required on such applications. It also prevents Verizon MA from re-issuing a photo ID badge or access card when the CLEC employee may have left or transferred to another company during his/her credential "active period" without informing Verizon MA, as required by long-standing collocation procedures. *Id.*

¹³ For example, if a CLEC employee is experiencing difficulty in accessing a premise due to card or equipment malfunction, Verizon MA can verify the identity of the employee at the time of trouble by requesting verbal confirmation of his/her Social Security number. Verizon MA would then cross-check that information with the database file described above. Once Verizon MA confirms that the individual is the assigned cardholder, the CLEC employee would be given access to the facility. *Id.*; *see also* Verizon MA's Reply to GN-VZ 1-11.

If the Department grants the relief requested in GNAPs' Complaint, it would, in effect, force Verizon MA to adopt a "lowest common denominator" approach to security procedures in Massachusetts. This would significantly compromise the reasonable security measures established to protect Verizon MA's and other carriers' equipment, network facilities, and employees.

As discussed above, there is no legal basis - or overriding "privacy principles," as GNAPs suggests - that would warrant the elimination of Verizon MA's requirement for CLEC certification of drug testing and felony convictions, as well as the provision of basic employee data, such as Social Security numbers. Likewise, no regulatory imperative exists that would justify *less* stringent security measures for CLEC employees than Verizon MA applies to its own workforce. Indeed, FCC guidelines support parity among incumbent LECs and CLECs in applying reasonable security measures.

GNAPs does not claim that complying with Verizon MA's security requirements would be costly, and provides no basis for refusing to certify its employees via drug testing and felony background checks. GNAPs' Replies to VZ-GN 1-5, 1-12 and 1-14. The fact that GNAPs does not currently have such employee screening procedures of its own employees and vendors is no excuse for GNAPs' non-compliance in this instance.¹⁴ GNAPs' Reply to VZ-GN 1-11.

Likewise, GNAPs fails to demonstrate how compliance with Verizon MA's security procedures would create a barrier to entry under federal law. Verizon MA has

¹⁴ GNAPs suggests that many of its employees have "experience in the armed forces and have already undergone rigorous background checks." GNAPs' Reply to DTE-GN 1-4. Nevertheless, GNAPs does not indicate how recently such background checks were conducted, nor does GNAPs provide the requisite certification regarding past criminal convictions per those background checks.

issued collocation access cards and photo ID badges to GNAPs' employees requiring access to GNAPs' equipment in Verizon MA's facilities upon completion of the Company's application form. Verizon MA's Answer to GNAPs' Complaint, ¶ 1. The information requested on that application form is the same information required of Verizon MA's own employees. *Id.*, at Attachment 1.

Finally, Verizon's published collocation security practices provide that any collocator employees or contractors with expired photo ID badges may be denied access to CO premises. In flagrant disregard of those practices, GNAPs has wrongfully allowed its employees to enter Verizon MA's collocated COs with lapsed access credentials.¹⁵ Such conduct cannot be condoned because it would undermine Verizon MA's security procedures, thereby increasing the potential for harm to Verizon MA's network and CLECs' collocated equipment, as well as jeopardizing the safety and security of personnel at those COs.¹⁶ Therefore, Verizon MA urges the Department to deny GNAPs' Complaint and affirm the reasonableness of Verizon MA's security measures to protect its network for customers and carriers alike.

¹⁵ The photo ID badges of three GNAPs' employees in technical and/or operational positions expired in April 2001. GNAPs' Reply to VZ-GN 1-3. However, GNAPs did not submit their applications for renewal until August 2002. GNAPs' Reply to DTE-GN 2-3 (Proprietary). Verizon MA subsequently rejected those three applications in September 2002 because GNAPs failed to provide certification of drug testing and felony background checks in compliance with Verizon MA's current security requirements. GNAPs' Reply to VZ-GN 1-3.

¹⁶ Contrary to GNAPs' claims, the *only* information provided on applications recently submitted by existing GNAPs employees whose ID badges had expired *and* new GNAPs employees was their name and those Verizon MA's CO locations to which they required access. GNAPs' Reply to DTE-GN 1-5. GNAPs has since supplied Social Security number and date and place of birth, as required by Verizon MA's long-standing security practices. As GNAPs recognized, its employees had provided such information to Verizon MA in the past. GNAPs' Reply to DTE-GN 1-6. However, GNAPs continues to refuse to provide certification of drug testing and felony background checks, where applicable.

II. CONCLUSION

Verizon MA's requirement that CLECs provide certification of drug screening tests and criminal background checks on applications for Verizon MA's non-employee photo ID badges and access cards is a reasonable security measure and should be endorsed by the Department. The certification requirement meets the FCC parity rules and is consistent with both Massachusetts and federal privacy law. Most of all, it makes good sense in a time of heightened security concerns.

GNAPs' objections to Verizon MA's certification requirements are without merit. The Department cannot endorse the position of a company that appears to undertake no objective security measures and has shown itself willing to ignore the basic security measures that Verizon MA has in place. GNAPs is not entitled to the relief requested in its Complaint, and should be directed by the Department to comply fully with Verizon MA's security procedures for the issuance of Verizon MA's non-employee access credentials.

Respectfully submitted,

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