

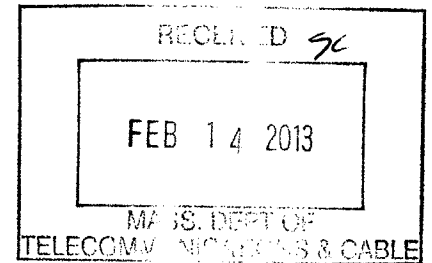
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February 14, 2013



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 is its Motion to Dismiss along with a Declaration of Jennifer Ross.

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,

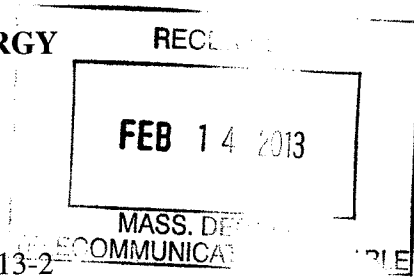
A handwritten signature in cursive script that reads "Alex Moore".

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 TO DISMISS

Pursuant to 220 CMR 106(6)(e), Verizon New England Inc., d/b/a Verizon Massachusetts, ("Verizon MA") hereby moves to dismiss the Competitive Carriers' Petition to Require Filing and Review of FIOS Digital Voice Interconnection Agreement dated January 31, 2013 ("Petition") or, in the alternative, stay proceedings on the Petition. In addition to the factual record the Department would need to develop, the Petition raises novel issues of law that are now before the Federal Communications Commission. As the Department knows through its participation in the FCC's dockets, the FCC is actively considering whether and, if so, how it should regulate commercial agreements for the exchange of voice traffic in IP format. It would be inappropriate and potentially harmful for the Department to conduct a proceeding on this matter before the FCC issues its decision. Not only is an FCC order likely to clarify any role of state commissions in addressing IP interconnection but it may also render a Department order in this proceeding moot in whole or in part, or the FCC approach may turn out to be inconsistent with any Department Order, resulting in wasted resources and needless disruption of the industry.

There is no pressing business need to address the Petition at this time, as demonstrated by the failure of the CLECs¹ to make any meaningful efforts even to request that Verizon MA negotiate commercial agreements with them for the exchange of traffic in IP format, despite the FCC's policy of encouraging such negotiations.

Consequently, the Department should dismiss the Petition 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. A stay may also encourage the CLECs to negotiate such commercial agreements with Verizon MA, rendering a proceeding unnecessary. As further grounds for this motion, Verizon MA states the following:

1. In essence, the Petition asserts that Verizon MA has entered into an IP-to-IP interconnection agreement, *i.e.* an agreement providing for the direct exchange of voice traffic in IP format between Verizon MA and another carrier, and that Section 252 of the Telecommunications Act requires Verizon MA to file that agreement for Department approval and potentially for adoption by the CLECs.

2. If this proceeding is not dismissed or stayed, Verizon MA would contest the CLECs' case in its Answer. Even assuming that Verizon MA has entered into an IP interconnection agreement as alleged, Verizon MA would contest the CLECs' legal theory, on the grounds that Sections 251(b) and 251(c) (and thus the filing requirements of Section 252) do not apply to the agreement that is the subject of the Petition.²

¹ The CLEC Petitioners are: 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 d/b/a Earthlink Business); Cbeyond Communications, LLC; and tw data services llc (collectively, "CLECs").

² Verizon MA is not asking the Department to rule on these issues. Rather, it is asking the Department not to rule on them, because the FCC is actively considering them.

3. More to the point, the FCC has never regulated IP agreements of this sort, and it has distinguished IP interconnected VoIP traffic from circuit-switched voice traffic³ In particular, the FCC has never concluded that Section 251(c) (cited in the Petition, ¶ 15) applies to IP voice interconnection agreements. Nor has it determined that VoIP is a telecommunications service or that VoIP constitutes either “telephone exchange service” or “exchange access” as referenced in Section 251(c).⁴

4. As the Department knows, however, the FCC is actively considering the appropriate regulatory treatment of commercial agreements to exchange voice traffic in IP format, including all of the above issues. The FCC has solicited comments in the *USF-ICC Transformation Order* on “the appropriate role for the Commission regarding IP-to-IP interconnection” and how best to encourage efficient IP-to-IP interconnection.⁵ Among other things, the FCC sought comment on whether it should leave such arrangements “largely unregulated”⁶ and if not, the most appropriate manner of regulation.⁷ Notably, the FCC has not concluded that it would ground a decision to regulate such arrangements in Section 251 but has sought comment on the nature of potential regulation under any of several sections of the Act, including Sections 201, 251, 256, and 706.⁸ Therefore, any Department determination that

³ See In the Matter of *Connect America Fund; A National Broadband Plan for our Future; Establishing Just and Reasonable Rates for Local Exchange carriers; High-Cost Universal Service Support; Developing An Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; lifeline and link-Up; Universal Service Reform – Mobility Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 679 (November 18, 2011) (“*USF-ICC Transformation NPRM*”).

⁴ See, e.g., *USF-ICC Transformation Order* ¶¶ 718, 1387.

⁵ *Id.* ¶¶ 1359, 1360-1364.

⁶ *Id.* ¶¶ 1375-1377.

⁷ See e.g., *id.* ¶¶ 1351-1358 and 1365-1374.

⁸ See *id.*, ¶¶ 1351-1358 and 1380-1398.

regulation under Section 251 applies would be inconsistent with the FCC's ongoing considerations.

5. In early 2012, the FCC received about fifty sets of comments and a similarly robust set of reply comments.⁹ Throughout 2012 the FCC held meetings and received written *ex parte* submissions from parties on all sides of the many complex questions, including the Department. The FCC recently solicited comments on two new petitions that again raised issues associated with IP voice interconnection.¹⁰ More than seventy parties filed comments. Further, the FCC in December announced that it had formed an agency-wide Technology Transitions Policy Task Force, which among other things will “coordinate the Commission’s efforts on IP interconnection.”¹¹

6. Given the FCC’s active consideration of the IP interconnection matters, the Department should not jump the gun and conduct a proceeding on the very same issues before the FCC enters on order. The Department itself has noted the “states’ jurisdictional ambiguity” over such arrangements and has asked the FCC to clear up the matter.¹² The Department should allow the FCC to respond to that request before taking action. Further, any decision the Department may make on the merits of the CLECs’ claims would be pre-empted and rendered

⁹ In its own comments to the FCC, the Department stated that it has approved negotiated ICAs that “include provisions for IP-based interconnections” and has arbitrated “an IP-related ICA,” citing the ICA between Verizon MA and Bandwidth.com and the ICA between Verizon MA and Intrado, respectively. See Letter from Geoffrey G. Why, Commissioner, to Marlene H. Dortch dated May 4, 2012, at 4 (“DTC *Ex Parte* Letter”). While those ICAs do apply to some VoIP traffic, the exchange of traffic under those agreements takes place in TDM format. The issue here is whether an agreement that provides for the exchange of VoIP traffic in IP format must be filed with a state commission for approval. Verizon MA has never filed such an agreement for approval by the Department or any other state commission, nor has it arbitrated such an agreement. Indeed, until recently, Verizon MA had never even entered into such an agreement.

¹⁰ *Public Notice*, Pleading Cycle Established on AT&T and NTCA Petitions, GN Docket No. 12-353 (Dec. 14, 2012.)

¹¹ *News Release*, FCC Chairman Julius Genachowski Announces Formation of ‘Technology Transitions Policy Task Force’, (Dec. 10, 2012).

¹² DTC *Ex Parte* Letter at 6, 7.

moot by a subsequent order and any rules issued by the FCC, to the extent they differ from the Department's decision in any respect. Allowing the Petition to move forward thus entails a substantial risk of wasting the resources of the Department and the parties. For the same reason, a Department decision on the CLECs' claims in advance of an FCC order will likely cause needless industry disruption, as carriers (ILECs and CLECs alike) adjust their practices and interconnection plans and arrangements in response to that decision, only to then have to revise their conduct again in light of a subsequent, superseding order of the FCC. A ruling of a single state on the complex factual, policy and legal matters that are squarely before the FCC would also be inconsistent with the comprehensive, deliberative approach to the transition to IP networks that the Department has urged the FCC to take.¹³

7. There is no need for the Department to rush to address the CLECs' claims at this time. The Petition includes general allegations regarding the growing popularity and use of VoIP service and that the CLECs offer such services. The Petition does not allege in any way, however, that the CLECs are currently prepared to interconnect with Verizon MA on an IP-to-IP basis for voice traffic or otherwise explain why the Department should step in here before the FCC acts. Nor does the Petition allege that the CLECs have even requested that Verizon MA negotiate such agreements with them. The FCC established in the *USF-ICC Transformation Order* more than a year ago that it expects carriers to negotiate in good faith in response to requests for IP voice interconnection.¹⁴ Verizon MA takes that expectation seriously and, in any event, has its own business motives for negotiating IP agreements with other carriers. In

¹³ See *In re Comments Sought on the Technological Transitions of the Nation's Communications Infrastructure, etc.* GN Docket No. 12-353, et al.; Comments of The Massachusetts Department of Telecommunications and Cable dated January 28, 2013, at 14-15.

¹⁴ *USF-ICC Transformation Order* ¶ 1011.

addition to the agreement at issue here, Verizon has held discussions with about a dozen carriers concerning potential IP interconnection arrangements over the past year. The CLECs know how to send a request to Verizon's Contract Management Group to request IP voice interconnection, but none of them have done so.¹⁵

8. Verizon MA does not claim that a good faith effort to negotiate an agreement is a legal prerequisite to the CLECs' claims, but their failure to make any meaningful efforts to develop IP interconnection arrangements through direct negotiations with Verizon MA (an approach which the FCC obviously seeks to encourage, no matter how it eventually addresses the issue) makes clear that there is no pressing need for the Department to hear the Petition before the FCC takes action. In light of the significant reasons for *not* doing so, outlined above, the Department should dismiss the Petition or, in the alternative, hold it in abeyance until the FCC determines the appropriate regulatory treatment for commercial agreements for the exchange of voice traffic in IP format. In the meantime, Verizon MA stands ready to negotiate in good faith such an agreement with any of the CLECs if they are interested.

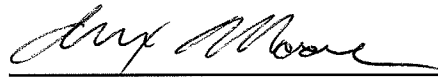
¹⁵ See Declaration of Jennifer E. Ross filed herewith.

WHEREFORE, Verizon MA respectfully requests that the Department dismiss the Petition or, in the alternative, stay this proceeding pending the FCC's determination of the regulatory treatment of IP interconnection arrangements.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,



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Dated: February 14, 2013