

One Boston Place, Boston, MA 02108
Tel: (617) 226-4000 ■ Fax: (617) 226-4500 ■ www.WolfBlock.com

Richard A. Sugarman
Direct Dial: (617) 226-4031
Direct Fax: (617) 226-4531
E-mail: rsugarman@wolfblock.com

March 5, 2008

VIA HAND DELIVERY

Catrice Williams
Secretary
Department of Telecommunications & Cable
One South Station
2nd Floor
Boston, MA 02110

Re: Petition of Verizon for Investigation under Chapter 159,
Section 14 of the Intrastate Access Rates of Competitive
Local Exchange Carriers, D.T.C. 07-9

Dear Secretary Williams:

Intervenor Comcast Phone of Massachusetts, Inc. ("Comcast") respectfully submits that the Massachusetts Department of Telecommunications and Cable ("the Department") should go forward with the above-captioned proceeding.

The proceeding presents important issues for the telecommunications marketplace in Massachusetts and for the customers it serves. Comcast and its affiliates, among the largest providers of residential voice services in Massachusetts, believe strongly in competition and in the policies of regulatory forbearance that have promoted competition since *IntraLATA Competition*, D.P.U. 1731 (1985). Terminating access charges cannot be insulated from the impact of competition, however. A terminating carrier has leverage over traffic originating on another carrier's network because the latter has an obligation to deliver a call regardless of the price of termination, and these terminating access charges are invisible to the calling party. More specifically, the caller receives no pricing signals and the originating and transiting carriers may not choose among terminating LECs. There is no apparent reason for terminating access rates to differ greatly from carrier to carrier, because the costs of terminating are primarily a function of switching costs that do not vary much. The result may be neither efficient nor equitable. A disparity in access charges creates incentives to arbitrage by expanding services to customers with a disproportionate amount of inbound calling. A small number of CLEC customers may receive subsidies at the expense of a far greater number of LEC and IXC customers who would be unable to reap the benefits of competition.

This investigation therefore should determine if imbalances in access charges are a regulatory anomaly that the Department should address. The Department has broad power to conduct such an investigation and to determine how to proceed. Nothing in G.L. c. 159 § 14 or otherwise precludes the Department from proceeding as contemplated at the February 12, 2008 procedural conference.

1. The Department Has Power to Open an Investigation Into CLECs' Intrastate Access Rates.

The Department's power of "general supervision and regulation of, and jurisdiction and control" over telecommunications carriers under M.G.L. c. 159 § 12 confers on it "broad supervisory powers." *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts*, D.T.E. 97-116 at 3 (Oct. 26, 1998); *see also id.*, D.T.E. 97-116-A, at 4 (Feb. 25, 1999). This general supervisory and regulatory jurisdiction permits the Department to request information from carriers and to use such information in determining how to proceed with an investigation. D.T.E. 97-116-A at 4; *see also* M.G.L. c. 159 § 13.

Nothing in G.L. c. 159 § 14 limits these powers, contrary to the arguments of One Communications,¹ XO Communications,² and RNK Communications.³ This statute makes no distinction between the scope of a proceeding initiated on the Department's own motion compared to one initiated by complaint. By the terms of the statute, either way of commencing a proceeding may culminate in a decision that intrastate "rates, fares or charges . . . or the regulations or practices" are unjust or unreasonable, preferential, or discriminatory. Thus, it is immaterial to the scope of this proceeding whether it is treated as a Verizon complaint or opened as an investigation on the Department's own motion. Likewise, there is nothing in M.G.L. c. 159 § 14 that requires that a complaint be brought against a particular carrier or that precludes reading "of any carrier" as any carrier that has rates, fares, charges, regulations, or practices that are the subject of a complaint. Indeed, G.L. c. 159 § 13 specifically confers such general authority to "inquire into the rates, charges, regulations, practices, equipment and services of common carriers in this commonwealth, and elsewhere, rendering any service of a kind subject to its jurisdiction."

¹ *Petition of Verizon New England, Inc. for Investigation Under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Motion to Dismiss of One Communications, at 7-8 (filed Feb. 27, 2008).

² *Id.*, Motion of XO Communications Services, Inc. to Dismiss Verizon Massachusetts' Section 14 Complaint, at 1-2 (filed Feb. 27, 2008).

³ *Id.*, Motion to Dismiss of RNK, Inc. d/b/a/ RNK Communications, at 3-4 (filed Feb. 27, 2008).

As a regulatory agency, the Department's powers include discretion whether to exercise its authority by rulemaking or adjudication.⁴ See *Mass. Elec. Co. v. Dept. of Public Utilities*, 383 Mass. 675, 679 (1981)(quoting *Securities & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 203 (1947) ("the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency"). "To insist upon one form of action to the exclusion of the other is to exalt form over necessity." *Chenery*, 332 U.S. at 202.

These powers under its enabling statute and Massachusetts administrative law allow the Department the latitude to conduct this investigation and to go forward according to the Procedural Schedule adopted on February 12, 2008.

2. The Department Has Proceeded in a Similar Manner in Resolving Broad Intercarrier Compensation Issues by Adjudication in D.T.E 97-116.

Verizon's petition for investigation presents issues parallel to the issue of reciprocal compensation following the Telecommunications Act of 1996. That issue occupied the DTE through a series of proceedings beginning with *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts*, D.T.E. 97-116 (Oct. 26, 1998).⁵ That matter, like this one, originated as an adjudicatory complaint by an individual carrier (albeit against a named party); that matter, like this one, had broad application across the telecommunications industry in Massachusetts and attracted many intervenors (including some of the same parties as this case).

⁴ The filed rate doctrine does not prevent the Department from proceeding; it only restricts customers from obtaining relief for rates or practices governed by a filed tariff. *Kline & Co. v. MCI Communications Corp.*, 98 F. Supp. 2d 69, 71 (D. Mass Mar. 2, 2000). The doctrine applies to retrospective relief for charges already paid under tariffs filed with the Department. That does not preclude prospective relief directing carriers to revise tariffs. See *id.* at 73.

⁵ *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, D.T.E. 97-116 (Oct. 26, 1998); D.T.E. 97-116-A (Feb. 25, 1999)(denying partial motion for reconsideration and clarification); D.T.E. 97-116-B (Mar. 23, 1999) (ordering Bell Atlantic to escrow reciprocal compensation payments for ISP-bound traffic); D.T.E. 97-116-C (May 26, 1999) (reconsidering October 1998 order in light of intervening FCC decision); D.T.E. 97-166-D (Feb. 25, 2000) (reaffirming decision in light of reversal of FCC); D.T.E. 97-116-E (2000) (denying motion to vacate D.T.E. 97-116-C & D.T.E. 97-116-D and to reopen D.T.E.97-116 in light of reversal of FCC); D.T.E. 97-116-F (Aug. 29, 2001) (reaffirming based on FCC April 2001 Order on Remand).

Despite the adjudicatory context in D.T.E. 97-116, the DTE proceeded to resolve intercarrier compensation issues much as though it were engaged in rulemaking. Each stage was decided on papers without taking evidence, even though parties argued at various stages that the D.T.E. should do so.⁶ Here, in contrast to D.T.E. 97-116, the Department has decided to hear evidence; this affords the parties the fullest requirements of agency decision-making whether by adjudication or rulemaking – notice and the opportunity to be heard. *Cf. Mass. Elec. Co. v. Dept. of Public Utilities, supra*, 383 Mass. at 679 (discussing rights of stakeholders). The Department should be assured of an adequate record and full participation to be able address the intercarrier compensation issues presented in this proceeding.

For these reasons, Comcast submits that there is no reason to dismiss the proceeding and good reason to go forward.

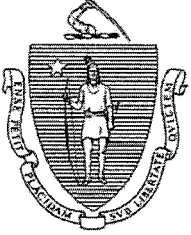
Sincerely,



Richard A. Sugarman
For WolfBlock LLP

cc: Service List

⁶ See, e.g., *Complaint of Global NAPS, Inc. against Bell Atlantic*, dismissed as moot in D.T.E. 97-116-D (Feb. 25, 2000); Initial Comments by AT&T Regarding the FCC's April 2001 Order on Reciprocal Compensation for ISP-Bound Traffic, D.T.E. 97-116-F (filed June 13, 2001).



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

ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3580
www.mass.gov/dtc

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

DANIEL O'CONNELL
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

DANIEL C. CRANE
DIRECTOR OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

SHARON E. GILLETT
COMMISSIONER

D.T.C. 07-9
Service List
As of February 26, 2008

Catrice C. Williams
Department Secretary
Department of Telecommunications and Cable
One South Station
Boston, MA 02110
617-305-3580
Catrice.williams@state.ma.us
dtc.efiling@state.ma.us

Lindsay DeRoche
Hearing Officer
Department of Telecommunications and Cable
One South Station
Boston, MA 02110
Tel: 617-305-3580
Fax: 617-478-2590
Lindsay.deroche@state.ma.us

Geoffrey Why
General Counsel
Department of Telecommunications and Cable
One South Station
Boston, MA 02110
Tel: 617-305-3580
Fax: 617-478-2590
Geoffrey.why@state.ma.us

Michael Isenberg
Director, Competition Division
Department of Telecommunications and Cable
One South Station
Boston, MA 02110
Tel: 617-305-3580
Fax: 617-478-2590
Mike.isenberg@state.ma.us

Bruce Beausejour, Esq.
Verizon Massachusetts
185 Franklin Street, 13th floor
Boston, MA 02110-1585
Tel: 617-743-2445
Fax: 617-737-0648
bruce.p.beausejour@verizon.com

Douglas Denny-Brown, Esq.
RNK Telecom.
333 Elm Street, Suite 310
Dedham, MA 02026-4530
Tel: 781-613-6103
Fax: 781-297-9836
dougdb@rnktel.com

Richard Fippen, Esq.
Verizon
140 West Street- 27th floor
New York, NY 10007
Tel: 212-321-8115
Fax: 212-962-1687
richard.fipphen@verizon.com

Stacey Parker, Esq.
Comcast Cable Communications Mgmt. LLC
12 Tozer Road
Beverly, MA 01915
Tel: 978-927-5700
Fax: 978-927-6074
stacey_parker@cable.comcast.com

Meabh Purcell, Esq.
Dewey & Lebof, LLP
260 Franklin Street, 3rd Floor
Boston, MA 02110-3173
Tel: 617-748-6847
Fax: 617-439-0341
mpurcell@dl.com

Michael Donahue
Level 3 Communications
1025 Eldorado BLVD 13865
Broomfield, CO 80021
Tel: 720-888-2505
Fax: 720-888-5127
tom.stortz@level3.com

Karen M. Potkul
XO Communications, Inc.
1701 Trapelo Road, Suite 397
Waltham, MA 02451
Tel: 781-858-7775
Fax: 781-949-7766
karen.potkul@xo.com

Cameron F. Kerry, Esq.
Mintz and Levin
One Financial Center
Boston, MA 02111
Tel: 617-348-1671
Fax: 617-542-2241
cfkerry@mintz.com

Eric J. Krathwohl, Esq.
Rich May, a Professional Corporation
176 Federal Street
Boston, MA 02110-2223
Tel: 617-556-3857
Fax: 617-556-3890
ekrathwohl@richmaylaw.com

Jesse Reyes
Office of the Attorney General
One Ashburton Place
Boston MA 02108
Tel: 617-727-2200
Fax: 617-727-1047
jesse.reyes@state.ma.us

Gregory M. Kennan
Vice President, Regulatory Affairs
One Communications
220 Bear Hill Road
Waltham, MA 02451
Tel: 781-622-2124
Fax: 781-522-8797
gkennan@onecommunications.com

Judith Messenger
Paetec
Senior Manager - Regulatory Affairs
600 Willowbrook Office Park
Fairport, NY 14450
Tel: 585-340-2822
Fax: 585-740-2498
judy.messeng@pactec.com

Alan D. Mandl
Attorney At Law
Qwest Communications
55 Old Bedford Road
Lincoln, MA 01773
Tel: 617-228-4464
Fax: 781-259-1112
amandl@smithduggan.com

John B. Messenger
Vice President and Associate General Counsel
600 Willowbrook Office Park
Fairport, NY 14450
(585) 340-2772 Office
(585) 340-2563 Fax
(585) 820-8722 Mobile
john.messenger@paetec.com

Paula Foley
Regulatory Affairs Counsel
One Communications
220 Bear Hill Road
Waltham, MA 02451
Tel: 781-466-1220
Fax: 781-622-2180
pfoley@onecommunications.com

Matthew Kinney
RNK Telecom
333 Elm Street, Suite 310
Dedham, MA 02026-4530
Tel: 781-613-6148
Fax: 781-297-9836
matt@rnktel.com

Michael Tenore
Assistant General Counsel
RNK Communications
333 Elm Street, Suite 310
Dedham, MA 02026
Tel: 781-613-6119
Fax: 781-297-9836
mtenore@rnkcom.com

Jay Gruber
Senior Attorney
AT&T Communications of New England, Inc.
99 Bedford St., Suite 420
Boston, MA 02110
Tel: 617-574-3149
Fax: 617-574-3120
jegruber@lga.att.com

Adam L. Sherr
Corporate Counsel
Qwest Communications Corporation
1600 7th Avenue, Rm. 3206
Seattle, WA 98118
Tel: 206-398-2507
Fax: 206-343-4040
adam.sherr@qwest.com

John B. Adams
The Adams Legal Firm, LLC
626C Admiral Drive, # 312
Annapolis, MD 21401
Tel: 202-448-9033
Fax: 202-448-9040
jbadams@adamslegalfirm.com

William A. Haas
1 Martha's Way
Hiawatha, Iowa 52233
Tel: 319-790-7295
Fax: 319-790-7901
whaas@mcleodusa.com

Michael J. Goldey
81 Highfield Road
Harrison, NY 10528
Tel: 914-967-3312
Fax: 914-967-2183
m.goldey@mindspring.com