PUBLIC VERSION

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

COMPETITIVE CARRIERS' MOTION FOR SUMMARY JUDGMENT

The Competitive Carriers[1] move pursuant to 220 C.M.R. § 1.06(6)(e) for summary judgment determining that the Traffic Exhange Agreement[2] (including Amendment No. 1)[3] and the VoIP-to-VoIP Agreement[4] (collectively, the "Agreements") that Verizon New England Inc., d/b/a Verizon MA has submitted to the Department are "interconnection agreements" that must be filed for approval pursuant to 47 U.S.C. § 252. There is no genuine issue as to any material fact and the Competitive Carriers are entitled to judgment as a matter of law. The Agreements squarely fit the Federal Communications Commission's (FCC) criteria for § 252 interconnection agreements. The Department should grant the motion forthwith.

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[1] 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.

[2] **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

As in previous filings, the Competitive Carriers' marking of certain Verizon MA-originated material as Highly Confidential does not signify assent that Verizon properly designated such material. The Competitive Carriers reserve all rights on this issue.

[3] **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

[4] **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

In support of this motion, the Competitive Carriers rely on the filings, motions, other submissions, orders, and other materials in the Department's files relating to this matter[5] and the Declaration of Gregory M. Kennan ("Kennan Dec."), which attaches portions of Verizon MA's prefiled testimony, certain responses to information requests, and other documents.

Issue Presented

The Competitive Carriers are entitled to summary judgment on the sole question pending in this matter: whether the Traffic Exchange Agreement (including Amendment No. 1) and the VoIP-to-VoIP Agreement are "interconnection agreements" that must be filed with the Department for approval pursuant to 47 U.S.C. § 252. *See* Hearing Officer's Ruling on Petitions for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, and the Other Party to the Agreement, at 2 (June 28, 2013).[6]

Many matters are *not* at issue at this juncture, and the Department should take care not to be distracted by irrelevant claims or evidence that is not germane to the issues at hand (regardless of whether it might have some bearing at later stages of the case). A question that will be important in the future but is not pertinent at this stage of the proceeding is whether the Agreements satisfy the substantive criteria of § 252(e)(2), such as whether the Agreements are nondiscriminatory and in the public interest. The Department will conduct its substantive review after finding that the Agreements must be filed with the Department for review and approval.

[5] The Department may take official notice of material in its own files. *Board of Assessors of Boston v. Ogden Suffolk Downs, Inc.*, 398 Mass. 604, 605, 499 N.E.2d 1200, 1201 (1986). To the extent a specific request is necessary or appropriate, the Competitive Carriers make such request for any material in the Department's files cited or quoted in this motion.

[6] http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/rulptninterconf.pdf.

Discussion

I. Legal Standards.

A. Summary Judgment.

The standard for summary judgment is familiar: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56(c). Further, "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Mass. R. Civ. P. 56(e). Further, partial summary judgment resolving some but not all claims or issues may be entered. In such case, facts found to be without substantial controversy "shall be deemed established, and the trial shall be conducted accordingly." Mass. R. Civ. P. 56(d).

B. Interconnection Agreement.

There is no genuine question that the Traffic Exchange Agreement (including Amendment No. 1) and the VoIP-to-VoIP Agreement are "interconnection agreements" under 47 U.S.C. § 252. The standard is straightforward: the FCC has held that "an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1)." *Qwest Communications Int'l Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1),*

WC Dkt. 02-89, Memorandum Opinion and Order, FCC 02-276, 17 FCC Rcd. 19337, ¶ 8 (2002) (emphasis omitted) (*"2002 Qwest Declaratory Ruling Order*").[7] Further, "[A]greements that contain an ongoing obligation *relating to* section 251(b) or (c) must be filed under 252(a)(1)." *Id.* n.26 (emphasis added).

Importantly, on the issue of what constitutes "relating to section 251(b) or (c)," courts and state commissions have interpreted the phrase broadly, holding that the § 252(a)(1) filing requirement is not limited solely to agreements involving the specific mandates in 47 U.S.C. §§ 251(b) and (c). *See, e.g., Qwest Corp. v. Pub. Utils. Comm'n of Colo.*, 479 F.3d 1184, 1192-97 (10th Cir. 2007), *affirming Qwest Corp. v. Pub. Utils. Comm'n of Colo.*, 2006 WL 771223, at *4 (D. Colo. Mar. 24, 2006) and *Qwest Corp. v. Pub. Serv. Comm'n of Utah*, 2005 WL 3534301, at *7-*9 (D. Utah Dec. 21, 2005). Rather, the plain language of 47 U.S.C. § 252(a)(1) provides that even those agreements the incumbent LEC voluntarily negotiates "*without regard to the standards set forth in subsection (b) or (c) of section 251* . . . shall be submitted to the State commission under subsection (e) of this section." 47 U.S.C. § 252(a)(1) (emphasis added); *see also Qwest Corp.*, 2005 WL 3534301, at *5; *In re Qwest Corp.*, 2004 WL 2567420, at *3 (Utah P.S.C. Sept. 30, 2004).

Notably, the FCC's view of what types of provisions give rise to an incumbent LEC's duty to file is broad, recognizing that "on its face, section 252(a)(1) does not . . . limit the types of agreements that carriers must submit to state commissions." *2002 Qwest Declaratory Ruling Order*, ¶ 8. As such, the FCC concluded that even "agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements." *See id.*, ¶ 9.

[7] http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-02-276A1.pdf.

In addition, the FCC has made it clear that it is the responsibility of state commissions (such as the Department) to apply the FCC's guidance by deciding what agreements should be filed. The FCC specifically addressed and rejected the idea that more detailed guidance was necessary.

> We decline to establish an exhaustive, all-encompassing "interconnection agreement" standard. The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed. We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval.

Id., ¶ 10. The FCC reached this conclusion because, "Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an 'interconnection agreement' and, if so, whether it should be approved or rejected." *Id.*

1. Obligations Related to Interconnection

"Interconnection" is defined as "the physical linking of two networks for the mutual exchange of traffic." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, CC Docket No. 96-98, First Report and Order, FCC 96-325, 11 FCC Rcd. 15499, ¶ 176 (1996) ("*Local Competition Order*").[8] As discussed above, any agreement involving an incumbent LEC, like Verizon MA, that establishes or contains an ongoing obligation relating to the physical linking of networks is an interconnection agreement that must be filed under section 252. *2002 Qwest Declaratory Ruling Order*, ¶ 8.

[8] http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-96-325A1.pdf.

2. Obligations Related to Reciprocal Compensation

Section 251(b)(5) of the Act imposes on all local exchange carriers "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has made clear that § 251(b)(5) applies to *all* types of telecommunications traffic:

> Section 251(b)(5) imposes on all LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." . . . The Commission explained that section 251(b)(5) does not use the term "local," but instead speaks more broadly of the transport and termination of "telecommunications." As defined in the Act, the term "telecommunications" means the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received" and thus encompasses communications traffic of *any* geographic scope (*e.g.*, "local," "intrastate," or "interstate") or regulatory classification (*e.g.*, "telephone exchange service," "telephone toll service," or "exchange access").

In the Matter of Connect America Fund, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 761 (released Nov. 18, 2011) ("*ICC Reform Order*") (emphasis added). [9]

In particular, among the traffic types that the FCC explicitly brought within § 251(b)(5) was VoIP-PSTN traffic. VoIP-PSTN traffic is traffic that either originates and/or terminates in IP format (but which is exchanged in TDM format). See 47 C.F.R. § 51.913. In the *ICC Reform Order*, the FCC held: "Although the Commission has not classified interconnected VoIP services . . . as 'telecommunications services' or 'information services,' VoIP-PSTN traffic nevertheless can be encompassed by section 251(b)(5)." *ICC Reform Order*, ¶ 954. The FCC's rationale was based on its previous recognition "that interconnected VoIP providers are providers of telecommunications." *Id.*, citing *In the Matter of Universal Service Contribution Methodology*,

[9] (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1_Rcd.pdf.

WC Dkt. 06-122, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, ¶ 41 (rel. June 27, 2006) (*"Universal Service Contribution Methodology Order"*).

This point bears emphasizing. The FCC thus has held that the question whether VoIP is a telecommunications service or an information service is irrelevant to the question whether reciprocal compensation under § 251(b)(5) is applicable to VoIP traffic. This is because, under FCC precedent, VoIP services are "telecommunications," *id.*, and § 251(b)(5) applies to "telecommunications" traffic. And, the § 252 filing obligation is triggered for agreements with ILECs relating to ongoing obligations under § 251(b)(5).

Comcast agrees that the scope of the § 251(b)(5) obligation is broad, applying to all types of telecommunications, including VoIP. Comcast explained to the FCC:

> Congress drafted section 251(b)(5) expansively to apply to all compensation issues related to the transport and termination of "telecommunications," which the statute defines very broadly. Moreover, section 251(b)(5) makes no distinctions among traffic on the basis of jurisdiction (local, toll, intrastate, interstate) or service definition (*e.g.*, exchange access, local exchange service, VoIP).

In re Connect America Fund, WTC Docket 10-90, Comments of Comcast Corporation, at 6-7 (Apr. 18, 2011) (Kennan Dec., Ex. A).[10] Comcast went on to say further: "As the Commission previously has found, section 251(b)(5) applies not just to the exchange of traffic between two LECs, but more broadly to the exchange of any traffic involving a LEC at one end." *Id.* at 7 n. 21.

Consequently, *all* telecommunications traffic categories are subject to section 251(b)(5). This means that any agreement involving an ILEC and addressing an ongoing obligation regarding the transport and termination of, or payment of reciprocal compensation for, *any* type

[10] http://apps.fcc.gov/ecfs/document/view?id=7021239474.

of telecommunications traffic is by definition an "interconnection agreement" that must be filed for review under § 252.

II. The Agreements Contain Numerous Obligations and Provisions That Make Them Interconnection Agreements Under 47 U.S.C. § 252.

The Agreements submitted by Verizon MA contain numerous obligations and provisions that make them interconnection agreements under 47 U.S.C. § 252. Several examples follow.

A. Traffic Exchange Agreement (and Amendment No. 1).

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[redacted]

- [redacted]
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[redacted]

[redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

Therefore, for at least these four reasons, the Traffic Exchange Agreement is an interconnection agreement under § 252, and must be filed for Department review and approval.

B. VoIP-to-VoIP Agreement.

Under the standards summarized above, the VoIP-to-VoIP Agreement is also a § 252 interconnection agreement.

[BEGIN HIGHLY SENSITIVE CONFIDENTIAL] [redacted]

[redacted]

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In sum, the VoIP-to-VoIP Agreement contains numerous provisions covering the same topics as the Traffic Exchange Agreement (sometimes in identical language). To the extent that the VoIP-to-VoIP Agreement differs from the Traffic Exchange Agreement, those differences do not mean that the VoIP-to-VoIP Agreement is not subject to review under § 252.

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Second, although **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]** that makes no difference to the determination that the VoIP-to-VoIP Agreement is a § 252 interconnection agreement. Comcast states specifically that its VoIP affiliate "offers retail interconnected [VoIP] services." *See* Comcast's Response to Competitive Carriers' First Set of Information Requests to Comcast, Preliminary Statement at 1 (Kennan Dec. Ex. B). Like Verizon's interconnected VoIP service, Comcast's interconnected VoIP service is "telecommunications" subject to § 251(b)(5). And, Comcast has asserted to the FCC that § 251(b)(5) does not require that both the originating and terminating provider be LECs; it is sufficient that the provider on one end is a LEC. When the LEC on the other end is an incumbent LEC, like Verizon MA, the § 252 filing obligation applies.

Further, Comcast's VoIP affiliates do not act in isolation in providing voice services to Massachusetts customers; Comcast's CLEC affiliates are integrally involved in the process of transmitting and routing calls to Comcast's VoIP customers. Comcast CLEC affiliates provide other wholesale services to Comcast VoIP affiliates for purposes of providing retail VoIP services to end-user customers in a state. *In the Matter of Petition for Declaratory Ruling Whether Voice over Internet Protocol Services Are Entitled to the Interconnection Rights of Telecommunications Carriers*, WC Docket No. 08-56, Comments of Comcast Corporation, at 2 (May 19, 2008) (Kennan Dec. Ex. C).[11] For example, Comcast's VoIP affiliates do not obtain direct access to telephone numbers for customers seeking to purchase Comcast VoIP service; rather, the Comcast CLEC affiliates perform this function. *See* Comcast's Response to Competitive Carriers' First Set of Information Requests to Comcast, Information Request No. 1 (Kennan Dec. Ex. B).

[BEGIN HIGHLY SENSITIVE CONFIDENTIAL] [redacted]

[11] http://apps.fcc.gov/ecfs/document/view?id=6520010404

[redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

Consequently, the Comcast CLEC affiliates remain central to the activities necessary to provide the Comcast VoIP service that is the subject of the VoIP-to-VoIP Agreement. Allowing a CLEC to create a separate non-CLEC affiliate to enter into an interconnection agreement with an ILEC for the exchange of voice traffic in IP format would enable the CLEC to receive terms from the ILEC that are more favorable than those offered to CLECs without such affiliates and would prevent Massachusetts and other states from policing unreasonable discrimination. It would also preclude opt-in rights, contrary to the provisions of § 252.

III. The Legal and Policy Rationales that Verizon Offers to Avoid Filing are Irrelevant and/or Meritless.

Based on its prefiled testimony and earlier filings, Verizon is expected to offer various legal and policy rationales to escape its clear duty to file the Agreements. In addition to being irrelevant, its arguments are meritless and wrong.

A. Verizon's Claim that VoIP is an Information Service is Irrelevant.

Verizon has stated that it will argue that the Agreements are not subject to section 252 review on the ground that the VoIP services that the Agreements address are information services, not telecommunications services, because they offer an integrated suite of services and features and the capability to perform a net protocol conversion. *E.g.*, Reply of Verizon MA in Support of Motion for Abeyance, at 2-3 (Sept. 11, 2013) (Kennan Dec. Ex. D);[12] Verizon Letter to Secretary Williams dated November 26, 2013, at 1 (Kennan Dec. Ex. E).[13] Verizon's claim is

[12] http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/vzrepsuppmtnabey.pdf

[13] http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/vzrespclecsched.pdf

irrelevant and the evidence on which it will rely is immaterial. The Department should not consider either such claims or such evidence.

Verizon's claim is irrelevant because the FCC has explicitly held that § 251(b)(5) applies to VoIP traffic. As discussed above, in the *ICC Reform Order,* the FCC expressly stated that while it has never determined whether interconnected VoIP services are telecommunications services or information services, the section 251(b)(5) obligation applies to VoIP because VoIP is "telecommunications." "Telecommunications" is a broader term than "telecommunication services," and unquestionably includes VoIP.

And, there can be no question that the traffic exchanged under the Agreements is "telecommunications." **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]** Verizon acknowledges that customers of its VoIP services can make local, intraLATA, and interLATA voice calls to customers of Comcast's VoIP services; customers of its non-VoIP services can make local, intraLATA, and interLATA voice calls to customers of Comcast's VoIP services; customers of Comcast's VoIP services can make local, intraLATA, and interLATA voice calls to customers of Verizon's VoIP services; and customers of Comcast's VoIP services can make local, intraLATA, and interLATA voice calls to customers of Verizon's non-VoIP services. Verizon MA Responses to Competitive Carriers' Information Requests,

Set 1, Nos. 16, 18, 20, & 22 (Kennan Dec. Ex. F). No matter what combination of Verizon and Comcast retail services is involved, the underlying traffic is still voice calls.

And, as noted above, Comcast agrees. "[S]ection 251(b)(5) makes no distinctions among traffic on the basis of jurisdiction (local, toll, intrastate, interstate) or service definition (*e.g.*, exchange access, local exchange service, VoIP)." *In re Connect America Fund*, WTC Docket 10-90, Comments of Comcast Corporation, at 6-7 (Apr. 18, 2011) (Kennan Decl., Ex. A).

Since the Agreements (among other things) establish and relate to ongoing obligations for the transport and termination of, and reciprocal compensation for, VoIP traffic, they are "interconnection agreements" within the scope of § 252.

Because Verizon MA's defense that VoIP is an information service is irrelevant, evidence in support of such an argument also is immaterial and irrelevant. The Department should reject any factual information that Verizon MA files in response to this motion that purports to support its argument that its VoIP offering is an information service (including but not limited to information regarding an integrated suite of services or net protocol conversions). In addition, the Department should disregard Verizon MA's prefiled testimony to the extent it purports to support this claim.

B. Verizon's Other Policy Rationales Also Fail.

Verizon is expected to offer various policy justifications as to why the Department should let Verizon escape its statutory duty to file the Agreements for review. In essence, these justifications share the theme that the law no longer should apply, or no longer should apply to Verizon, in the brave new world of VoIP.

However, like it or not, the law is the law, and Verizon may not simply ignore the law because Verizon wishes it were different. While Verizon might like this case to be a referendum

on the Telecommunications Act, that is not the purpose of this proceeding and it is not the role of the Department to conduct one. Therefore, Verizon's policy rationales are irrelevant and the Department should disregard them.

1. Filing of the Agreements at Issue Here Will not Result in a Patchwork Quilt of Inconsistent Regulation.

Verizon is expected to argue that if the Department requires filing of the Agreements, the result will be a patchwork quilt of various state regulatory requirements that will eliminate the flexibility carriers need to negotiate IP interconnection arrangements. At the outset, it is worth noting that Verizon's expected argument is premature. The only issue at this stage of the proceeding is whether the existing, negotiated, and signed Traffic Exchange and VoIP-to-VoIP Agreements must be filed for review. Arguments about the substance of the agreements (including whether particular agreements or provisions are or are not consistent state to state, if that is a relevant concern at a later date) are not germane at this stage.

Moreover, Verizon's expected argument about inconsistent state regulation is based on the false premise that state commissions will interfere in the technical details of the parties' negotiations. But there is no reason for state commissions to become involved in the technical details of parties' IP interconnection arrangements. As Verizon itself observes, use of IP technologies simplifies technical matters by, for example, eliminating layers of switches and transport and reducing the number of necessary interconnection points. Verizon Direct at 11 (Kennan Decl. Ex. G). This is true not only for Verizon but for all other facilities-based providers, including competitive carriers, that have deployed IP technology in their networks. Verizon further claims that VoIP service providers can exchange all domestic traffic across the country pursuant to a single IP interconnection agreement. Verizon Direct at 12 (Kennan Dec.

Ex. G). If Verizon is correct, that would simplify the business and administrative aspects of interconnection and traffic exchange.

In addition, even if arguments about inconsistency had some bearing on the issue currently before the Department, there is no *a priori* reason to believe that reasonable consistency among state commission decisions cannot be achieved in the future. The development of nationwide industry standards promotes uniformity. For example, the Association for Telecommunications Industry Solutions (ATIS) (of which Verizon's Thomas Sawanobori, Vice President, Network Corporate Technology, is Second Vice Chairman[14]) has stated to the FCC:

> As a leading developer of technical and operational standards for the communications industry and the North American Organizational Partner in the 3rd Generation Partnership Project (3GPP), ATIS has developed a significant number of standards related to the transition of wireline and wireless networks to new and evolving technologies. This work includes voice over IP (VoIP) interconnection and next generation 9-1-1 (NG9-1-1) emergency communications, QoS, and North American Numbering Plan (NANP) numbering.
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> . . .
>
> ATIS PTSC [Packet Technologies and Systems Committee], for example, has published a number of standards in support of transitioning from circuit-switched to packet-switched (i.e., IP) technologies. Among these are standards focused on the interconnection of VoIP networks, including *IP Network-to-Network Interface (NNI) Standard for VoIP* (ATIS-1000009). This standard addresses the IP NNI for VoIP between carriers, as well as the need for a standard interface as telecommunications networks migrate the NNI from TDM circuit-switched to IP systems. It supports VoIP by defining: (1) interconnection architecture; (2) Session Initiation Protocol (SIP) call/session control signaling; (3) signaling and media transport; (4) QoS; (5) association between call control and media control; and (6) mandatory SIP uniform resource identifiers (URI) to be supported.

[14] *See* Kennan Dec. Ex. I.

In the Matter of Technology Transitions Policy Task Force Seeks Comment on Potential Trials, GN Docket No. 13-5, Comments of the Alliance for Telecommunications Industry Solutions, at 1, 4-5 (July 8, 2013) (Kennan Dec. Ex. J).[15]

There is no reason to think that in the event of an arbitration, state commissions would depart from these industry technical standards and practices that have been developed and are being developed for IP interconnection.

In fact, a ruling requiring filing and review could ultimately afford other providers the opportunity to opt into the same agreements as Comcast. Enabling other providers to adopt the

[15] http://apps.fcc.gov/ecfs/document/view?id=7520928994.

ATIS listed numerous additional industry standards in its comments to the FCC:

> Other VoIP interconnection standards developed by PTSC include:
>
> - *Session Border Controller Functions and Requirements* (ATIS-1000026.2008(R2013)), which define the Session Border Controller (SBC) functions and requirements that reside within a service provider's network, including operation, administration, maintenance, and provisioning (OAM&P) requirements.
> - *Technical Parameters for IP Network to Network Interconnection Release 1.0* (ATIS-1000038), which specify the "Interconnection Technical Parameters" that need to be collected and eventually exchanged between two service providers so that they can successfully interconnect IP-based facilities and VoIP services at an NNI.
> - *Testing Configuration for IP Network to Network Interconnection Release 1.0* (ATIS-1000039), which specifies the service under test configurations that shall be utilized in order to verify the settings (to support ingress and egress processing) of the network border elements for interoperability of a service between providers.
> - *Protocol Suite Profile for IP Network to Network Interconnection Release 1.0* (ATIS-1000040), which identifies a set of protocols and specifies their profile so that signaling, media, and network related parameters can be uniformly and consistently (as identified by the test scenarios defined in ATIS-1000041) utilized across the interconnection interface.
> - *Test Suites for IP Network to Network Interconnection Release 1.0* (ATIS-1000041), which specifies a set of call test scenarios involving SIP and other signaling messages which for various situations may be required to provide an expected reaction to an event or a sequence of events appropriate to the previously-signaled message. This "expected reaction" is based upon the protocol profile established in the messages that flow across the NNI.
> - *IP Device (SIP UA) to Network Interface Standard* (ATIS-1000028.2008(R2013)), which supports SIP-based interconnection for VoIP between a carrier and the user. The SIP UNI specified in this document is applicable to individual SIP phones as well as to SIP private branch exchanges.

Id.

same agreements as Comcast cannot and does not create inconsistency. Just the opposite is true — opting-in *promotes* consistency.

Further, consistency is fostered by national or multi-state agreements. Verizon suggests that a single interconnection agreement would cover all domestic traffic across the country. Verizon Direct at 12 (Kennan Dec. Ex. G). And that is exactly what Verizon has done here. It describes the Traffic Exchange Agreement as "multi-state." Reply of Verizon MA in Support of Motion for Abeyance at 1 (Kennan Dec. Ex. D). **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]** It is hard to imagine greater uniformity and consistency.

2. Complying with its Legal Obligations Will Not Unduly Burden Verizon.

The Department should disregard any argument by Verizon MA portraying itself as a struggling startup in the VoIP market, no different than competitive VoIP providers, such that it should not be subject to the statutory obligations of incumbent LECs. That claim is irrelevant, because Verizon MA indisputably is an incumbent LEC subject to the requirements of §§ 251and 252.

And, Verizon MA is anything but a small startup. Verizon holds 99.9% of the incumbent LEC market share in Massachusetts, while the CLEC market share is spread among *133*

competitors. Department of Telecommunications and Cable, *Competition Status Report*, Executive Summary at ii-iv;[16] FCC, *Local Telephone Competition: Status as of December 31, 2012*, Table 17 (released November 2013) (Kennan Dec. Ex. K).[17] It is the disparity in relative size between Verizon and each *individual* competitor that creates the conditions for discrimination that § 252 is intended to prevent.

Further, the Department should reject any claim by Verizon that complying with the filing and review requirements of section 252 would place undue burdens upon it. In stark contrast, NTCA-The Rural Broadband Association, a trade organization of rural incumbent LECs, has urged the FCC to rule that the obligations of sections 251 and 252 apply to VoIP interconnection.

> Clarifying that sections 251 and 252 apply to the exchange of traffic between carriers in any technological format [including VoIP] would thus be consistent with the Commission's own reasoning in reforming intercarrier compensation. Such clarification would also promote certainty by incorporating a well-known, time-tested regulatory backdrop and stimulate IP deployment by creating a level competitive playing field and minimizing opportunities for arbitrage.

Letter from Michael Romano, President, NTCA, to FCC Secretary Marlene H, Dortch, April 1, 2013, *In the Matter of Connect America Fund*, WC Docket No. 10-90, at 3 (Kennan Dec. Ex. L).[18] Notably, these small, rural ILECs are not claiming any undue burden from complying with the requirements of sections 251 and 252. Any such claims by Verizon lack any credibility, and the Department should disregard them.

[16] http://www.mass.gov/ocabr/docs/dtc/compreport/competitionreport-executivesummary.pdf

[17] http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1126/DOC-324413A1.pdf

[18] http://apps.fcc.gov/ecfs/document/view?id=7022136656

IV. Requiring Verizon MA to File the Agreements Will Promote Competition.

Verizon's failure to file the Agreements not only violates the Act, but also undermines the Act's fundamental, pro-competitive policy goals in several ways.

First, "requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms." *Local Competition Order*, ¶ 167. The FCC has further found that "State commissions should have the opportunity to review *all* agreements . . . to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest." *Id.* (emphasis in original). Thus, unless the Department can review the Agreements, the Department cannot fulfill its statutory duty under section 252(e)(2)(A) of ensuring that the agreements are non-discriminatory and in the public interest.

Second, the section 252 filing requirement gives third-party carriers an independent opportunity to avoid the harmful effects of discrimination by allowing them to know which interconnection agreements and terms are available for opt-in under section 252(i). *See In the Matter of Qwest Corporation — Apparent Liability for Forfeiture*, File No. EB-03-IH-0263, Notice of Apparent Liability for Forfeiture, FCC 04-57, 19 FCC Rcd. 5169, ¶ 4 n.12 (Mar. 12, 2004).[19] For this reason, the statutory filing requirement is "not just a filing requirement" but rather "the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors." *Id.* ¶ 46. If, however, Verizon MA is permitted to withhold the Agreements at issue, Verizon MA can provide more favorable rates, terms, and conditions to Comcast over other competitors and keep those better rates, terms, and conditions "'a secret from the other CLECs.'" *Id.* ¶ 47 (internal citation omitted). As the FCC has found, by discriminating

[19] http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-04-57A1.pdf

in this manner, the incumbent LEC can permanently skew the market in favor of certain competitors. *See id.* ¶ 43.

This is not an abstract or theoretical problem. Verizon MA describes its current practice as follows: "VoIP-PSTN traffic must be converted to TDM at some point in order to complete the call. Currently, the VoIP provider is responsible for performing that conversion, and may do so itself or by contracting with one of the many companies in the marketplace offering IP-to-TDM conversion services." Verizon Direct at 11 (Kennan Dec. Ex. G). To permit Comcast to interconnect in IP format while precluding other carriers that operate IP networks, like the Competitive Carriers, from doing the same gives Comcast an efficiency advantage over the Competitive Carriers and similarly-situated carriers that are relegated to interconnecting only in TDM format. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Yet, without the benefit of an IP interconnection agreement like Comcast has, when a VoIP customer of a Competitive Carrier calls a Verizon non-VoIP customer, the Competitive Carrier performs the conversion. Even though the Competitive Carrier has deployed an efficient IP network, in the traffic exchange it does not enjoy the acknowledged efficiencies and savings of IP technology that should result, such as fewer points of interconnection and reductions in layers of equipment. *See* Verizon Direct at 11-13 (Kennan Dec. Ex. G). The discrimination is obvious.

Third, Section 252(i) of the Act lowers the barriers to competitive entry — and thus promotes competition — by enabling third-party carriers to obtain interconnection on the same

terms and conditions as in a previously approved interconnection agreement without incurring the costs associated with a lengthy negotiation and approval process. *See Local Competition Order* ¶ 1321 (finding that permitting requesting carriers to obtain interconnection "on an expedited basis" will "ensure competition occurs as quickly and efficiently as possible"). If Verizon is not required to file and obtain approval of the Agreements, the Competitive Carriers other requesting carriers could not exercise their opt-in rights. Instead, they would be forced to engage in unnecessary and costly negotiations. Such an outcome would defeat the "pro-competition purpose of section 252(i)." *Id.*

Finally, and importantly, the Department should not fall prey to any argument that requiring filing and review of these Agreements will open the floodgates to a deluge of interconnection arbitrations that will mire the rollout of VoIP technology in a morass of administrative process. The Competitive Carriers agree that the better course in these matters is voluntary negotiation of mutually acceptable and beneficial agreements. What the Competitive Carriers are seeking is *balanced* negotiation buttressed by a regulatory backstop that provides competitors with a statutory minimum of rights (such as the ability to opt into approved agreements) and a process for Department arbitration of unresolved issues. The percentage of interconnection agreements that have gone to arbitration is small. There is no reason to fear that the percentage will radically increase merely because the format for the exchange of traffic is IP rather than TDM.

Conclusion

For the foregoing reasons, the Department should grant this motion.

Respectfully submitted,

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