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DEPT. OF
TELECOMMUNICATIONS & CABLE

verizon

March 7, 2013

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

Re: D.T.C. 13-2 - Petition for a Determination that Verizon IP-to-IP Interconnection Agreements must be Filed for Review and Approval and for Associated Relief

Dear Secretary Williams:

Enclosed for filing in the above-referenced matter on behalf of Verizon New England Inc. d/b/a Verizon Massachusetts are its Motion for Leave to File Reply and Reply of Verizon MA in Support of Motion to Dismiss.

Please date stamp the enclosed copy of this letter, and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Sincerely,

Alexander W. Moore

Enclosures

cc: Karlen Reed, Director-Competition Division
Benedict Dobbs, Deputy Director-Competition Division
Gregory M. Kennan, Esquire

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition for a Determination that Verizon IP-to-IP Interconnection Agreements Must be Filed for Review and Approval and for Associated Relief	D.T.C. No. 13-2

MOTION OF VERIZON MA FOR LEAVE TO FILE REPLY

Pursuant to 220 CMR 1.03(5), Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") hereby moves for leave to file the enclosed Reply of Verizon MA in Support of Motion to Dismiss. As grounds for this motion, Verizon MA states that the CLECs' Opposition to Verizon MA's motion misinterprets applicable law and misapprehends the context of this proceeding. Verizon MA seeks the opportunity to respond briefly to those failings in the belief that doing so will assist the Department in addressing the Motion to Dismiss.

WHEREFORE, Verizon MA respectfully requests that the Department grant it leave to file the Reply attached hereto.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,

Alexander W. Moore
125 High Street
Oliver St. Tower – 7th Floor
Boston, MA 02110
(617) 743-2265

Dated: March 7, 2013

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition for a Determination that Verizon IP-to-IP Interconnection Agreements Must be Filed for Review and Approval and for Associated Relief	D.T.C. No. 13-2

REPLY OF VERIZON MA IN SUPPORT OF MOTION TO DISMISS

The CLECs' Opposition to Verizon MA's Motion to Dismiss misinterprets precedent and misapprehends the context of this proceeding. The CLECs have offered no valid grounds for the Department to rush into the thorny federal thicket of IP interconnection policy even while the FCC is actively considering the appropriate regulatory treatment of such matters, and there is a very real risk that any decision by the Department here would be mooted by a subsequent decision by the FCC.

1. The FCC has not determined that IP interconnection arrangements must be filed under section 252. The CLECs argue that the Department has authority to decide "whether a particular agreement is required to be filed" for approval under section 252, citing *In re Qwest Communications*.[1] But the Department cannot apply the *Qwest* standard until the FCC determines whether IP interconnection is a section 251 obligation. *Qwest* makes clear that not every agreement between an incumbent and a competitor must be filed with the state commission – "only those agreements that contain an ongoing obligation relating to section 251(b) or (c)

[1] *In Re Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, WC Docket No, 02-89, Memorandum Opinion and Order, FCC 02-276 (October 4, 2002).

must be filed...."[2] As Verizon MA explained in its Motion to Dismiss, the FCC is now considering whether section 251—or something else—might impose an IP interconnection duty: "We seek comment on which of the available approaches [to IP interconnection under the Telecom Act] is most consistent with our statutes as a whole and sound policy."[3] Until the FCC determines whether IP interconnection is required and the source of any such requirement, the Department cannot know whether section 252 requires filing of the agreement at issue. So the Petitioners' reliance on *Qwest* is unavailing.[4]

2. The CLECs' reliance on DTC 07-9, the Access Rates case, is misplaced. The CLECs assert that the Department should move forward with this proceeding even though the FCC is actively considering the very same issues, citing DTC 07-9 for the proposition that the Department "has declined previous invitations to defer action while FCC dockets are pending." Opposition at 5. But DTC 07-9 provides no guidance here. To begin with, there was no question that the Department had jurisdiction over the subject matter of DTC 07-9, intrastate access rates, whereas its jurisdiction over the subject matter of this case is contested: Verizon MA maintains that the Department does not have such authority, and the Department itself has characterized state commission authority over IP interconnection arrangements as ambiguous.

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2 *Id.* at 5.

3 *USF-ICC Transformation Order* ¶ 1335; *see also id.*, ¶ 1341 ("we seek comment below on which of the various possible statutory provisions as well as standards and enforcement mechanisms we should adopt to implement our expectation that carriers negotiate in good faith").

4 Nor does state law authorize the Department to issue the relief the CLECs seek. The Petition, at 1, requests an advisory opinion "pursuant to G.L. c. 30A, § 8" as to whether Verizon MA must file an IP agreement for Department review under Section 252. Under G.L. c. 30A, § 8, an agency may make an advisory ruling with respect to the applicability of "any statute or regulation enforced or administered by that agency." As the title makes clear, however, Chapter 30A is the "State Administrative Procedure" Act, and its scope is, almost axiomatically, limited to state statutes and state regulations — in other words, to the laws that the state agency not only has authority to enforce, but has the legal jurisdiction to interpret. Here, however, the CLECs are demanding that the Department exercise this state-law authority in order to issue an interpretation of federal statutes. G.L. c. 30A, § 8 does not grant the Department the authority to interpret sections 251 and 252. The province of interpreting federal statutes rests with the federal government (here, the FCC), not with a state agency acting as the executor of a federal regulatory scheme.

Moreover, while it is true that the FCC was considering intercarrier compensation reform while DTC 07-9 was pending, the FCC was focused, at least with respect to intrastate access rates, on ***reducing*** those rates, not increasing them, so there was virtually no likelihood that it would enter an order conflicting with the relief Verizon MA was seeking from the Department – indeed, the FCC had already imposed, at the federal level, the same rate cap the Department ordered in DTC 07-9. Here, of course, the FCC is considering a variety of possible approaches to IP interconnection arrangements, only one of which would extend sections 251 and 252 authority and procedures to such arrangements. Accordingly, the FCC's eventual order may well conflict with the relief that the CLECs seek from the Department.

3. Industry disruption stemming from conflicting orders from the Department and the FCC is much more likely than the CLECs claim. Contrary to the CLECs' assertion, Opposition at 7, the FCC is likely to address whether IP voice interconnection arrangements must be filed for state commission approval under sections 251 and 252. Given that the FCC is not just considering whether there is an IP interconnection obligation but also evaluating the source of any such obligation – as well as the states' role, if any, in administering it – there is a very real possibility that the FCC will land on a regulatory treatment for IP interconnection different than traditional state commission review under section 252.

The CLECs also imply that it is unlikely that enough carriers will enter into IP arrangements "in accordance with the Department's decision" in their favor that a subsequent FCC decision would cause industry disruption. *Id.* But the CLECs then make an immediate about-face and argue that the potential widespread adoption of IP interconnection arrangements is precisely why the Department should not dismiss their Petition: "Indeed, one of the reasons the Department should move expeditiously to require Verizon to file its agreement is so that other

agreements may be put in place." *Id.* at 8. The CLECs cannot have it both ways. A Department decision on this issue will either cause carriers to change their plans and conduct (and then potentially shift gears again in response to an FCC order taking a different approach) as Verizon MA suggests, or it will not, in which case there is no reason for the Department to rush to take action before the FCC addresses the matter.

4. The CLECs have failed to demonstrate any valid grounds for the Department to act ahead of the FCC. None of the CLEC Petitioners has sought to negotiate IP interconnection arrangements with Verizon. Again, Verizon MA does not argue that such negotiation is a legal prerequisite to Department relief, but the CLECs' failure to seek IP interconnection through this available avenue before, or even after, petitioning the Department for redress contradicts any claim that they have a pressing business need that requires the Department to step into this federal issue in advance of an FCC decision. And the Opposition does not even attempt to demonstrate such a need.

Rather, the sole grounds the CLECs have offered for moving forward with the case is the national policy argument noted above, namely that the state commission approval process under sections 251 and 252 "can facilitate the development of IP networks" by making IP interconnection agreements available for adoption. *See* Opposition at 7-9. A ruling that imposes section 252 filing, approval and adoption requirements on such agreements would reduce carriers' incentive to enter into such agreements in the first place, chilling – not promoting – the development of IP networks. More to the point for purposes of the Motion, these policy considerations are now before the FCC, which is the appropriate forum to address them. The CLECs' policy argument does not explain why the Department should not dismiss, or at least stay, this proceeding pending a decision on the matter by the FCC.

Verizon MA respectfully requests that the Department grant its motion to dismiss or, in the alternative, stay this proceeding.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,

Alexander W. Moore
125 High Street
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Dated: March 7, 2013