

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

DIRECT TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF
THE COMPETITIVE INTERVENORS

1 **I. Introduction and Witness Qualification**

2

3 **Q. Please state your name, business address and occupation.**

4

5 A. My name is Joseph Gillan. My business address is P. O. Box 7498, Daytona
6 Beach, Florida 32116. I am an economist with a consulting practice specializing
7 in telecommunications.

8

9 **Q. On whose behalf are you testifying in this proceeding?**

10

11 A. I am testifying on behalf of CTC Communications Corp. d/b/a EarthLink
12 Business; Lightship Telecom LLC d/b/a EarthLink Business; Choice One
13 Communications of Massachusetts, Inc. d/b/a EarthLink Business; Conversent

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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; tw data services llc; Level 3 Communications, LLC; and PAETEC Communications, LLC (collectively, “Competitive Intervenors”).

Q. Please briefly outline your educational background and related experience.

A. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission where I had responsibility for the analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing the National Regulatory Research Institute (NRRI).

In 1985, I left the Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/Strategic Planning to begin a consulting practice.

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1 Over the past thirty years I have testified over 300 times before more than 40 state
2 commissions, a number of state legislatures, the Commerce Committee of the
3 United States Senate, and the Federal/State Joint Board on Separations Reform. I
4 have also provided expert testimony before federal and state civil courts on behalf
5 of clients as diverse as the trustees of a small competitive carrier in the Southeast
6 to Qwest Communications. In addition, I have filed expert analysis with the
7 Finance Ministry of the Cayman Islands and before the Canadian Radio-
8 Telecommunications Commission.

9
10 I serve on the Advisory Council to New Mexico State University's Center for
11 Public Utilities (since 1985) and served as an instructor in the Center's Principles
12 of Regulation program taught twice annually in Albuquerque. In addition, I
13 lecture annually at Michigan State University's Regulatory Studies Program
14 ("Camp NARUC"). I have also lectured at the School of Laws at the University
15 of London (England), and the School of Law at Northwestern University
16 (Chicago). I serve on the Board of Directors for the Universal Service
17 Administrative Company (USAC), the corporate entity responsible for
18 implementing the federal universal service system.

19
20 A complete listing of my qualifications, testimony and publications is provided in
21 Attachment JPG-1 (attached).

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1 **Q. What is the purpose of your testimony?**

2

3 A. The purpose of my testimony is to demonstrate that the traffic exchange
4 agreements between Verizon and Comcast filed in this proceeding are
5 “Interconnection Agreements” under the federal Telecommunications Act of 1996
6 (“Act”).¹ As such, the agreements must be filed (as required by 47 U.S.C. § 252)
7 with the Massachusetts Department of Telecommunications and Cable (“DTC”)
8 so that the critical competitive protections of the section 252 of the Act –
9 including public disclosure, an impartial state commission review to prevent
10 nondiscrimination and ensure consistency with the public interest, and the most
11 powerful protection, the ability of competitors to opt-in – apply.

12

13 **II. The Standard that Defines an Interconnection Agreement**

14

15 **Q. What is the issue in this proceeding?**

16

17 A. At this stage of the proceeding, the issue is narrow: whether the agreements
18 submitted to the Department must be filed for review under § 252.

19

¹ To be clear, I am not an attorney and, therefore, am not offering a “legal opinion.” That said, I have over 30 years of experience in the telecommunications industry and am quite familiar with the structure and role of Interconnection Agreements as set forth in federal law and regulation. I expect that additional legal analysis will be provided (as appropriate) in the briefs and motions filed by the Competitive Intervenors as contemplated by the Department’s procedural schedule.

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1 **Q. What is *not* at issue at this stage of the proceeding?**

2

3 A. One of the most central questions that is not at issue at this stage of the
4 proceeding is whether the agreements satisfy the substantive criteria of §
5 252(e)(2), such as whether the agreements are nondiscriminatory and in the public
6 interest. The Department will conduct its substantive review after finding that the
7 agreements are “Interconnection Agreements” that must be filed with the
8 Department for approval.

9

10 **Q. Has the FCC provided guidance as to what type of agreement constitutes an**
11 **Interconnection Agreement and must be filed under section 252?**

12

13 A. Yes. The standard as to what constitutes an Interconnection Agreement is
14 straight-forward. As the FCC explained, *any* agreement that:

15 ... creates an *ongoing* obligation pertaining to resale, number
16 portability, dialing parity, access to rights-of-way, reciprocal
17 compensation, interconnection, unbundled network elements, or
18 collocation is an interconnection agreement that must be filed
19 pursuant to section 252(a)(1).²

20 Notably, the FCC’s view of what types of provisions relate to an incumbent
21 ILECs’ duties is broad, recognizing that “on its face, section 252(a)(1) does not
22 ... limit the types of agreements that carriers must submit to state commissions.”

² *In the Matter of 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, ¶ 8 (Rel. October 4, 2002) (“*Qwest Declaratory Ruling*”) (emphasis in original; footnote omitted) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-02-276A1.pdf).

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1 As such, the FCC concluded that even “agreements addressing dispute resolution
2 and escalation provisions relating to the obligations set forth in sections 251(b)
3 and (c) are appropriately deemed interconnection agreements,”³ even though such
4 arrangements may not directly address listed duties.

5

6 **Q. Has the FCC made clear that this basic guidance is sufficient and that it is**
7 **the responsibility of state commissions (such as the Department) to apply it**
8 **by deciding what agreements should be filed?**

9

10 A. Yes. The FCC specifically addressed and rejected the idea that more detailed
11 guidance was necessary.

12 ... we [the FCC] decline to establish an exhaustive, all-
13 encompassing “interconnection agreement” standard. The
14 guidance we articulate today flows directly from the statute and
15 serves to define the basic class of agreements that should be filed.
16 We encourage state commissions to take action to provide further
17 clarity to incumbent LECs and requesting carriers concerning
18 which agreements should be filed for their approval.⁴

19

20 **Q. Is the preexisting guidance sufficient to address the agreements at issue in**
21 **this proceeding?**

22

23 A. Yes. The FCC’s guidance makes clear that any agreement addressing
24 interconnection and reciprocal compensation (among other attributes) are
25 reviewable Interconnection Agreements. The agreements between Verizon and
26 Comcast clearly and unambiguously address interconnection and reciprocal

³ *Qwest Declaratory Ruling* at ¶ 9.

⁴ *Qwest Declaratory Ruling* at ¶ 10.

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1 compensation for the transport and termination of voice telephone calls.⁵

2 Consequently, it takes little direct testimony to prove the obvious.

3

4 **Q. Why is it important for Interconnection Agreements to be filed?**

5

6 A. It is important that Interconnection Agreements be filed because the competitive
7 protections of section 252 all start with public disclosure. A publicly-filed
8 agreement can then be reviewed (with any discrimination or public interest
9 concern raised with the state commission) and, if a carrier is interested in the
10 agreement, it can opt-in without incurring unnecessary negotiating costs. The
11 guaranteed ability to opt-in is also an important protection against discrimination.

12

13 **Q. Does your testimony assert that the agreements at issue here are, in fact,**
14 **discriminatory?**

15

16 A. No (although they may be). My testimony does *not* address whether these
17 specific agreements are discriminatory because to do so here, in this proceeding,

⁵ Interconnection is defined as the physical linking of two networks, while the term “reciprocal compensation” (as set forth in §251(b)(5)) establishes both a compensation obligation (as the term suggests), as well as the fundamental duty to transport and terminate telecommunications. *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dockets 96-98 and 95-185, First Report and Order, FCC 95-325, ¶ 176 (Rel. August 8, 1996) (“*Local Competition Order*”) (“We also reject CompTel’s argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).”) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-96-325A1.pdf) In the testimony below, the terms “reciprocal compensation” and “transport and termination” are used interchangeably to refer to the duties of section 251(b)(5).

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would place the cart before the horse. The purpose of this proceeding is to establish that the nondiscrimination protections of section 252 apply to the agreements; once the Department reaches this finding, then the review process required by section 252 will determine whether these specific Interconnection Agreements are discriminatory (or otherwise not in the public interest).

Q. Does Verizon's behavior in its proceeding suggest that its *intention* is to discriminate among carriers?

A. Yes. Verizon has insisted that the agreements in this proceeding be subject to confidentiality agreements that preclude the company personnel most familiar with Interconnection Agreements (*i.e.*, those that negotiate such agreements) from reviewing key portions of the contracts.⁶ Remarkably, Verizon's explanation for these restrictions is to protect its ability to discriminate:

... 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.⁷

This is precisely the reason that the opt-in provisions of section 252 exist – to allow another carrier (that is competing with both Verizon and, in this instance, Comcast), and that seeks to exchange traffic in IP format with Verizon, the opportunity to do so on equal terms. The only reason that Verizon would want to

⁶ See Motion to Comply with Hearing Officer Ruling and Protective Order at 5 (Dec, 9, 2013).

⁷ Motion for Confidential Treatment, Verizon MA, filed December 23, 2013, at ¶ 3.

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keep the contracts secret is to impose less favorable terms on another competitor
(or simply to increase the competitor's negotiating costs).

Again, however, it is not the purpose of this testimony to address whether the
contracts submitted by Verizon in this proceeding *are* discriminatory, but rather to
ensure that the public disclosure, review and opt-in provisions of section 252
apply so that a review that includes these questions can move forward.

III. The Verizon-Comcast Agreements are Interconnection Agreements

Q. Please describe the agreements that are the subject of this proceeding.

A. Verizon filed several agreements on May 30th ("May 30 Agreements"). These
agreements were:

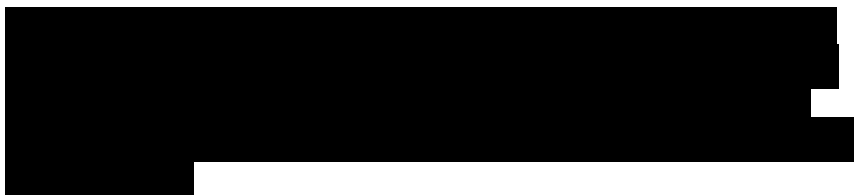
***** BEGIN CLAIMED HIGHLY SENSITIVE CONFIDENTIAL *****

* [REDACTED]

* [REDACTED]

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*



***** END CLAIMED HIGHLY SENSITIVE CONFIDENTIAL *****

In addition, on December 23, 2013, Verizon filed an agreement that is specifically applicable to the exchange of traffic in IP format.

Q. Are these agreements in operation now?

A. Yes. While Verizon previously claimed in its June 26, 2013 Motion for Abeyance that (at least some of) the agreements were incomplete or tentative, it now states that the agreements are fully in effect. See Verizon's responses to information requests CC-VZ 1-4, 1-5, and 1-7, attached as parts of Attachment JPG-2.

Q. Are the parties exchanging traffic under the agreements?

A. Yes. See Verizon's June 26, 2013 Motion for Abeyance, p. 1.

Q. In summary form, why are the agreements at issue in this proceeding Interconnection Agreements?

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1 A. As explained above, any agreement creating an ongoing obligation pertaining to
2 reciprocal compensation and/or interconnection (among other obligations) is an
3 Interconnection Agreement subject to section 252. As detailed below, these
4 agreements cover the physical linking (interconnection) of the Verizon and
5 Comcast networks, as well as the transport and termination of voice calls
6 (reciprocal compensation). Since the documents are clear on their face that they
7 satisfy the criteria set by the FCC to establish what is an Interconnection
8 Agreement subject to § 252 review, Verizon bears the burden of explaining why
9 these agreements – which clearly apply to voice calls of any stripe – suddenly fall
10 outside of the Act.

11

12 **Q. You indicated that an agreement is an Interconnection Agreement if it**
13 **addresses the reciprocal compensation obligation described by section**
14 **251(b)(5). Is there any question that these agreements address the transport**
15 **and termination (i.e., the activity covered by the reciprocal compensation**
16 **obligation of § 251(b)(5)) of voice traffic?**

17

18 A. No. To begin, in its November 2011 comprehensive intercarrier compensation
19 reform order (“*ICC Reform Order*”), the FCC made clear that 251(b)(5) applies to
20 *all* types of telecommunications traffic:

21 Section 251(b)(5) imposes on all LECs the “duty to establish
22 reciprocal compensation arrangements for the transport and
23 termination of telecommunications.” ... The Commission
24 explained that section 251(b)(5) does not use the term “local,” but
25 instead speaks more broadly of the transport and termination of
26 “telecommunications.” As defined in the Act, the term
27 “telecommunications” means the “transmission, between or among
28 points specified by the user, of information of the user’s choosing,
29 without change in the form or content of the information as sent

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and received” and thus encompasses communications traffic of any geographic scope (*e.g.*, “local,” “intrastate,” or “interstate”) or regulatory classification (*e.g.*, “telephone exchange service,” “telephone toll service,” or “exchange access”).⁸

Consequently, even if the agreements eschewed the conventional concepts of “local” and “long distance” – and, as indicated above they do not – *all* telecommunications traffic categories are subject to section 251(b)(5). This means that any agreement addressing the transport and termination of *any* telecommunications traffic type is by definition an Interconnection Agreement.

Q. Is the transport and termination duty of § 251(b)(5) comprehensive?

A. Yes. As Comcast has previously explained to the FCC:

Congress drafted section 251(b)(5) expansively to apply to all compensation issues related to the transport and termination of “telecommunications,” which the statute defines very broadly. Moreover, section 251(b)(5) makes no distinctions among traffic on the basis of jurisdiction (local, toll, intrastate, interstate) or service definition (*e.g.*, exchange access, local exchange service, VoIP).⁹

⁸ *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 761 (released Nov. 18, 2011) (“*ICC Reform Order*”) (emphasis added; footnotes omitted) (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1_Rcd.pdf).

⁹ *In re Connect America Fund*, WTC Docket 10-90, Comments of Comcast Corporation, at 6-7 (Apr. 18, 2011) (<http://apps.fcc.gov/ecfs/document/view?id=7021239474>).

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1 **Q. Has the FCC embraced an expansive view of § 251(b)(5)?**

2

3 A. Yes. In its *ICC Reform Order*, among the traffic types that the FCC explicitly
4 brought within § 251(b)(5) was VoIP-PSTN traffic. VoIP-PSTN traffic is traffic
5 that either originates and/or terminates in IP format (but which is exchanged in
6 TDM format). See 47 U.S.C § 51.913. In its order, the FCC held:

7 Although the Commission has not classified interconnected VoIP
8 services or similar one-way services as “telecommunications
9 services” or “information services,” VoIP-PSTN traffic
10 nevertheless can be encompassed by section 251(b)(5).¹⁰

11 With all traffic categories now subject to § 251(b)(5) – and any contract
12 addressing 251(b)(5) unquestionably an interconnection agreement – it is difficult
13 to understand how Verizon can claim that these agreements are not
14 Interconnection Agreements.

15

16 **Q. Please identify the relevant provisions that address interconnection and**
17 **reciprocal compensation (transport and termination).**

18

19 *** BEGIN CLAIMED HIGHLY SENSITIVE CONFIDENTIAL ***

20 A. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

¹⁰ *ICC Reform Order* at ¶ 954.

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1 [REDACTED]

2 [REDACTED]

3

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 *

8 [REDACTED]

9 [REDACTED]

10 *

11 [REDACTED]

12 [REDACTED]

13 *

14 [REDACTED]

15 [REDACTED]

16 *

17 [REDACTED]

18 *

19 [REDACTED]

20 *

21 [REDACTED]

22 *

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 *

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

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Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

A. [REDACTED]

11 [REDACTED]

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1 * [REDACTED]
2 [REDACTED]

3 * [REDACTED]

4 * [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 * [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 * [REDACTED]

11

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 *** END CLAIMED HIGHLY SENSITIVE CONFIDENTIAL ***

16 Although I am certain that this dispute will become more complicated by
17 Verizon's testimony, that will not alter the plain facts that these agreements
18 address and create ongoing obligations relating to interconnection, reciprocal
19 compensation and other topics typically addressed by Interconnection Agreements
20 filed with the Department.

21
22 **Q. Is there any question that voice traffic is being exchanged under these**
23 **agreements?**

24

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1 A. No. See Verizon’s responses to information requests CC-VZ 1-16, 1-18, 1-20 and
2 1-22 (attached as parts of Attachment JPG-2).¹²

3

4 **Q. Have any other states ruled that IP Interconnection agreements are subject**
5 **to sections 251 and 252 of the Act?**

6

7 A. Yes. On Dec 6, 2013, the Michigan Public Service Commission concluded that
8 the interconnection provisions of the Act apply to IP interconnection:

9 [T]he Commission finds that pursuant to Section 251(c)(2)(A), an
10 ILEC, such as AT&T Michigan, not only must provide, for the
11 facilities and equipment of any requesting telecommunications
12 carrier, interconnection, but also IP interconnection, with the local
13 exchange carrier’s network – for the transmission and routing of
14 telephone exchange service and exchange access.¹³

15 In reaching its decision, the Michigan Commission noted that the FCC had not yet
16 ruled definitively on the issue, but that federal inaction did not suggest that the
17 Michigan Commission should not do so:

18 This legal question is currently pending before the FCC in a
19 rulemaking proceeding. However, in its further notice of proposed
20 rulemaking, the FCC observed that, “section 251 of the Act is one
21 of the key provisions specifying interconnection requirements, and
22 that its interconnection requirements are technology neutral – *they*
23 *do not vary based on whether one or both of the interconnecting*
24 *providers is using TDM, IP, or another technology in their*
25 *underlying networks.*” [ICC Reform Order] ¶ 1342 (emphasis

¹² Although Verizon acknowledged that it is exchanging traffic with COMCAST, it objected to providing the relative volumes being exchanged by format or contract. See Verizon Response to CC-VZ 1-24, 1-25 and 1-26 (attached as JPG-2).

¹³ *In the Matter of the petition of SPRINT SPECTRUM L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN*, Case No. U-17349, Order at 7 (Dec. 6, 2013) (*Michigan IP Order*) (http://www.dleg.state.mi.us/mpsc/orders/comm/2013/u-17349_12-6-2013.pdf).

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added). Although the FCC has yet to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations, the Commission notes that in the interim, the FCC did not request that state commissions refrain from deciding the issue.

More importantly, pursuant to the Second Circuit Court's decision in *S. New England Tel. Co. v Comcast Phone of Conn., Inc.*, 718 F3d 53 (2d Cir 2013) (*SNET*), the Commission is not required to delay its decision until the FCC rules on this issue. In its opinion, the Second Circuit Court stated that the FTA, "permits state commissions to regulate interconnection obligations so long as they do 'not violate federal law and until the FCC rules otherwise.'"¹⁴

The issues of this proceeding are even more ripe for decision by the Department here because, as explained earlier, the FCC expressly directed state commissions to "provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval."¹⁵

IV. Summary and Conclusion

Q. Please summarize your testimony.

A. There is nothing magical about IP technology. The Act provides that contracts creating certain ongoing obligations must be filed, reviewed and approved by state commissions and made available for opt-in to ensure nondiscrimination. Among these obligations are those relating to interconnection and reciprocal compensation (*i.e.*, the duty to transport and terminate all telecommunications).

¹⁴ *Michigan IP Order* at 5.

¹⁵ *Qwest Declaratory Ruling* at ¶ 10.

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1 The contracts at issue here create ongoing obligations relating to interconnection
2 and reciprocal compensation and, as such, are Interconnection Agreements that
3 must be filed with the Department under § 252.

4

5 These are voice calls, no different that voice calls have always been (dial your
6 digits, hear the voice correctly). The fact that the agreements' IP interconnection
7 provisions enable the traffic to be exchanged in IP format as well as in TDM
8 format does not change the fact that the necessary functions of interconnection
9 and transport and termination are still provided by each signatory to the other.

10 The contracts filed in this proceeding are Interconnection Agreements, subject to
11 the requirements of section 252.

12

13 **Q. Does this conclude your direct testimony?**

14

15 A. Yes.