

**FAGELBAUM &
HELLER LLP**

**ATTORNEYS
AT LAW**

**LOS ANGELES
NEW YORK
BOSTON**

20 North Main Street, Suite 125 ♦ P.O. Box 230 ♦ Sherborn, MA 01770 ♦ USA
Telephone 508-318-5611 ♦ Facsimile 508-318-5612 ♦ E-mail: gmk@fhllplaw.com

RECEIVED

2013 JAN 31 AM 8:59

Gregory M. Kennan
Of Counsel
(Adm. MA)

CLASS. SECT. OF
TELECOMMUNICATIONS & CABLE

January 31, 2013

Catrice C. Williams
Department Secretary
Department of Telecommunications & Cable
1000 Washington Street, 8th Floor, Suite 820
Boston, MA 02118-6500

Re: *Petition for a Determination that Verizon IP-to-IP Interconnection Agreements Must be
Filed for Review and Approval and for Associated Relief, Dkt. No. DTC 13-_____*

Dear Ms. Williams:

Enclosed for filing are the Competitive Carriers' Petition to Require Filing and Review of
FiOS Digital Voice Interconnection Agreement and Notice of Appearance.

Please feel free to contact me if you have any questions. Thank you.

Very truly yours,



Gregory M. Kennan

cc: Alexander W. Moore, Esq.

HOME OFFICE

2029 Century Park East ♦ Suite 3550 ♦ Los Angeles, CA 90067 ♦ USA
Telephone (310) 286-7666 ♦ Facsimile (310) 286-7086 ♦ E-mail: office@fhllplaw.com

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

Petition for a Determination that Verizon IP-to-IP Interconnection Agreements Must be Filed for Review and Approval and for Associated Relief

DTC 13-_____

**COMPETITIVE CARRIERS' PETITION
TO REQUIRE FILING AND REVIEW OF FIOS DIGITAL VOICE
INTERCONNECTION AGREEMENT**

In a formal statement to the Federal Communications Commission (FCC) in February 2012, Verizon stated: "Verizon currently has one [IP-to-IP interconnection] agreement in place covering its FiOS Digital Voice VoIP traffic, and we are negotiating others." *In re Connect America Fund*, WC Docket No. 10-90, Comments of Verizon at 14 (Feb. 24, 2012) ("Verizon Comments").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; and tw data services llc (collectively, the "Competitive Carriers") petition pursuant to G.L. c. 30A, § 8 and any other applicable authority that the Department: (1) determine that Verizon New England Inc. must file for Department review and approval under 47 U.S.C. § 252(a)(1) and (e)(1) the admitted (and any other) interconnection agreement that requires or permits the exchange of voice

¹ <http://apps.fcc.gov/ecfs/document/view?id=7021865697>

traffic to or from customers subscribing to Verizon's FiOS Digital Voice service in Internet Protocol (IP) format; (2) conduct such investigation as is necessary to determine whether the FiOS Digital Voice interconnection agreement that Verizon admits to having entered applies to traffic that originates and/or terminates in Massachusetts;² (3) direct Verizon to file such agreement with the Department for review and approval; (4) undertake to review such agreement as required by 47 U.S.C. § 252(e); (5) issue any other orders or directives as may be necessary to effect the letter and spirit of the Department's determinations; and (6) grant such other relief as may be appropriate and just.

Parties

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; and EarthLink Business, LLC (formerly New Edge Network, Inc. d/b/a EarthLink Business) (collectively, the "EarthLink Business companies"), each is a competitive telecommunications provider duly registered with the Department to provide, and which does provide, telecommunications services within the Commonwealth of Massachusetts. The EarthLink Business companies have a place of business at 5 Wall Street, Burlington, MA.

2. Cbeyond Communications, LLC ("Cbeyond") is a competitive telecommunications provider duly registered with the Department to provide, and which

² In the event that Verizon claims that the contract does not apply to any traffic that originates or terminates in Massachusetts, Petitioners would request the Department require Verizon nevertheless to provide the contract for inspection so that the Department may independently verify that no such traffic would fall within its terms.

does provide, telecommunications services within the Commonwealth of Massachusetts. Cbeyond has a place of business at 200 Wheeler Road, First Floor, Burlington MA 01803.

3. tw data services llc ("tw") is a competitive telecommunications provider duly registered with the Department to provide, and which does provide, telecommunications services within the Commonwealth of Massachusetts. tw has a place of business at 10475 Park Meadows Drive, Littleton, Colorado 80124.

4. Verizon New England Inc. ("Verizon") is a telecommunications carrier duly registered with the Department to provide, and which does provide, telecommunications services within the Commonwealth of Massachusetts. It has a place of business at 125 High St., Boston, MA 02110. Verizon is one of the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

5. Verizon is a "local exchange carrier" within the meaning of 47 U.S.C. § 3(26). Verizon also is an "incumbent local exchange carrier" within the meaning of 47 U.S.C. § 251(h).

6. Verizon provides within Massachusetts, among other things:

- a. "exchange access" within the meaning of 47 U.S.C. § 3(16);
- b. "telephone exchange service" within the meaning of 47 U.S.C. § 3(47); and
- c. "telephone toll service" within the meaning of 47 U.S.C. § 3(48).

Statement of Facts

7. Among the services that Verizon offers to provide (and does provide) to its end-user customers is FiOS Digital Voice Service, which uses IP technology (and is

commonly known as a Voice over Internet Protocol (VoIP) service). This VoIP service allows end-users to make local, regional, and interstate calls for the transmission of voice communications to locations of the end-users' choosing. Verizon offers to provide (and does provide) FiOS Digital Voice Service to end users in Massachusetts and elsewhere. On information and belief, Verizon uses its own, private, facilities-based network for the transmission of FiOS Digital Voice calls to and from its end users.

8. The use of VoIP is significant and growing. Carriers like the Competitive Carriers and, on information and belief, Verizon are replacing existing time division multiplexing (TDM) technology with IP technology. The periodic report by the Federal Communications Commission's (FCC) Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2011*, FCC DOC 314631A1, states that as of that date, there were 33.6 million VoIP subscriptions in the United States, versus 112.2 million retail switched access lines. Corresponding figures reported by the FCC as of June 30, 2010 were 28.9 million VoIP subscriptions and 122.3 million retail switched access lines. *Local Telephone Competition: Status as of June 30, 2010*, FCC DOC 305297A1.

9. Each of the Competitive Carriers also offers to provide and does provide local voice services using IP protocol, or which can be and are converted to IP protocol for purpose of transport, to its end-user customers, in Massachusetts and elsewhere. These services allow end-users to make local, regional, and interstate calls for the transmission of voice communications to locations of the end-users' choosing. Each of the Competitive Carriers uses, in whole or in part, its own, private, facilities-based network for the transmission of such calls to and from its end users.

10. In order to exchange traffic, providers must interconnect their networks. “Interconnection is the linking of two networks for the mutual exchange of traffic.” 47 C.F.R. § 51.5.

11. It is more efficient to exchange voice traffic in IP format than to convert such traffic to other formats, such as TDM, solely for purposes of interconnection. Converting IP voice traffic to TDM format solely for the purposes of handing the traffic off at an interconnection point imposes inefficiencies on the Competitive Carriers and other providers that transmit voice in IP format.

12. Verizon agrees that interconnecting in IP format for the exchange of traffic is beneficial. As Verizon explained to the FCC: “In an IP network, there is no need for a dedicated physical connection to carry a call all the way to the terminating party, and the switches that separate calls into local, tandem, and interexchange segments can be eliminated. And in an IP network, there can be far fewer network interconnection points.” Verizon Comments at 15; *see* Verizon Comments, Attachment A – Declaration of Ihab S. Tarazi (“Tarazi Decl.”), ¶ 8.

13. Absent the ability to interconnect and exchange traffic in IP format, the Competitive Carriers, other competitive facilities-based providers, and their customers will experience higher costs, degraded service quality, and slower deployment of IP technology. Such an outcome would harm public welfare.

14. Conversely, the Competitive Carriers, other competitive facilities-based providers, and their customers will benefit from the ability to interconnect with Verizon directly on an IP-to-IP basis. Public welfare and the public interest would improve.

15. Under 47 U.S.C. § 251(c)(3), Verizon has:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title [47 U.S.C.].

16. It is technically feasible for Verizon to interconnect its network with those of other carriers, such as the Competitive Carriers, on an IP-to-IP basis. Verizon has entered at least one agreement to interconnect in IP to exchange traffic in IP format. Specifically, Verizon told the FCC, "Verizon currently has one agreement in place covering its FiOS Digital Voice VoIP traffic, and we are negotiating others." Verizon Comments at 14; Tarazi Decl. ¶ 6.

17. Pursuant to 47 U.S.C. § 252(a)(1) and 252(e)(1), any interconnection agreement arrived at by negotiation or arbitration must be submitted to the state commission for review and approval. In Massachusetts, the Department is the "state commission" for this purpose.

18. Under 47 U.S.C. § 252(e)(2)(A), a state commission, such as the Department, may reject a negotiated interconnection agreement if the agreement (or a portion thereof) discriminates against a telecommunications carrier not a party to the

agreement, or if the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

19. The requirement that interconnection agreements be filed with the state commission, at least in part, allows the state commission to ensure that agreement is nondiscriminatory and consistent with the public interest, convenience, and necessity, as set forth in § 252(e)(2)(A).

20. No interconnection agreement between Verizon and any other party relating to the exchange of traffic to or from FiOS Digital Voice customers in IP format has been submitted to the Department for review and approval.

21. The failure of Verizon to submit such IP-interconnection agreement related to FiOS Digital Voice customers to the Department has prevented the Department from performing its statutory duties to review and approve the agreement and determine whether the agreement meets the criteria of nondiscrimination and consistency with the public interest, convenience, and necessity set forth in 47 U.S.C. § 252(e)(2)(A).

22. G.L. c. 25C, § 6A does not affect the Commission's authority and duties regarding review and approval of IP-interconnection agreements related to FiOS Digital Voice service. Subsection (c) expressly provides, "Subsection (b) shall not be construed to modify or affect the rights or obligations of any carrier under sections 47 USC 251 or 47 USC 252."

23. In addition, under 47 U.S.C. § 252(i), a local exchange carrier, such as Verizon, shall make available any interconnection or service provided under an agreement approved by a state commission to which such carrier is a party, to any other

requesting telecommunications carrier under the same terms and conditions as those provided in the agreement.

24. The failure of Verizon to file such IP-interconnection agreements with the Department has prevented the Competitive Carriers from exercising their right potentially to “adopt” such agreement under to § 252(i). More basically, Verizon’s failure to file such IP-to-IP interconnection agreements with the Department has prevented the Competitive Carriers from even being able to evaluate such agreements to determine if they would want to exercise their right to adopt such agreement. Having an opportunity to evaluate this agreement and adopt it if appropriate would also greatly reduce negotiation costs and facilitate the development of IP-to-IP interconnection agreements more generally.

25. The failure of Verizon to file the IP-to-IP interconnection agreements with the Department, therefore, is discriminatory and inconsistent with the public interest, convenience, and necessity.

Relief Sought

26. Wherefore, the Competitive Carriers request that the Department:

a. Pursuant to G.L. c. 30A, § 8, determine that any IP-interconnection agreement between Verizon and any other party concerning FiOS Digital Voice Service must be filed with the Department for review and approval under 47 U.S.C. § 252(a)(1) and 252(e)(1);

b. Conduct such investigation as may be necessary and appropriate to make such determination;

- c. Direct Verizon to file such agreement with the Department for the Department's review and approval;
- d. Undertake to review such agreement as required by 47 U.S.C. § 252(e);
- e. Issue any other orders or directives as may be necessary to effect the letter and spirit of the Department's determination; and
- f. Grant such other relief as may be appropriate and just.

January 31, 2013

By their attorneys,



Gregory M. Kennan (BBO #267780)
Of Counsel
Fagelbaum & Heller LLP
20 N. Main St., Suite 125
Sherborn, MA 01770
508-318-5611 Tel.
508-318-5612 Fax
gmkn@fhllplaw.com

Certificate of Service

I certify that on the date below I caused the foregoing document to be served by Federal Express overnight delivery upon:

Alexander W. Moore, Esq.
Deputy General Counsel
Verizon
125 High Street
Oliver Tower, Floor 7
Boston, MA 02110-1585

January 31, 2013



Gregory M. Kennan

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

Petition for a Determination that Verizon IP-to-IP Interconnection Agreements Must be Filed for Review and Approval and for Associated Relief

DTC 13-_____

NOTICE OF APPEARANCE

Please take notice that the undersigned counsel appears in this proceeding on behalf of 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, Inc.; and tw data services llc (collectively, the "Competitive Carriers"). Please send future correspondence to:

Gregory M. Kennan
Fagelbaum & Heller LLP
20 N. Main St., Suite 125
Sherborn, MA 01770
508-318-5611 Tel.
508-318-5612 Fax
gmk@fhllplaw.com
jbolen@fhllplaw.com (electronic copies only)

January 31, 2013



Gregory M. Kennan (BBO #267780)