



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

D.T.C. 13-2

May 13, 2013

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

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D.T.C. 13-6

May 13, 2013

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

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**ORDER OPENING AN INVESTIGATION, DECLINING TO ISSUE AN  
ADVISORY RULING, AND DENYING VERIZON MA'S MOTION TO DISMISS  
OR STAY THE PROCEEDING**

**I. INTRODUCTION**

In accordance with the Department of Telecommunications and Cable's ("Department's") statutory authority under 47 U.S.C. § 252, G. L. c. 25C, §6A(e), and G. L. c. 159 §§ 12(d) and 13, the Department opens an investigation and directs Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon MA") to submit to the Department, the agreement between Verizon MA and an unidentified party that provides for the exchange of Voice over Internet Protocol ("VoIP") traffic in Internet Protocol ("IP") format as identified by Verizon MA in its motion to dismiss ("IP Agreement"). *Verizon MA Motion to Dismiss* at 4 n.9. The Department directs Verizon MA to submit the IP Agreement, so that the Department, in accordance with its statutory obligations, may conduct an investigation to determine whether the agreement is an "Interconnection Agreement" under 47 U.S.C. § 251 requiring the document to

be filed with the Department for approval in accordance with 47 U.S.C. § 252. As a part of opening a new investigation, the Department declines to issue an advisory ruling as requested in the Petition 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 Communications, LLC; and tw data services llc (collectively, “Competitive Carriers”), closes Docket No. D.T.C. 13-2, and denies Verizon MA’s motion to dismiss or stay the proceeding.

## II. PROCEDURAL HISTORY

On January 31, 2013, the Competitive Carriers filed a petition requesting that the Department, pursuant to G. L. c. 30A, § 8 and any other relevant authority, issue an advisory ruling stating 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)” and to take all necessary and appropriate action to enforce its advisory ruling. *Competitive Carrier’s Petition* at 8-9. The Department docketed the case as Docket No. D.T.C. 13-2. *Docket* at 1. On February 14, 2013, Verizon MA filed a motion requesting, “the Department dismiss the [p]etition without prejudice or, in the alternative hold the petition in abeyance until the FCC determines the appropriate regulatory treatment for commercial IP voice interconnection agreements.” *Verizon MA Motion to Dismiss* at 2.

On February 20, 2013, Hearing Officer Betsy Whittey informed counsel for the Competitive Carriers of the Department’s request that any response to Verizon MA’s Motion to

Dismiss be filed on or before February 28, 2013. *Email of Hearing Officer Betsy Whittey to the Service List for D.T.C. 13-2*. On February 28, 2013, the Competitive Carrier filed an Opposition to Verizon MA's Motion to Dismiss. *Docket* at 1. The Competitive Carriers claim that there is no specific legal or policy impediment to the Department's consideration of their Petition and the mere fact that the FCC is investigating the issue does not require that the Department dismiss or hold the Petition in abeyance. *CLEC Response* at 2. On March 7, 2013, Verizon MA filed a Motion for Leave to File Reply and a Reply of Verizon MA in Support of Motion to Dismiss. *Docket* at 1. In reply, Verizon MA reasserts that it is up to the FCC to determine whether IP interconnection is a 47 U.S.C. § 251 obligation. Further, Verizon MA claims that delay in Department action is warranted because the FCC is considering state jurisdiction over IP interconnection agreements, a Department decision that is ultimately contrary to an anticipated FCC's conclusion could cause industry disruption, and no parties have presented a pressing business case for Department action. *Verizon MA Reply* at 1-4.

### III. ANALYSIS AND FINDINGS

#### A. The Department Grants Verizon MA's Motion for Leave to File Reply.

As an initial matter, the Department grants Verizon MA's Motion for Leave to File Reply and accepts Verizon MA's Reply into the record. Verizon MA claims it seeks to respond briefly to arguments raised in the Competitive Carrier's Opposition to Verizon MA's Motion to Dismiss and in doing so will assist the Department in addressing Verizon MA's Motion to Dismiss. *Verizon MA Motion for Leave to Reply* at 1. The Department procedural regulations allows a party to seek leave to file a motion (220 C.M.R. 1.04(5)) and it is within the Department's discretion whether to accept such motions (200 C.M.R. 1.06 (6)). Verizon MA's Motion for Leave to File Reply is uncontested. While the Department has discretion in granting motions for

leave to file reply, the Department will typically balance the potential for additional insight against the need for conducting an efficient hearing. *See e.g. Investigation by the Dep't of Telecomms. and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England Inc. d/b/a Verizon Mass., D.T.C. 06-61, Order on Clarification and Partial Reconsideration at 7 (May 11, 2012).* The Department is persuaded that Verizon MA's Reply could provide some additional insight and would not burden the forward progression of the hearing. Therefore, the Department in its discretion grants Verizon MA's Motion for Leave to File Reply. 220 C.M.R. 1.06(6).

**B. The Department Does Not Grant The Competitive Carrier's Request for Advisory Ruling, But Will Investigate The Substantive Issue Raised By The Request.**

The Department declines to issue an advisory ruling. Pursuant to G. L. c. 30A, § 8, and 220 C.M.R. § 2.08, the Department has discretion to issue or to decline the issuance of advisory rulings as to the applicability to any person, property, or factual situation of any statute or regulation enforced or administered by the Department. *Request for Interpretation of Authority Under G. L. c. 164 with Respect to a Loan by the Littleton Elec. Light Dep't to the Littleton Water Dep't*, D.P.U. 96-11 at 3 (Jan. 30, 1996); *Pet. of MA-Am. Water Co. requesting Advisory Rulings by the Dep't of Pub. Utils., pursuant to G. L. c. 165, § 4, as amended and to 220 C.M.R. § 2.08(1), as amended*, D.P.U. 95-41 at 6-7 (May 3, 1995). Further, "ordinarily, the Department declines to issue advisory opinions and prefers to construe its statutes and regulations in specific factual settings." *Request for Interpretation of Authority Under G. L. c. 164 with Respect to a Loan by the Littleton Elec. Light Dep't to the Littleton Water Dep't*, D.P.U. 96-11 at 4 (citing *Pet. of Town of Stow for an Advisory Ruling, pursuant to the provisions of 220 C.M.R. 2.08, concerning the application of G.L. c. 164, ss. 42 and 43 to the Town of Stow and to the Hudson*

*Light and Power Dep't*, D.P.U. 93-124-B at 1 (May 24, 1994)). Because this is an issue of first impression before the Department and the Department is opening an investigation to determine whether the IP Agreement is an interconnection agreement, the Department declines to issue an advisory ruling.

Although the Department is not issuing an advisory ruling at this time, it is prudent to clarify that contrary to Verizon MA's claim,<sup>1</sup> the Department could provide an advisory ruling with respect to the applicability to 47 U.S.C. §§ 251 and 252 and provide the relief requested by the Competitive Carriers. *See Verizon MA Reply* at 2 n.4. It is well established that state agencies may interpret federal statutes and that state commissions may interpret the Telecommunications Act including 47 U.S.C. §§ 251 and 252. *See e.g., Centennial Puerto Rico License Corp. v. Telecomms. Regulatory Bd. of P.R.*, 634 F.3d 17, 26 (1st Cir. 2011) (holding that state agency interpretation of federal and state law are reviewed de novo, but it is customary where doubt exists to give some deference to the agency charged with administering the statute); *Qwest Corp. v. Pub. Utils. Comm'n of Colo.*, 479 F.3d 1184, 1192 (10th Cir. 2007) (applying a de novo review standard to state commissions' interpretation of the Telecommunications Act); *Global NAPs, Inc. v. Verizon New Eng., Inc.*, 396 F.3d at 24 n.8 (articulating the standard of judicial review of state agency determinations under the Telecommunications Act); *Ind. Bell Tel. Co. v. McCarty*, 362 F.3d 378, 383 (7th Cir.2004); *MCIMetro Access Transmission Servs. v. Bellsouth Telecomms., Inc.*, 352 F.3d 872, 876 (4th Cir.2003); *Coserv. Ltd. Liab. Corp. v. Southwestern Bell Tel. Co.*, 350 F.3d 482, 486 (5th Cir.2003); *U.S. West Commc'ns, Inc. v.*

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<sup>1</sup> “As the title makes clear, [ ] 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 [Competitive Carriers] 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 authority to interpret [47 U.S.C. §§] 251 and 252.” *Verizon MA Reply* at 2 n.4.

*Sprint Commc 'ns Co.*, 275 F.3d 1241, 1248 (10th Cir.2002); *AT&T Commc 'ns of S. States, Inc. v. BellSouth Telecomm., Inc.*, 268 F.3d 1294, 1296 (11th Cir.2001); *AT&T Commc 'ns of N.J. v. Verizon N.J., Inc.*, 270 F.3d 162, 169 (3d Cir.2001); *U.S. West Commc 'ns., Inc. v. MFS Intelenet, Inc.* 193 F.3d 1112, 1117 (9th Cir.1999). See also *In re Qwest Commc 'ns Int'l Inc. Pet. for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Sec. 252(a)(1)*, WC Docket No. 02-89, Mem. Op. and Order, FCC 02-276, ¶ 10 (Oct. 4, 2002) (2002 Qwest Order); *FCC Notice of Apparent Liability for Forfeiture in the Matter of Qwest Corp.*, 19 FCCR 5169, ¶ 34.

An advisory ruling under G. L. c. 30 A, § 8 is merely a procedural tool the Department may utilize to explain or otherwise clarify any statute or regulation it enforces or administers. The heading of Chapter 30A, “State Administrative Procedure”<sup>2</sup> does not limit the scope of the laws and regulations that the Department may interpret.<sup>3</sup> The heading is merely descriptive of the statutes being set forth under the chapter, specifically, the procedures through which state administrative agencies may conduct their business. Nothing from this heading<sup>4</sup> should be

<sup>2</sup> Verizon MA refers to the Chapter 30A as having the title “‘State Administrative Procedure’ Act.” *Verizon MA Reply* at 2 n.4. This is actually incorrect, “State Administrative Procedure” is the title or heading for Chapter 30A which was added to the General Laws by the Session law 1954 Chapter 681. The title to that statute is “An Act providing for the improvement of the administration of justice BY prescribing fair administrative procedures.” See 1954 Chap. 0681 available at <http://archives.lib.state.ma.us/handle/2452/53227?show=full> (last accessed Apr. 11, 2013).

<sup>3</sup> The Massachusetts Supreme Judicial Court and the United States Supreme Court have provided clear guidance on the appropriate use of headers and titles for understanding statutory provisions. The title of an act or the heading of section may not limit or extend the plain meaning of the text, though it may resolve ambiguity. See *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–529 (1947) (citations omitted); *Breault v. Ford Motor Co.*, 364 Mass. 352, 354 (1973) (The title to an act cannot control the plain provisions of the statute, although it may be a guide to resolving an ambiguity in the legislation); *Charles I. Hosmer, Inc. v. Commw.*, 302 Mass. 495, 501 (1939) (“The title to a statute may be considered in determining its construction, yet its apparent scope and extent cannot be extended or restricted by the title itself.”).

<sup>4</sup> Verizon MA does not claim that there is any ambiguity to the statute, or that the title illuminates any such ambiguous language. See *Carter v. United States*, 530 U.S. 255, 267 (2002); *Breault v. Ford Motor Co.*, 364 Mass. at 354 (1973). Rather, Verizon MA impermissibly tries to limit the scope of the statutory section by attempting to impute the use of the word State from the heading of the Chapter into the

construed to limit the clear statutory authority of the Department to issue an advisory ruling with respect to “**any** statute or regulation enforced or administered by that agency.” G. L. c. 30A, § 8 (emphasis added). Congress granted state agencies, such as the Department, authority to enforce and administer 47 U.S.C. §§ 251 and 252. *See* 47 U.S.C. § 252; 2002 Qwest Order at ¶ 7. Therefore, the Department may issue an advisory ruling with respect to the applicability of 47 U.S.C. §§ 251 and 252 to any person, property, or state of facts.

C. The Department in Opening an Investigation and Directing Verizon MA to submit the IP Agreement Denies Verizon MA’s Motion to Dismiss or Stay the Proceeding.

In most proceedings, declining a petitioner’s request would moot a motion to dismiss or stay a proceeding directed at that request. However, because the Department is continuing the proceeding as an investigation, and requiring Verizon MA to submit the IP Agreement to the Department, it is in effect denying the motion to dismiss or stay the proceeding. As such, the Department addresses the substantive arguments in the motion as if they were directed at the Department’s decision to open this investigation.

Verizon MA submitted a motion to dismiss pursuant to 220 C.M.R. §1.06(6)(e), under which a party may move at any time after the submission of an initial filing for dismissal as to all issues or any issue in the case. 220 C.M.R. §1.06(6)(e). As an alternative to dismissing the Competitive Carriers’ Petition, Verizon MA moved to stay the proceeding until the FCC makes a determination on the appropriate regulatory treatment of IP-to-IP Interconnection.<sup>5</sup> The

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unambiguous language of the section. *See Holy Trinity Church v. United States*, 143 U.S. 457, 462 (1892); *Charles I. Hosmer, Inc. v. Commw.*, 302 Mass. at 501 (1939).

<sup>5</sup> In discussing IP-to-IP Interconnection, the FCC has recognized that interconnection for circuit-switched voice traffic is governed by 47 U.S.C. § 251, but also that historically the FCC has not implemented rules governing IP interconnection for the exchange of VoIP traffic. *See In the Matter of Connect Am. Fund A Nat’l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up*, 26 F.C.C.R. 4554, 4773-74 (2011). The FCC has also questioned the need to maintain different interconnection arrangements for the exchange of VoIP and other forms of

Department will dismiss without prejudice or stay a proceeding where moving forward with a proceeding is an inefficient use of the Department's and parties' resources. *See Pet. for Arbitration of an Interconnection Agreement between Intrado Commc'ns Inc. and Verizon New England Inc. d/b/a Verizon Mass.*, D.T.C. 08-9, *Arbitration Order* at 10 (May 8, 2009); *Proceeding by the Dep't of Telecomms. & Energy on Its Own Motion to Implement the Requirements of the FCC's Triennial Review Order Regarding Switching for Mass Market Customers*, D.T.E. 03-60 Track A and Track B, *Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Mass.*, at 16-17 (Apr. 2, 2004); *Investigation by the Dep't of Telecomms. & Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass.' Resale Servs. in the Commw. of Mass.*, D.T.E. 01-20, *Interlocutory Order on Part B Motions* at 8 (Apr. 4, 2001); *see also Pet. of Safari Commc'ns, Inc. for Designation as an Eligible Telecomms. Carrier on a Wireless Basis*, D.T.C. 11-4, *Order of Dismissal without Prejudice* (May 1, 2012) (dismissing petition in light of FCC order reforming the eligible telecommunications carrier designation process requiring FCC approval of a compliance plan before refiling).

The Department has also dismissed or stayed proceedings pending the outcome of FCC proceedings when it would be unreasonably onerous for the Department to issue a decision

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Internet traffic. *Id.* But, the FCC has made clear that its decision to consider issues related to IP-to-IP interconnection "should not be misinterpreted to suggest any deviation from the Commission's longstanding view regarding the essential importance of interconnection of voice networks." *In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, 26 F.C.C.R. 17663 (2011).



without preceding action by the FCC. *Investigation by the Dep't of Telecomms. & Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass.' Resale Servs. in the Commw. of Mass.*, D.T.E. 01-20, *Interlocutory Order on Part B Motions*, at 8 (Apr. 4, 2001)(staying a proceeding to review Verizon's proposed avoided cost study until the FCC promulgated new pricing rules for state commissions to follow); *see also Pet. of Safari Commc'ns, Inc. for Designation as an Eligible Telecomms. Carrier on a Wireless Basis*, D.T.C. 11-4, *Order of Dismissal without Prejudice* (May 1, 2012) (dismissing petition in light of FCC order reforming the eligible telecommunications carrier designation process and requiring FCC approval of a compliance plan before refiling). For the reasons discussed below, the Department does not believe it would be unreasonably onerous to issue a decision or that it would be an inefficient use of resources to continue this proceeding as an investigation.

The Competitive Carriers assert Verizon MA has entered into an interconnection agreement and the Department has an obligation to review that agreement for approval under 47 U.S.C. § 252. *Competitive Carriers' Petition* at 1-2. Verizon MA does not dispute that it has entered into the agreement described by the Competitive Carriers, identifying it as an agreement for the exchange of VoIP traffic in IP format. *Verizon MA Motion to Dismiss* at 4 n.9. However, Verizon MA disputes that an agreement for the exchange of VoIP traffic in IP format constitutes an interconnection agreement under 47 U.S.C. § 251 and asserts that the FCC is currently considering the issue.<sup>6</sup> *Id.* at 2-3. As such, the central question presented to the Department is whether the identified agreement is an interconnection agreement under 47 U.S.C. § 251.

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<sup>6</sup> Verizon MA also asserts that unless the FCC determines otherwise, agreements for the exchange of VoIP traffic in IP format are unregulated and not subject to the requirements of 47 U.S.C. §§ 251 and 252.

Congress gives state commissions, such as the Department, direct authority to determine whether an agreement is an interconnection agreement. 47 U.S.C. § 252(e) (“Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the [s]tate commission. A [s]tate commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.”). The FCC determined to provide only limited guidance as to whether a particular agreement qualifies as an interconnection agreement that must be filed with a state commission because 47 U.S.C. § 252 requires the filing process to occur within state commissions. 2002 Qwest Order at ¶ 10-11. The FCC is reluctant to interfere with the process of state commissions and believes that state commissions, based on the statutory role provided by Congress and their experience, 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.* The FCC also encourages 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.*

The plain language of 47 U.S.C. § 252 and the FCC’s prior determination make clear that it is state commissions, such as the Department, that should determine whether a particular agreement is an interconnection agreement. The FCC declined to address various hypothetical agreement situations, as it is the FCC’s position that state commissions should determine in the first instance what sort of agreements fall within the scope of the statutory standard. *See* 2002 Qwest Order at ¶ 11. Where there is a dispute concerning whether an agreement is an

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*Verizon MA Motion to Dismiss* at 3. However, the FCC has never explicitly held that until it reaches a determination on the issue that the exchange of voice traffic in IP format is not subject to 47 U.S.C. §§ 251 and 252. The FCC also has not preempted the states from acting on this issue despite opportunity to do so. Without such limitations, the Department must act in accord with statutory requirements.

interconnection agreement, it is state commissions that have been granted the authority and contain the expertise to evaluate the agreement in the first instance. *Id.*

In firmly recognizing the state's authority, the FCC provides some limited guidance to evaluate agreements. The FCC's guidance as to whether an agreement constitutes an interconnection agreement flows directly from the language of 47 U.S.C. § 251. "An agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to right-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to [47 U.S.C.] section 252(a)(1)." 2002 Qwest Order at ¶ 8. In essence, if an agreement contains an ongoing obligation relating to 47 U.S.C § 251 (b) or (c) it must be filed under §252(a)(1). *Id.* at ¶ 12; *See also Qwest Corp. v. Pub. Utils. Comm'n of Colo.*, 479 F.3d 1184, 1192 (10th Cir. 2007). This inquiry is fact-based and dependent upon the terms of the agreement.

Verizon MA's assertion that the Department cannot know whether 47 U.S.C. § 252 requires the filing of the IP Agreement until the FCC decides the issue is unavailing. *Verizon MA Reply* at 2. The Department has the expertise and statutory obligation to determine on a case-by-case basis whether an agreement should be filed as an interconnection agreement and, if so, whether the agreement should be approved or rejected. *See* 2002 Qwest Order at ¶ 10; *FCC Notice of Apparent Liability for Forfeiture in the Matter of Qwest Corp.*, 19 FCCR 5169, ¶ 34 ("After an agreement is filed with a state commission, the commission may approve or reject that agreement. The state commission can advise the carrier whether a certain type of agreement is considered an interconnection agreement that requires filing in that state. Until an agreement is filed, however, the state commission would not be in a position to approve, reject, or determine whether a certain type of agreement does not require filing.") (interpreting 2002 Qwest Order).

In addition, where a state commission is not preempted or guided by FCC precedent, it may interpret a federal statute and apply its dictates. *See Comcast IP Phone of Mo., LLC. et al., v. Mo. Pub. Serv. Comm'n, et. al*, 2007 WL 172359 (W.D. Mo. Jan. 18, 2007) (citing *Amisub (PSL), Inc. v. Colorado Dep't of Social Servs.*, 879 F.2d 789, 795- 96 (10<sup>th</sup> Cir. 1989)); *see also* *Vt. Pub. Serv. Bd., Investigation into regulation of Voice over Internet Protocol ("VoIP") services*, Docket No, 7316, 2010 WL 4320513, Order at (Oct. 28, 2010) (citing *Qwest Corp. v. Wash. State Utils. and Transp. Comm'n.*, 484 F.Supp.2d 1160, 1168-69 (W.D. Wash. 2007)). Further, the identified source of authority for the agreement is not dispositive of whether an agreement should also be considered an interconnection agreement under 47 U.S.C. § 252. *See Qwest Corp. v. Pub. Utils. Comm'n of Colo.*, 479 F.3d at 1198 ("The [ ] [a]greement may well have been intended to satisfy the requirements of [47 U.S.C.] § 271, but this has no bearing on whether the agreement should also be considered an interconnection agreement under [47 U.S.C.] § 252."). IP interconnection may be required under one or more sections of the Communications Act, but if an IP interconnection agreement, by its terms, contains ongoing obligations relating to 47 U.S.C § 251 (b) or (c) it may still be an interconnection agreement under 47 U.S.C. § 252. *Id.*

Of course, in order to determine whether an agreement constitutes an interconnection agreement, the Department must review the agreement. *See FCC Notice of Apparent Liability for Forfeiture in the Matter of Qwest Corp.*, 19 FCCR 5169, ¶ 34. Therefore, Verizon MA is directed to submit the IP Agreement to the Department for a determination of whether the agreement is an interconnection agreement subject to Department approval pursuant to 47 U.S.C. § 252.

#### IV. PROCEDURAL MATTERS

As the Department is opening an investigation, it clarifies a few procedural matters. In this Order, the Department closes Docket No. D.T.C. 13-2 and opens a new docket for this investigation. The Department designates this investigation, Docket No. D.T.C. 13-6, as an adjudicatory proceeding subject to the requirements of G. L. c. 30 A, §§ 10 and 11, and governed in accordance with the Department's procedural rules, 220 C.M.R. 1.00 *et seq.* Verizon MA as a specifically named person whose legal rights, duties, or privileges are being determined is granted party status. *See* G. L. c. 30A § 1(3); 220 C.M.R. 1.03(2). Any other interested person may file a written petition for leave to intervene or participate in the proceeding in accordance with the Department procedural regulations. 220 C.M.R. 1.03(1). Interested persons are encouraged to file petitions to intervene or participate as soon as possible to ensure an efficient and orderly proceeding. Verizon shall submit the IP Agreement to the Department in accordance with this Order. In requiring Verizon MA to submit the IP Agreement to the Department, the Department has not made a determination as to whether the IP Agreement is an interconnection agreement. Rather, as discussed in more detail above, the Department is merely acknowledging that it cannot determine whether an agreement is an interconnection agreement under 47 U.S.C. § 251 without first reviewing the document. As the issue of whether the IP Agreement is an interconnection agreement is disputed, parties will have an opportunity for a full and fair hearing on the matter. The Hearing Officer, subsequent to Verizon MA filing the IP Agreement with the Department, shall, if requested, schedule a public hearing and procedural conference to determine the appropriate additional procedures as may be necessary to investigate this matter, such as the need and timing for a hearing and a schedule for briefing the issues.

V. ORDER

Accordingly, after review and consideration it is

ORDERED: That Verizon MA's Motion for Leave to File Reply is GRANTED and Verizon MA's Reply is ACCEPTED into the record; and it is

FURTHER ORDERED: That the Department DECLINES to issue an advisory ruling as requested by the Competitive Carriers at this time and closes Docket No. D.T.C. 13-2; and it is

FURTHER ORDERED: That the Department OPENS an investigation, Docket No. D.T.C. 13-6, into whether the IP Agreement, entered into by Verizon MA, is an interconnection agreement that must be filed with the Department for approval pursuant to 47 U.S.C. § 252; and it is

FURTHER ORDERED: That Verizon MA's Motion to Dismiss or, alternatively, stay the proceeding is DENIED; and it is

FURTHER ORDERED: That Verizon MA is directed to submit a copy of the IP Agreement to the Department, on or before June 03, 2013; and it is

FURTHER ORDERED: That Verizon MA and the Competitive Carriers shall comply with all other directives contained herein.

By Order of the Department:

/s/ Geoffrey G. Why  
Geoffrey G. Why  
Commissioner

#### RIGHT OF APPEAL

Appeals of any final decision, order, or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.