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February 6, 2014

Catrice Williams, Secretary
Department of Telecommunications & Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

Re: D.T.C. 13-6 – Agreement of Verizon New England Inc.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is a corrected version of the Rebuttal Testimony of Eugene J. Spinelli, Sherri D. Schlabs and Paul B. Vasington on behalf of Verizon New England Inc. The only difference from the version filed yesterday is that we have deleted the line in the header incorrectly labeling the testimony as Highly Sensitive Confidential.

Thank you for your attention to this matter.

Sincerely,

Alexander W. Moore

Enclosure

cc: Michael Scott, Hearing Officer (2)
Service List

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	)	D.T.C. 13-6

REBUTTAL TESTIMONY OF

EUGENE J. SPINELLI, SHERRI D. SCHLABS AND PAUL B. VASINGTON

ON BEHALF OF VERIZON NEW ENGLAND INC.

February 5, 2014

Q. MR. SPINELLI, PLEASE STATE YOUR NAME AND TITLE.

A. My name is Eugene J. Spinelli. I am Manager - Product Technology for Verizon.

Q. MS. SCHLABS, PLEASE STATE YOUR NAME AND TITLE.

A. My name is Sherri D. Schlabs. I am Acting Director – Global Wholesale Interconnection Services for Verizon.

Q. MR. VASINGTON, PLEASE STATE YOUR NAME AND TITLE.

A. My name is Paul B. Vasington. I am Director – State Public Policy for Verizon.

Q. DID THE THREE OF YOU PREVIOUSLY FILE TESTIMONY IN THIS PROCEEDING?

A. Yes, we comprise the panel that submitted direct testimony in this proceeding on January 15, 2014.

Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A. We respond to the direct testimony of Mr. James R. Burt submitted by Sprint and the direct testimony of Mr. Joseph Gillan submitted by the Competitive Intervenors, both on January 15, 2014.

Q. WHAT ARE EACH WITNESS'S RESPONSIBILITIES REGARDING THIS TESTIMONY?

A. As with our Direct Testimony, each witness has reviewed and concurs with the entire testimony. However, Mr. Spinelli is primarily responsible for technical issues, Ms. Schlabs is primarily responsible for contract issues, and Mr. Vasington is primarily responsible for policy issues. Also as we stated in our Direct Testimony, we are not lawyers, so we will signal legal issues here but leave their detailed treatment to legal briefs.

Q. HOW DO YOU REACT TO MR. BURT'S DISCUSSION OF THE INTERCONNECTION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996?

A. Most of what Mr. Burt filed as direct testimony is actually a legal brief in disguise. Verizon has filed a Motion to Strike most of that legal "testimony," as well as Mr. Gillan's for the Competitive Intervenors, and we will leave to Verizon's attorneys the task of responding to Sprint's legal arguments.

In terms of his discussion of markets, technology, and various providers' motivations, Mr. Burt remains stuck in 1996. In our direct testimony we explained how different today's communications landscape is from the one that the 1996 Act addressed. The marketplace has changed dramatically. As we explained, there are no incumbent providers of VoIP service in Massachusetts (or elsewhere). And if there were one, it would not be Verizon MA. *See* Verizon Direct Testimony at 30-33.

Mr. Burt refers to ILECs exercising "market power over competitors attempting to enter their markets." (Burt at 6, lines 11-3). But the conditions with respect to traditional switched services that the 1996 Act sought to address no longer exist, and Mr. Burt's statement is not true with respect to today's VoIP marketplace, in which no provider has market power, as we demonstrated in our direct testimony. Non-ILECs were in the VoIP business first and have far more lines than ILECs do, both in the Commonwealth and nationally.

Q. MR. BURT SUGGESTS THAT INTERCONNECTION IS NECESSARY FOR A COMPETITIVE PROVIDER'S CUSTOMERS TO TALK TO A VERIZON CUSTOMER AND THAT THE ABSENCE OF IP INTERCONNECTION THUS HARMS COMPETITIVE PROVIDERS. (BURT AT 5-6, LINES 20-2.) IS IP INTERCONNECTION NECESSARY FOR CALLS TO BE CONNECTED?

A. No. Mr. Burt accuses ILECs of using "scare tactics,"[1] but that is exactly what he is doing here. Interconnection *is* necessary for networks to connect and for calls to and from customers of different carriers to be completed, which is why Verizon has just as much interest today as Sprint or any other carrier in interconnection. But it is not necessary for that interconnection to be in IP format for VoIP calls to be completed. As we pointed out in our direct testimony, companies today successfully exchange VoIP traffic through existing PSTN interconnection arrangements in TDM format, and there is no question that carriers must accept IP-originated traffic through existing TDM interconnection arrangements.[2] Therefore, this dispute is not about whether VoIP calls will be completed (they will) or whether interconnection in IP format to exchange VoIP traffic ("IP VoIP interconnection") will take place. It is simply about whether IP VoIP interconnection is and should be subject to the legacy regulatory regime of Sections 251 and 252 of the Telecommunications Act of 1996. The Department should not be scared by Sprint's tactics into thinking otherwise.

Q. MR. BURT SAYS THAT ILECS WANT IP INTERCONNECTION "ON THEIR OWN TERMS ..." (BURT AT 23, LINES 20-21). IS THERE ANY REASON TO BELIEVE THAT VERIZON AND COMCAST DID NOT NEGOTIATE MUTUALLY ACCEPTABLE TERMS?

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1 Mr. Burt refers here to un-named "parties" who suggest that "regulation of IP interconnection is akin to regulating the Internet," but we made no such argument in our direct testimony.

2 *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007).

A. No. Verizon and Comcast are competitors, and both are capable of considering their own interests in freely negotiating an agreement. There is nothing to suggest that Comcast somehow did not ensure its own interests in negotiating the agreements at issue in this proceeding. Five other VoIP providers – Vonage, BroadVox, InterMetro, Bandwidth.com and Millicorp – also have freely negotiated and entered into IP VoIP interconnection agreements with Verizon, and none of them has suggested that the agreements are on Verizon's terms in a manner that disadvantages them in competing with Verizon and others to provide VoIP services to consumers.

Q. MR. BURT SPECULATES THAT ILECS "NATURALLY WANT TO DELAY THE TRANSITION TO IP INTERCONNECTION AS LONG AS POSSIBLE." (BURT AT 23, LINES 19-20). IS THAT CORRECT?

A. Not at all. This claim is belied by the facts of what is happening in the marketplace, and it is a remarkable claim given that the genesis of this proceeding was Verizon's voluntary disclosure of its agreement with Comcast to exchange voice traffic in IP format. As we discuss below, Verizon has been actively pursuing IP VoIP interconnection arrangements with other providers, including all of those involved with this proceeding. But we also need to address the false rationale for Mr. Burt's speculations.

Q. WHAT IS THAT FALSE RATIONALE?

A. Mr. Burt states that "It is indisputable that IP interconnection is more efficient and less costly than TDM interconnection. So, given the fact that the ILECs will collect more from their competitors for TDM interconnection than for IP interconnection they naturally want to delay the conversion to IP interconnection as long as possible." (Burt at

23, lines 16-19). There are several problems with this statement. It assumes facts not in evidence, and the conclusion does not proceed from the foundation.

We agree with some of what Mr. Burt says. IP interconnection is more efficient for the exchange of traffic that is VoIP on both ends. In fact, much of our direct testimony is a description of the efficiency benefits of IP VoIP interconnection. Mr. Burt, however, does not cite evidence to support his claim that "ILECs will collect more from their competitors for TDM interconnection than for IP interconnection." And as we explained in our direct testimony, IP interconnection for VoIP-to-VoIP traffic is more efficient for Verizon as well as for other providers.

Equally wrong is Mr. Burt's speculation that Verizon wants to delay IP VoIP interconnection. To the contrary, Verizon wants to advance and accelerate the transition to IP VoIP interconnection for the reasons discussed in our direct testimony and as demonstrated by our conduct. The thing we wish to avoid, precisely because it would delay the IP transition and eliminate much of the efficiency of IP networks and interconnection, is subjecting IP VoIP interconnection to the legacy legal framework developed for a different time, different market, and different technologies.

Q. MR. BURT SAYS THE ONLY THING DIFFERENTIATING TDM INTERCONNECTION AND IP INTERCONNECTION IS THE TECHNOLOGY. (BURT AT 7, LINES 16-17.) IS THAT CORRECT?

A. No. Mr. Burt's simplistic description of IP VoIP interconnection ignores the vast differences between circuit-switched TDM interconnection and packet-switched IP VoIP interconnection. We explained these differences in detail in our direct testimony. For example, we explained how a circuit-switched network requires a dedicated pathway

covering the distance between the calling party and called party, and that the pathway has to be maintained for the duration of the call. IP networks work in a totally different way, in which a person's voice is converted into many data packets which are routed individually or in groups along multiple, constantly changing pathways. We also explained that IP VoIP interconnections are more efficient and that far fewer of them are needed between two interconnecting carriers than would be necessary on the circuit-switched PSTN. Efficiencies like these are driving Verizon and others to pursue IP interconnections for VoIP traffic without a regulatory mandate to do so.

Q. HAS VERIZON PURSUED IP VOIP INTERCONNECTION AGREEMENTS WITH THE COMPANIES THAT FILED TESTIMONY?

A. Yes. In 2013 we invited each of those providers and many other companies to negotiate commercial IP VoIP interconnection agreements. Two of the providers that filed testimony refused to negotiate with Verizon unless we agreed that the negotiations and any subsequent agreement would be covered by Sections 251(c) and 252 of the 1996 Act. In and of itself, their position demonstrates how even the mere potential for regulation impedes commercial negotiations and the transition to IP-based networks and services.

Q. CAN YOU PROVIDE AN UPDATE ON THE STATUS OF VERIZON'S IP VOIP INTERCONNECTION NEGOTIATIONS IN GENERAL?

A. Yes. In our direct testimony we said that Verizon had completed four IP interconnection agreements for VoIP. We have since completed two more, with Bandwidth.com and Millicorp. And we continue to negotiate with many other providers.

Q. HAVE THESE AGREEMENTS BEEN BASED ON THE TEMPLATES YOU DESCRIBED IN YOUR DIRECT TESTIMONY?

A. Yes. Since we developed the templates in 2013 we have used them to begin each of our IP VoIP interconnection negotiations involving Verizon MA. Companies that want to pursue IP VoIP interconnection arrangements with Verizon – instead of trying to score regulatory points – know that Verizon wants to interconnect on commercially reasonable terms. And it's worth noting that the six IP VoIP interconnection agreements we have reached are with different types of competitors, some very established and some newer to the marketplace, including a cable company, traditional CLECs, and an over-the-top VoIP provider. Verizon is negotiating with and entering into agreements with many different types of providers.

Q. IN HIS TESTIMONY, MR. BURT EMPHASIZED THAT GOOD-FAITH NEGOTIATION OBLIGATIONS COME "DIRECTLY" FROM SECTION 251 OF THE ACT. (BURT AT 20.) HOW DO YOU RESPOND?

A. Verizon negotiates IP interconnection in good faith. Verizon expects that all VoIP providers will negotiate in good faith and agree to interconnect in IP format to exchange VoIP traffic with one another. That's what Verizon is doing.

The FCC also expects good faith negotiations, which it made clear in the *USF/ICC Transformation Order*. But the connection of this expectation to a legal obligation is a matter of law, so we will not discuss the conclusions that Mr. Burt – a non-lawyer – draws from FCC orders. We note, however, that Mr. Burt does not accurately represent what the FCC has said on the subject in the *USF/ICC Transformation Order*. The Department can draw its own conclusions from what the FCC said in paragraphs 1335 and 1351 through 1358 of that order about the statutory basis for its good-faith

negotiation expectation and whether that expectation flows from Section 251, including the following:

> In this section, we note that there are various sections of the Act upon which the right to good faith negotiations for IP-to-IP interconnection could be grounded, and seek comment on the policy implications of selecting particular provisions of the Act. In the subsequent section, we seek comment on the possible legal authority commenters have cited in support of substantive IP-to-IP interconnection obligations, including sections 251(a)(1), 251(c)(2), and other provisions of the Act; section 706 of the 1996 Act; as well as the Commission's ancillary authority under Title I. We thus likewise seek comment on those and other provisions as a basis for the right to good faith negotiations regarding IP-to-IP interconnection, as well as resulting implications for the scope and enforcement of that right.[3]

Q. HOW DO YOU RESPOND TO THE CLEC GROUP'S TESTIMONY OF JOE GILLAN?

A. The testimony of Mr. Gillan on behalf of the EarthLink companies, CBeyond, Level 3, tw data services and PAETEC is essentially a legal brief, as he acknowledges. He even refers to the anticipated briefs and motions filed on behalf of his clients as "*additional* legal analysis." (Gillan at 4, n.1, italics added). Most of his testimony is dedicated to interpreting the FCC's rules and orders, and he adduces very few facts aside from his foray into legal analysis. There are however two matters to which we would like to respond.

[3] *USF/ICC Transformation Order*, at ¶ 1351.

Q. WHAT IS THE FIRST MATTER?

A. Mr. Gillan alleges that because the Verizon agreements with Comcast include confidentiality provisions, Verizon must be up to no good. (*See* Gillan at 8-9.) But that is not so.

Verizon is conducting IP VoIP interconnection negotiations in accordance with non-disclosure agreements because both parties' information required for negotiating these documents is commercially sensitive. The parties with whom we have negotiated have understood that signing a non-disclosure agreement is a routine first step in commercial negotiations, and our approach is no different from the way Verizon conducts other commercial negotiations for wholesale services. The companies must exchange proprietary and competitively sensitive information in order to design and implement an efficient IP interconnection arrangement. This includes detailed traffic data, IP network component locations, codecs, and detailed call routing information.

The agreements that we have reached, including the Comcast agreements, include some of that competitively sensitive information, and the agreements include confidentiality provisions to protect that and other competitively sensitive information from disclosure. The agreements also protect the confidentiality of the terms of the agreements themselves, to preserve a level playing field for Verizon in future negotiations for IP VoIP interconnection agreements with other providers – and as we have explained here and in our Direct Testimony, there is no "incumbent" status or other imbalance of negotiating power that would justify imposing special disclosure obligations on parties to such agreements. Furthermore, Verizon's conduct demonstrates that we are

approaching negotiations with companies of different sizes and different types with the same template agreements. We described those templates in detail in a January 10, 2014 letter to the FCC, and Sprint appended our letter to its direct testimony. Our consistent approach to negotiations and our willingness to describe publicly the key details of the template agreements rebut the intervenors' speculative allegations about Verizon's intentions.

Q. WHAT IS THE SECOND MATTER?

A. The second matter relates to the first. Specifically, Mr. Gillan says that the opt-in provisions of Section 252 are necessary to protect against discrimination. But as we've explained, that's a solution in search of a problem. And it's also a solution that does not make sense when it comes to IP VoIP interconnection, because of the many technical details that have to be worked out for each IP VoIP interconnection arrangement. These include the details we described in our Direct Testimony, at 36-37.

In addition, the opt-in provisions of the 1996 Act are extraordinary. The 1996 Act's opt-in requirements apply only to incumbent LECs. As we discussed in our direct testimony, they were part of a national policy unique to the market structure that existed in 1996. That market structure no longer exists. The current marketplace is characterized by robust competition and consumer choice. There are no incumbent providers of VoIP service with market power. Verizon MA has only a small portion of the interconnected VoIP lines in Massachusetts, and a smaller piece of the larger communications marketplace. So not only would opt-in obligations not make sense for IP VoIP interconnection from a practical standpoint, also they are not needed and not appropriate

from a policy standpoint. Normal commercial negotiations do not require any party to disclose the terms that it was willing to offer or compromise on in a separate commercial negotiation, and this is not "discriminatory" in the pejorative sense that Mr. Gillan uses the term. It is a normal feature of negotiations that was not applied to ILECs in the Act's process due to the extraordinary conditions of breaking up a government-sanctioned, long-standing monopoly. Those conditions no longer apply and certainly are not relevant in the context of IP VoIP interconnection.