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' OPPOSITION TO VERIZON'S MOTIONS TO DISMISS AND TO REOPEN THE RECORD

At least nine competitive providers serving Massachusetts customers through differing business models, products, and services have urged the Department to resolve the central issue in this case — whether the Verizon/Comcast IP Interconnection Agreements must be filed for Department review under 47 U.S.C. § 252[1] — by ordering immediate filing of the Agreements. The evidence set forth by the Competitive Carriers,[2] Sprint,[3] Cox and Charter,[4] and XO[5] shows that establishing such a regulatory backstop to the parties' negotiations will benefit consumers and competition and facilitate broadband investment and deployment in the Commonwealth.

[1] Order Opening an Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA's Motion to Dismiss or Stay the Proceeding, at 1-2 (May 13, 2013) (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/end132open136.pdf); *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) (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/rulptninterconf.pdf).

[2] Competitive Carriers' Initial Brief (May 30, 2014) ("Competitive Carriers' Brief") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/clecinitialbrief.pdf); Competitive Carriers' Reply Brief (June 20, 2014) ("Competitive Carriers' Reply") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/clecreplybrief.pdf).

[3] Sprint's Initial Post-Hearing Brief (May 30, 2014) ("Sprint Brief") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/clecinitialbrief.pdf); Sprint's Reply Brief (June 20, 2014) ("Sprint Reply")(http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/sprintreplybrief.pdf).

[4] Post Hearing Brief of Cox Rhode Island Telecom LLC and Charter Fiberlink MA-CCO, LLC (May 30, 2014) ("Cox/Charter Brief") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/coxcharterbrief.pdf); Post Hearing Brief of Cox Rhode Island Telecom LLC and Charter Fiberlink MA-CCO, LLC (June 20, 2014) ("Cox/Charter Reply") ((http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/coxchartrebrief.pdf).

[5] Initial Brief of XO Communication Services, LLC (May 30, 2014) ("XO Brief") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/clxoinitialbrief.pdf); .Reply Brief of XO Communication Services, LLC (June 20, 2014) ("XO Reply") (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/xoreplybrief.pdf).

Therefore, the Competitive Carriers[6] oppose Verizon's Motion to Dismiss[7] and Motion to Reopen.[8] Verizon offers no valid reason to avoid or delay a decision on the merits requiring that the Agreements be filed. Given that interconnecting in IP format is becoming a business imperative for carriers, it is not surprising that a mobile wireless carrier would enter into an IP interconnection agreement with Verizon. But that is not cause to dismiss or abate this proceeding. The relevant question is whether Verizon's exploitation of its competitors' need to interconnect in IP allows it to discriminate in favor of some competitors and against others in direct contravention of the Act. The Department has previously observed that allowing incumbent LECs to circumvent the requirements of Section 252 for IP interconnection would be "ill-conceived."[9] Absent a Department ruling in this proceeding requiring filing of the Verizon/Comcast Agreements, however, that is exactly what Verizon will continue to do in Massachusetts. Verizon's agreement with Sprint's wireless subsidiary is irrelevant to the Department's ruling on the Verizon/Comcast Agreements. If it were relevant, however, it would underscore the need not to dismiss this case, but promptly to issue an order requiring the Comcast/Verizon Agreements to be filed.

Contrary to Verizon's assertion, there is no justification for reopening the record. The Sprint agreement that Verizon seeks to introduce will not have a significant impact on the outcome of the case. Further, the procedural vehicle upon which Verizon relies —

---

[6] Cbeyond Communications, LLC; 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); Level 3 Communications, LLC; PAETEC Communications, Inc.; and tw telecom data services llc.

[7] Verizon MA's Motion to Dismiss or, in the Alternative, Renewed Motion to Abate this Proceeding (September 9, 2014) ("Motion to Dismiss").

[8] Motion to Reopen the Record and Accept an Additional Exhibit (September 9, 2014) ("Motion to Reopen").

[9] Reply Comments of the Massachusetts Department of Telecommunications and Cable, WC Dkt. No. 10-90, at 10 (Feb. 17, 2012) (http://apps.fcc.gov/ecfs/document/view?id=7021861557).

supplementing an earlier discovery response — is unavailable, because the Sprint agreement is utterly non-responsive to Information Request CC-VZ 2-6. Even if it were, the purported supplemental response is not timely, and should be rejected on that basis.

Discussion

I. The Department Should Decide This Case on the Merits.

A. Verizon claims that its agreement with Sprint's wireless subsidiary shows that "there is no IP interconnection problem in Massachusetts for the Department to address."[10] To the contrary — there is. That at least nine competitive providers in Massachusetts have participated in this case and advocated for an order requiring that the Verizon/Comcast Agreements be filed for review under Section 252 demonstrates the depth of that problem. As XO stated, "Whether contracts such as the Agreements must be filed with the Department and are subject to the review and opt-in requirements of Section 252 has been a matter of critical concern to the competitive local exchange carrier ("CLEC") community for a long time."[11]

As the evidence in this case shows, Verizon seeks free reign to enter into interconnection agreements without filing them, in clear violation of the law.[12] All carriers have a right to review these interconnection agreements and to determine whether the possibility of discrimination exists, and to opt into these agreements if suitable to them. And, the Department has the right (and statutory duty) to review the agreements before approving them. Granting Verizon's Motion to Dismiss would eliminate the Department's and other carriers' rights to ensure that such agreements are non-discriminatory and in the public interest.

---

[10] Motion to Dismiss at 1.

[11] XO Reply at 1-2.

[12] If the Department admits the agreement with Sprint's wireless subsidiary into the record, that agreement would be further evidence of Verizon's ability to use its market power to force objectionable conditions upon parties with less negotiating leverage.

The FCC has explained that the filing, review, approval, and opt-in requirements for negotiated agreements under Section 252 constitute "the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors."[13] If an incumbent LEC were permitted to withhold its agreements from the public, it could exploit its market power by providing more favorable rates, terms, and conditions to a small number of competitors while keeping those better rates, terms, and conditions "a secret" from the other competitors.[14] The FCC has found that, by discriminating in this manner, the incumbent LEC can permanently skew the market in favor of certain competitors.[15]

Further, without filing and review by the state commission, there would be nothing to stop an incumbent LEC from "playing nice" while the regulatory spotlights were on it[16] and worsening its terms later when no longer under regulatory scrutiny. An incumbent LEC in this manner could accumulate a few agreements to build a case for its argument that regulation is unnecessary. Absent review and potential arbitration and enforcement by a state commission like the Department under Section 252 and the opt-in rights granted by Section 252(i), there is no obvious mechanism that would prevent the incumbent from discriminating in later agreements by offering less favorable terms.

---

[13] *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, ¶ 46 (Mar. 12, 2004) ("*Qwest NAL Order*") (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-04-57A1.pdf).

[14] *Id.* ¶ 47 (internal citation and quotation marks omitted).

[15] *See id.* ¶ 43.

[16] As the Competitive Carriers have explained, Verizon's enthusiasm for IP interconnection arose only after the FCC and the Department began to examine its IP-interconnection practices. Verizon announced its first agreement in February 2012, after the FCC sought comment on IP-interconnection issues. *In re Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 1381 (2011) ("*ICC Reform Order and FNPRM*") (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1_Rcd.pdf). It approached the parties in this case regarding "commercial" negotiations (those without the protections of § 252) in June 2013, after the Department denied its petition to dismiss the predecessor case, DTC 13-2. Even under the intense scrutiny of this proceeding and the FCC rulemaking, since Verizon announced that first IP-interconnection agreement in February 2012, it has entered only eight (according to the existing record). That further reflects Verizon's pattern of delay in bringing the benefits of IP-interconnection to consumers and other carriers. *See* Competitive Carriers' Reply Brief at 3-6.

Verizon makes no bones about its desire to enter discriminatory agreements. Verizon prefers secret negotiations because "knowledge of specific terms on which Verizon is willing to exchange traffic with one carrier in IP format would confer a valuable business advantage on other carriers (Verizon MA's competitors) who may also seek to exchange traffic in IP format – namely, a leg up in contract negotiations with Verizon MA."[17] In the negotiation environment envisioned by Verizon, only one party — Verizon itself — knows the details of all the agreements, and that knowledge gives *Verizon* the leg up in negotiations. This kind of discrimination by an incumbent LEC is exactly what the Section 252(a)(1) filing requirement was designed to prevent.

In addition, the Section 252 filing and opt-in requirements lower the barriers to competitive entry by enabling third-party carriers to obtain interconnection on the same terms and conditions as in a previously-approved interconnection agreement without undergoing a lengthy negotiation and approval process.[18] Without the filing and opt-in requirements, an incumbent LEC could exploit its market power by slow and expensive interconnection negotiations, thereby raising its rivals' costs and weakening competition.

A Department ruling that Section 252(a)(1) requires the filing of the Verizon/Comcast Agreements at issue also will encourage broadband investment and deployment, in furtherance of Congressional policy. Section 706(a) of the Act provides that the

---

[17] Gillan Direct Testimony (CC Ex. 1) at 8-9; Verizon MA Motion for Confidential Treatment, D.T.C. 13-6, at 3 (Dec. 23, 2013) (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/vzmtnconfcontrct.pdf).

[18] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, First Report and Order, FCC 96-325, 11 FCC Rcd. 15499, ¶ 1321 (1996) ("*Local Competition Order*") (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-96-325A1.pdf) (finding that permitting requesting carriers to obtain interconnection "on an expedited basis" will "ensure competition occurs as quickly and efficiently as possible"); *Qwest NAL Order* ¶ 20 ("Through this mechanism, competitive carriers avoid the delay and expense of negotiating new agreements with the incumbent LEC and then awaiting state commission approval.").

> [Federal Communications] Commission and *each State commission* with regulatory jurisdiction over telecommunications services *shall* encourage the deployment . . . of advanced telecommunications capability [(*i.e.*, broadband)] to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.[19]

The FCC repeatedly has held that regulatory actions to promote the use and deployment of VoIP services advance the goals of Section 706. In particular, the FCC has found that extending certain obligations to interconnected VoIP providers (*e.g.*, E911, CPNI, local number portability, and discontinuance requirements) "may spur consumer demand for interconnected VoIP services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment consistent with the goals of section 706."[20] The Department, too, has recognized that IP interconnection "will aid in the development of additional broadband networks."[21]

The Department clearly is correct. Allowing competitive carriers to opt into the Agreements and obtain IP interconnection with Verizon will undoubtedly promote the use and deployment of VoIP services, and in turn, the deployment of broadband. For example, removing obstacles to IP interconnection with Verizon would enable competitive LECs to deploy services, such as High Definition voice, that they would otherwise be unable to provide without IP

---

[19] 47 U.S.C. § 1302(a) (emphasis added).

[20] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order, 22 FCC Rcd. 6927, ¶ 59 (2007) (https://apps.fcc.gov/edocs_public/attachmatch/DOC-272953A1.doc); *IP-Enabled Services: E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245, ¶ 31 (2005) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-116A1.pdf); *see also IP-Enabled Services*, Report and Order, 24 FCC Rcd. 6039, ¶ 13 (2009) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-09-40A1_Rcd.pdf); *Telephone Number Requirements for IP-Enabled Services Providers*, Report & Order, 22 FCC Rcd. 19531, ¶ 29 (2007) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-07-188A1.pdf).

[21] Letter from Paul Abbott, General Counsel, Massachusetts Department of Telecommunications and Cable, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-90, at 7 (filed May 4, 2012) ("Department May 4, 2012 Comments to FCC") (http://apps.fcc.gov/ecfs/document/view?id=7021916063).

interconnection.[22] In addition, the numerous efficiencies associated with IP interconnection would allow competitive carriers (as well as Verizon) to provide VoIP services more cost-effectively[23] and to provide those services to more end-user customers. Making VoIP services available at lower costs and to more end-user customers would spur demand for more broadband and, as a result, would encourage investment in broadband networks. As Sprint has explained, "IP interconnection almost certainly will accelerate consumer adoption of broadband services because, between the sizable reduction in the cost of providing voice services and the enabling of new features altogether, consumers will have added incentives to subscribe to broadband services." [24] A Department finding in this case that the Agreements must be filed and made available for opt-in would help constrain Verizon's market power over interconnection, spur the use and deployment of VoIP services, and in turn, drive broadband deployment.

Massachusetts consumers will benefit from a decision that the Verizon/Comcast Agreements are subject to Section 252. By requiring Verizon to interconnect in IP format, millions of dollars potentially could be saved in Massachusetts alone by eliminating unnecessary equipment; simplifying business processes; and reducing the number of interconnection trunks that other carriers obtain from Verizon, with all their attendant costs.[25] Increasing efficiency and

---

[22] *See* Sprint Direct Testimony (Sprint Ex. 1) at 27, lines 7-9; *see also* Comments of COMPTEL, GN Dkt. No. 13-5, Attachment B, n.9 (filed July 8, 2013) ("COMPTEL July 8, 2013 Comments") (http://apps.fcc.gov/ecfs/document/view?id=7520928885).

[23] *See, e.g.*, COMPTEL July 8, 2013 Comments, Attachment B, at 1-6 (describing the operational and economic efficiencies that interconnected carriers can gain from IP interconnection, including "a significant reduction" in facilities and equipment and more simplified network design); *see id.* at 3 (stating that "the cost of interconnection could be reduced by more than 90% through the use of VoIP interconnection (in comparison to TDM)," and that figure does not account for "the additional benefits possible *once the VoIP interconnection [i]s established*") (emphasis in original); Sprint Direct Testimony (Sprint Ex. 1) at 26, lines 10-21.

[24] Comments of Sprint Nextel Corporation, WC Dkt. No. 10-90, at 3 (filed Feb. 24, 2012) (http://apps.fcc.gov/ecfs/document/view?id=7021865477)..

[25] Malfara Rebuttal Testimony (CC Ex. 3) at 9 (lines 14-25) and 10 (lines 1-16); Hearing Tr., Vol. 2, at 125, lines 15-23; RR DTC-Spr 1; Competitive Carriers' Brief at 6-7; Competitive Carriers' Reply Brief at 14-15; Sprint Brief at 43-45; XO Reply at 9-10; Cox/Charter Reply at 3.

reducing costs in this manner will aid consumers by freeing up funds to be used to lower rates or make network improvements. These benefits would be lost if the Department dismissed this case.

B. The evidence in this case demonstrates that the Verizon/Comcast Agreements are "interconnection agreements" that Verizon is required, but has refused, to file for Department review under Section 252. Whether entities other than Verizon and Comcast are asserting their rights to claim that Section 252 applies to IP interconnection agreements for voice traffic, or are waiving those rights, does not and should not affect the Department's duty under the Act to determine if the Verizon/Comcast agreements are subject to review. This is a question for the Department to determine in the exercise of its statutory duty under § 252.

In addition, Verizon's tiresome claims that it is negotiating in good faith while other parties are not[26] simply do not stand up to scrutiny. Verizon will not negotiate with a competitor that seeks an agreement subject to Section 252. It has a legal position, will not budge from it, and has engaged for eighteen months in hard-fought litigation to vindicate that legal position. Verizon impugns itself by repeating its mantra that other parties who insist on their own legal rights are not acting in good faith.[27] As Sprint aptly stated: "Verizon's repetitious attempts to discredit intervenors for their insistence on negotiating contracts without forfeiting those rights guaranteed them under the Act is simply further evidence of the need for the Department to serve as a regulatory backstop."[28]

---

[26] Motion to Dismiss at 1-2. Sprint accurately describes this theme as "far and away Verizon's favorite topic." Sprint Reply at 31.

[27] *See* Competitive Carriers' Opposition to Verizon's Motion to Abate, DTC 13-6, at 4-6 (filed May 27, 2014) (http://www.mass.gov/ocabr/docs/dtc/dockets/13-6/clecoppvzabate.pdf).

[28] Sprint Reply at 4.

Further, as Cox and Charter and XO point out, Verizon's accusations of "regulatory posturing" defy logic. The Competitive Carriers and other intervenors have pressed for expeditious determination of this case, while Verizon has repeatedly sought dismissal, abatement, and delay. Competitive providers want to interconnect in IP, and have incentives to do so quickly and avoid the costs of delay and litigation. (This is why competitive providers routinely interconnect in IP with carriers other than incumbent LECs.) It is not competitive providers, but Verizon's unyielding insistence on its own regulatory position, that impedes more widespread implementation of IP interconnection in Massachusetts.[29]

II. The Department Should Deny the Motion to Reopen.

A. There is No Good Cause to Reopen the Record.

In addition to denying the Motion to Dismiss, the Department should reject its underlying evidentiary basis: the Sprint agreement for which Verizon seeks to reopen the record. Verizon's Motion to Reopen fails to satisfy the legal standard that Verizon itself cites to determine whether good cause exists to reopen a record. The Sprint Agreement that Verizon wishes to introduce will not "have a significant impact on the decision," or indeed, any impact at all.

The Sprint agreement has no impact because it is irrelevant, cumulative, or both. The evidence in this case, specifically, the FCC Local Competition Report, states that as of December 2012 there were 913 reporting non-incumbent LECs and 591 providers of interconnected VoIP service nationally.[30] Adding the Sprint agreement at most increases from eight to nine the number of IP -interconnection agreements that Verizon has entered in the entire country in the

[29] *See* Cox/Charter Reply at 2-3; XO Reply at 10-11.

[30] CC Ex. 4.

two and a half years since February 2012. Such a minute increase to a miniscule number adds no detectable weight to Verizon's claims of its willingness to enter such agreements.

B. Verizon's Purported Supplemental Response Is Non-responsive and Untimely.

Verizon's attempt to shoehorn the Sprint agreement into the record under guise of a supplemental discovery response is invalid and should be rejected. The Sprint agreement simply is non-responsive to Information Request CC-VZ 2-6. That request asked for copies of five specified agreements that Verizon had entered with five carriers identified by name:

> Please produce copies of the five "IP VoIP interconnections agreements" (*i.e.*, those Verizon has entered into with "Vonage, BroadVox, InterMetro, Bandwidth.com and Millicorp") referred to in Verizon's rebuttal testimony, p. 4.

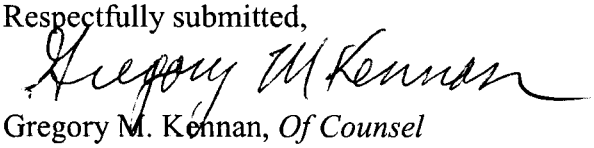
None of the named carriers was Sprint. The request did not seek "all agreements." Identifying an agreement with Sprint, or an agreement beyond the specified five, is utterly non-responsive to the question asked. Verizon's supposed response is more properly the object of a motion to strike, rather than a motion to reopen the record.

Even if Verizon's purported supplement were germane and responsive, it was not timely. Verizon announced the Sprint agreement to the Department on August 6, 2014. Yet, Verizon took more than a month to produce the document. Verizon therefore failed to amend its response "seasonably," as required by 220 C.M.R. 1.06(c)(5). It should not be allowed to benefit from its violation of the rules. Further, Verizon's failure for over a month to produce a document that it unquestionably had in its possession is another example in Verizon's long and consistent pattern of delay.

Conclusion

Verizon's continuing attempts to delay and obfuscate do not obscure, but instead underscore, the lack of merit in its substantive position. The Verizon/Comcast Agreements are subject to Section 252 review. The Department should deny the Motion to Dismiss and Motion to Reopen, then proceed to issue an order requiring Verizon, without further delay or procedural maneuvers, to file the Agreements for such review.

Respectfully submitted,



Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 N. Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
gmk@fhllplaw.com

September 16, 2014