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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 Docket No. 13-6

SPRINT'S REPLY BRIEF

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Sprint Spectrum L.P.
Nextel Communications of the Mid-Atlantic, Inc.
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Sprint[1] hereby submits its Reply Brief in the above captioned docket. The Department of Telecommunications and Cable (the "Department") should find that the IP Interconnection Agreements[2] submitted by Verizon New England d/b/a Verizon MA ("Verizon MA") in this proceeding are interconnection agreements subject to Sections 251 and 252 of the Telecommunications Act.[3] As explained below, the evidence presented compels the Department to reach this conclusion, the Department has the jurisdiction to decide the issues arising in this case, and the Department's performance of its statutorily designated role is essential to encouraging Internet Protocol ("IP") interconnection to flourish.

I. Introduction

The Department has before it a fundamental question: Are those duties imposed by the Act upon incumbent local exchange carriers contingent upon the technology used to originate, transport and terminate calls? The resounding answer is: NO.

On May 13, 2013, the Department announced that it would investigate whether the IP Interconnection Agreements between Verizon Communications, Inc.'s ("Verizon") subsidiaries, including Verizon MA, and Comcast Corporation's ("Comcast") subsidiaries, including Comcast Phone of Massachusetts, Inc. ("Comcast Phone"), are interconnection agreements that must be filed with the Department under Section 252 of the Act.[4] Sprint intervened in the case as did a number of other competitive carriers. Over the course of the following year, the parties conducted discovery, filed Motions, prepared pre-filed testimony, and participated in a two-day

[1] Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc., and Virgin Mobile USA, L.P. (collectively "Sprint").
[2] The agreements are under investigation in this docket are collectively referred to as the "IP Interconnection Agreements." Those three agreements are DTC Exhibits Nos. 1, 2 and 3.
[3] Telecommunications Act of 1996, Pub L No 104-104, 110 Stat 56 (1996) (the "Act").
[4] *See* Order Opening An Investigation, Declining to Issue an Advisory Ruling, and Denying Verizon MA's Motion to Dismiss or Stay the Proceeding, *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England 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, 9-12 (May 13, 2013) ("*Order Opening Investigation*").

hearing at the Department's headquarters.[5] This Reply Brief is another step towards ensuring that Verizon MA cannot unilaterally dispossess the Department of the market-oversight role assigned to it by the Act.

In November of 2011, the Federal Communications Commission ("FCC") issued the "*CAF Order*."[6] The *CAF Order* significantly reformed intercarrier compensation rules and principles, and required carriers to negotiate in good faith in response to requests to interconnect using IP technology. Based on this significant FCC action, Sprint and other competitive carriers are understandably eager to exercise their rights under Sections 251 and 252 of the Act in interconnection negotiations with Incumbent Local Exchange Carriers ("ILECs") like Verizon's subsidiaries, including Verizon MA.

The pace of technological change and network evolution is accelerating and the telecommunications industry is moving toward IP technology. Sprint and other carriers are building new 4G wireless networks, with IP network cores, to deliver advanced services to their customer bases. Companies like Sprint must ensure that its networks incorporate technological advancements so that services are delivered efficiently and effectively. By concluding that the IP Interconnection Agreements are interconnection agreements subject to Section 251 and 252 of the Act, the Department will be providing Sprint and other intervenors that to which they are entitled to by law: interconnection on terms consistent with the requirements of the Act, the FCC's rules, and the *CAF Order*. Such terms will ensure that Sprint can engineer its network and interconnect with Verizon MA in a way that is efficient and will enable delivery of innovative services consistent with the public interest.

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[5] Evidentiary hearings on this matter were held on April 30 and May 1, 2014, and the transcripts of those two hearing days will be cited as 1Tr. and 2Tr., respectively.

[6] *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (released Nov. 18, 2011) ("*CAF Order*").

The Department recognized in opening this docket that it was fully vested with the jurisdiction necessary to review the important issues addressed in the matter at bar.[7] Importantly, the Department found that it has jurisdiction and is the appropriate entity to determine whether interconnection rights and obligations arising under the Act apply to IP interconnection.[8] The Department's recognition that its statutorily designated role as interpreter, arbiter and enforcer of rights and obligations arising under Sections 251/252 of the Act is accurate and important. As has been illustrated in the course of this case, there is still palpable need for the Department to oversee interconnection rights and obligations.

In its Initial Prehearing Brief, Sprint illustrated for the Department that

- The Act was designed to facilitate competition. To encourage competition, the Act imposed a series of narrowing obligations, with the broadest set of obligations imposed on ILECs. ILECs are required to establish reciprocal compensation arrangements for the transport and termination of traffic. They are also obligated to provide interconnection that is equal in quality to that provisioned by the ILEC to any other carrier – including itself, at rates, terms and conditions that are non-discriminatory, and just and reasonable. ILECs' agreements regarding these and other obligations must be filed with state commissions;[9]

- Whether an agreement is an interconnection agreement under the Act has been broadly interpreted. Agreements that contain ongoing obligations that "relate" or "pertain" to Sections 251(b) and (c) of the Act are interconnection agreements. State commissions are vested with jurisdiction and authority to determine in the first instance whether agreements are interconnection agreements under the Act;[10]

- Sections 251 and 252 of the Act apply to IP interconnection, and other reviewing state commissions have reached that conclusion;[11]

- The FCC's *CAF Order* makes clear that IP interconnection is subject to the requirements of Sections 251 and 252 of the Act;[12]

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[7] *Order Opening Investigation* at 10-11.
[8] *Id.* at fn. 6.
[9] Sprint's Initial Post-Hearing Brief at 5-8.
[10] Sprint's Initial Post-Hearing Brief at 9 – 10.
[11] Sprint's Initial Post-Hearing Brief at 11 – 16.
[12] Sprint's Initial Post-Hearing Brief at 18 – 19.

- Each of the IP Interconnection Agreements is an interconnection agreement subject to Sections 251 and 252 of the Act because it has terms relating or pertaining to interconnection and reciprocal compensation;[13]

- Whether Verizon MA, if the terms and conditions contained in the IP Interconnection Agreements are not made available to competing carriers, is in violation of its obligation under the Act to offer to requesting carriers rates, terms and conditions of interconnection that are just, reasonable and nondiscriminatory, and of equivalent quality;[14]

- The Department's exercise of jurisdiction will promote competition and the proliferation of broadband;[15]

- Verizon MA has financial incentives to continue to interconnect in TDM;[16] and

- The need for the Department to fulfill its role as a regulatory backstop for interconnection agreement negotiation and arbitration remains acute.[17]

Herein, Sprint refutes those arguments made by Verizon MA in its Post-Hearing Brief of Verizon MA. ("Verizon Br."). Verizon MA has presented no compelling reason for the Department to decline to exercise its jurisdiction under the Act. To the contrary, Verizon's repetitious attempts to discredit intervenors for their insistence on negotiating contracts without forfeiting those rights guaranteed them under the Act is simply further evidence of the need for the Department to serve as a regulatory backstop.

As illustrated below, most or all of Verizon MA's arguments suffer from the same fundamental flaw: the issues raised are not pertinent to the case and need not be addressed by the Department in order to conclude that the IP Interconnection Agreements are interconnection agreements under Sections 251/252 of the Act. The Department's role under the Act is clear as is the goal of the Department's investigation. The Department set out to fulfil its statutorily

[13] Sprint's Initial Post-Hearing Brief at 19 – 35.
[14] Sprint's Initial Post-Hearing Brief at 36 – 41.
[15] Sprint's Initial Post-Hearing Brief at 41 – 42.
[16] Sprint's Initial Post-Hearing Brief at 43 – 45.
[17] Sprint's Initial Post-Hearing Brief at 45 – 49.

designated role by determining whether the IP Interconnection Agreements are interconnection agreements subject to Sections 251 and 252 of the Act. Verizon MA's presentation of extraneous arguments must not deter the Department from finding that the IP Interconnection Agreements are in fact interconnections agreements under the Act.

II. The VoIP-to-VoIP Agreement is an Interconnection Agreement Regardless of Whether Comcast IP is a Requesting Telecommunications Carrier

Verizon MA argues that the VoIP-to-VoIP Agreement cannot be deemed an interconnection agreement because Verizon's counterparty is Comcast IP Phone, LLC ("Comcast IP") which Verizon MA alleges is not a "telecommunications carrier."[18] Verizon MA observes that while Section 251(c)(2) of the Act requires an ILEC to interconnect, such obligation is allegedly limited to interconnection with "any requesting telecommunications carriers."[19] Although Verizon MA states repeatedly that Comcast IP is not a telecommunications carrier under the Act, Verizon MA is unable to provide a single citation supporting its allegation. This is, of course, not surprising since no supporting citation exists. Comcast IP is an Interconnected VoIP service provider,[20] and the FCC has never concluded that Interconnected VoIP service providers are not telecommunications carriers.

Although the FCC has declined to definitively categorize Interconnected VoIP service as a telecommunications service, nor its providers as telecommunications carriers (although it has affirmed that Interconnected VoIP service is "telecommunications" under the Act and

[18] VZ Brief at 5, 7, 19, 20, 23, 24, 33-34, and 37-38. Verizon MA's Brief makes publicly known that Comcast IP as the signatory to the VoIP-to-VoIP Agreement. Verizon Br. at 37-38 ("... Comcast IP ... is Verizon's counterparty in the VoIP-to-VoIP Agreement.).

[19] 47 U.S.C. § 251(c)(2) ("... the duty to provide, for the facilities and equipment of any requesting carrier, interconnection ...").

[20] *See* Sprint Initial Post-Hearing Brief at 21-22. Verizon MA argues in its Brief that both its FiOS service and Comcast's XFINITY service are information services. Verizon Br. at 9, 33 and 35-36. Sprint will not herein refute Verizon MA's unfounded arguments as the point is well addressed in Sprint's Initial Post-Hearing Brief. *See also* Competitive Carriers' Initial Brief at 31-32.

Interconnected VoIP service providers are providers of telecommunications),[21] the FCC regulates Interconnected VoIP service providers in substantially the same manner as it regulates telecommunications carriers. This is evident in the FCC's decisions to apply to Interconnected VoIP service providers obligations relating to Universal Service contributions, local number portability, E-911 obligations, as well as other regulatory obligations – including interconnection – that previously had been applicable only to telecommunications services and telecommunications carriers. The common thread in the FCC's approach to addressing important issues that have come to the fore with the proliferation of VoIP telephony is that when presented with the opportunity to exempt Interconnected VoIP service providers from the regulatory scheme governing traditional/legacy networks, the FCC has declined to treat them, or Interconnected VoIP service, differently.

The FCC's even-handed regulatory approach is informed by important policy goals. The FCC recognizes that consumers reasonably expect that Interconnected VoIP services will function like traditional telephone service, and thus some regulatory obligations imposed on traditional telephone service must be extended to Interconnected VoIP service.[22] It attempts to apply regulation in a competitively neutral manner to ensure regulatory parity between providers of similar services such as traditional and VoIP telephony.[23] The FCC also attempts to avoid opportunities for regulatory arbitrage by regulating competing services consistently.[24] Sprint

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[21] *In the Matter of Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, 7541 at ¶ 35 (rel. June 27, 2006) (*"Universal Service Contribution Methodology"*) (declaring that providers of Interconnected VoIP service are providers of telecommunications.).

[22] *In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Provider*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245, 10256-57 at ¶ 23 (rel. June 3, 2005).

[23] *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, CC Docket Nos. 95-116, 99-200, Reporting and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19532 (rel. Nov. 8, 2007)(*"Numbering Requirements for IP-Enabled Services"*); *Universal Service Contribution Methodology* at ¶ 44.

[24] *Universal Service Contribution Methodology* at ¶ 44.

suggests to the Department, and explains below, that not only does the FCC's approach lead inexorably to the conclusion that the right to interconnect under Section 251(c) applies equally to Interconnected VoIP service providers, but any contrary conclusion would ignore FCC precedent and plain logic.

A. The FCC has Imposed on Interconnected VoIP Service Providers Obligations the Act Imposes on Telecommunications Carriers and Telecommunications Services

1. Local Number Portability

The Act imposes certain obligations regarding the portability of numbering resources. The Act defines "Number Portability" as "the ability of users of *telecommunications services* to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one *telecommunications carrier* to another."[25] The Act then imposes upon all Local Exchange Carriers (a category that includes both CLECs and ILECs) the duty to provide number portability.[26] Thus, number portability under the Act involves telecommunications services and telecommunications carriers, and must be provided by all LECs.

In the context of interconnection, Verizon argues that the VoIP-to-VoIP Agreement cannot be an interconnection agreement under the Act because Comcast IP is not a telecommunications carrier. Under the same logic, then, Comcast IP would not be subject to number portability obligations because the FCC has not determined whether an Interconnected VoIP service provider, such as Comcast IP, is providing telecommunications services or is a telecommunications carrier. Contrary to Verizon MA's position, however, the FCC found that number portability obligations apply equally to Interconnected VoIP service providers like

[25] 47 U.S.C. § 153(37) (emphasis added).
[26] 47 U.S.C. § 251(b)(2).

Comcast IP; and it applied the Act's obligations directly to Interconnected VoIP service providers, not just their wholesale numbering partners.

The FCC found that "both an interconnected VoIP provider and its numbering partner must facilitate a customer's porting request to or from an interconnected VoIP provider. By "facilitate" we mean that the *interconnected VoIP provider has an affirmative legal obligation* to take all steps necessary to initiate or allow a port-in or port-out ..."[27] The FCC concluded that number portability obligations under the Act apply directly to Interconnected VoIP service providers, and that for any failure to comply with the number portability obligations "that provider or carrier will be subject to Commission enforcement action for a violation of the Act and the Commission's LNP rules."[28]

Explaining its motivation, the FCC indicated that it was acting to "ensure regulatory parity among providers of similar services" and to "minimize marketplace distortions arising from regulatory advantage."[29] Recognizing the danger of market distortions if number portability obligations were not applied directly to Interconnected VoIP service providers, the FCC indicated that "[t]o find otherwise would permit carriers to avoid numbering obligations simply by creating an interconnected VoIP provider affiliate and assigning the number to such affiliate."[30]

This last observation is strikingly pertinent to the case at bar. Verizon MA suggests that by contracting with Comcast IP for interconnection, rather than a Comcast CLEC entity, Verizon MA avoids those statutory obligations arising under Sections 251 and 252, and its interpretation hinges on Comcast IP not being a telecommunications carrier. Verizon MA's interpretation is

[27] *Numbering Requirements for IP-Enabled Services* at ¶ 32 (emphasis added).
[28] *Id.* at ¶ 33.
[29] *Id.* at ¶ 1.
[30] *Id.* at ¶ 23.

illustrative of the "marketplace distortions" the FCC sought to avoid, in the context of number portability, by "ensur[ing] regulatory parity." Regarding number portability, the FCC applied to Interconnected VoIP service providers statutory obligations imposed by the Act on LECs for *telecommunications services* offered by *telecommunications carriers*; and it did so without ever finding that Interconnected VoIP service providers offer telecommunications services, or are either telecommunications carriers or LECs themselves.

2. Universal Service Funding

Another obligation arising under the Act, and specific to telecommunications carriers, that the FCC has imposed on Interconnected VoIP service providers is the obligation to contribute to the preservation and advancement of universal service. Section 254(d) of the Act requires "[e]very *telecommunications carrier* that provides interstate *telecommunications services* shall contribute, on an equitable and nondiscriminatory basis … to preserve and advance universal service."[31]

The FCC indicated that "the principle of competitive neutrality" supported its conclusion to require Interconnected VoIP service providers to contribute to ensuring universal service.[32] The FCC acted to ensure that its rules "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favors nor disfavors one technology over another."[33] The FCC acted to ensure that statutes and regulations did not influence technology decisions "or create opportunities for regulatory arbitrage."[34]

The FCC observed that Interconnected VoIP service providers are "like telecommunications carriers" in that they "have built their business, or a part of their business,

[31] 47 C.F.R. § 254(d) (emphasis added).
[32] *Universal Service Contribution Methodology* at ¶ 44.
[33] *Id.*
[34] *Id.*

on access to the PSTN."[35] Relying on the similarity in the business models, the FCC proceeded to obligate Interconnected VoIP service providers to contribute to the promotion and advancement of universal service just as telecommunications carriers are required to do.[36] The FCC also observed that "some interconnected VoIP providers may hold themselves out as telecommunications carriers ..."[37]

In sum, the FCC again found it necessary to apply to Interconnected VoIP service providers a regulatory obligation that the Act imposes on telecommunications carriers. The FCC concluded that Interconnected VoIP service providers hold themselves out as telecommunications carriers and compete directly with telecommunications carriers, so the principles of competitive neutrality demanded the FCC subject Interconnected VoIP service providers to the universal service obligations imposed by the Act on telecommunications carriers. A failure to do so, observed the FCC, could lead carriers to make technology choices based on regulatory distinctions and could lead to regulatory arbitrage.

3. Customer Proprietary Network Information

Another obligation imposed on telecommunications carriers by the Act that the FCC applies to Interconnected VoIP service providers is the obligation to protect customer proprietary network information ("CPNI"). Telecommunications carriers are obligated to protect CPNI.[38] Section 222(c) of the Act imposes on any "*telecommunications carrier* that receives or obtains customer proprietary network information by virtue of its provision of a *telecommunications service* ..." certain obligations to protect such information.[39]

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[35] *Id.* at 45.
[36] *Id.*
[37] *Id.* at ¶ 58.
[38] 47 U.S.C. § 222(a).
[39] 47 U.S.C. § 222(c)(1) (emphasis added).

Reviewing the question of whether to extend CPNI obligations to Interconnected VoIP service providers, the FCC found that Interconnected VoIP services are increasingly replacing analog voice services and that customers expect their telephone calls are treated equally under the law regardless of the technology used to place or receive the call – be it wireless, wireline or interconnected VoIP.[40] For customers making a telephone call, the type of service is virtually indistinguishable.[41] As with the earlier examples, the FCC determined that sections of the Act that on their face apply to telecommunications carriers and telecommunications services must apply to Interconnected VoIP service providers, too, and it again did so without making a determination regarding the regulatory classification of Interconnected VoIP service providers.

4. Other Obligations Arising Under the Act Have Been Applied to Interconnected VoIP Service Providers

Another instance in which the FCC imposed upon Interconnected VoIP service providers obligations arising under the Act is the FCC's imposition of E911 obligations.[42] Recognizing that customers are generally unaware that their Interconnected VoIP service is distinguishable from traditional telephone service, and have a reasonable expectation that it will function the same as traditional telephone service for emergency calls, the FCC concluded that it was appropriate to require Interconnected VoIP service providers to meet E911 obligations.[43]

As with other decisions applying obligations arising under the Act to Interconnected VoIP service providers, the FCC declined to determine whether Interconnected VoIP service is a

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[40] *In the Matter of Implementation of the Telecommunications Act of 19: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 6927, ¶ 56 (rel. April 2, 2007) ("*CPNI Report and Order*").
[41] *Id.*
[42] *In the Matter of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd. 10245, ¶ 23 (rel. June 3, 2005) ("*E911 VoIP Order*").
[43] *Id.* at ¶¶ 22-23.

telecommunications service.[44] The FCC found it persuasive and determinative that because the public failed to perceive traditional and VoIP telephony differently for emergency calling, it would treat Interconnected VoIP service providers similarly to traditional telephone providers and applied E911 obligations.[45] Despite the E911 VoIP Order having been issued over nine years ago, the FCC recognized even then that direct IP interconnection was possible and already taking place in the market.[46] The FCC went on to speculate that if an Interconnected VoIP service provider were to hold itself out as a telecommunications carrier, it would be entitled to interconnection and facilities under Section 251(a)(1), Section 251(c) and 47 C.F.R. § 51.319(f).[47]

As a final example of the FCC's parallel regulatory treatment of Interconnected VoIP Service Providers, the FCC's examination of call completion obligations is illuminative. In this context, the FCC provides a highly cogent analysis of VoIP providers' call completion responsibility – an obligation applicable to telecommunications carriers and telecommunications services.[48] Regarding call blocking, the FCC observed that it is necessary to treat Interconnected VoIP service providers in the same manner as telecommunications carriers to avoid unintended and divisive results.

> For example, an interexchange carrier that is a wholesale partner of such a VoIP provider could evade our directly-applicable restrictions on blocking under section 201 of the Act by having the blocking performed by the VoIP provider

[44] *Id.* at ¶ 24.
[45] *Id.* at ¶¶ 22-23.
[46] *Id.* at ¶ 25 and fn. 83 ("… In addition, a VoIP service provider has established direct interconnection with the Selective Router(s) in at least one state … Further, several incumbent LECs are offering, or have announced their intent to offer, VoIP service providers direct interconnection to their Selective Routers through tariff, contract, or a combination thereof …" The FCC identified Verizon as such a company and referenced a Verizon Press Release in support (*Verizon Identifies Solution Enabling VoIP Companies to Connect to E911 Emergency Calling System,* Press Release (rel. Apr. 26, 2005)).
[47] *See Id.* at fn. 128. As explained at Section II.A.2. *infra*, the FCC already found that Interconnected VoIP service providers may hold themselves out as telecommunications carriers. *Universal Service Contribution Methodology* at ¶ 58.
[48] *See CAF Order* at ¶ 974 ("[i]f interconnected VoIP services … are telecommunications services, they already are subject to restrictions on blocking under the Act.").

> instead. An IXC generally would be prohibited from refusing to deliver calls to telephone numbers associated with high intercarrier compensation charges. If that IXC's VoIP provider wholesale customer were free to block calls to such numbers, the IXC thus could evade the directly-applicable restrictions on blocking ... In addition, blocking or degrading of a call ... [would deny the] benefits of telecommunications interconnection under section 251(a)(1).[49]

The FCC recognized that dissimilar treatment of Interconnected VoIP service providers would threaten the ubiquitous interconnection that is a clear goal of the Act, and thus it applied to Interconnected VoIP service providers the same treatment applicable to telecommunications carriers.[50] The FCC observed that failing to regulate carriers equally would enable a telecommunications carrier (the IXC in the FCC's example) to avoid obligations arising under the Act by availing itself of the disparate treatment applicable to its VoIP partner.

It must not be lost on the Department that Verizon MA's telecommunications carrier argument, and the structure of Verizon's VoIP-to-VoIP Agreement with Comcast IP that by design supports the argument, parallels the regulatory arbitrage opportunity highlighted in the FCC's above-quoted example. To wit, if Verizon MA contracts with Comcast Phone, a CLEC, obligations under Section 251(c)(2) apply fully, but if it instead contracts separately and exclusively[51] with a Comcast IP, allegedly not a telecommunications carrier, Verizon MA may argue to the Department that Sections 251/252 do not apply. The conclusion Verizon MA urges the Department to reach is contrary to public policy and must be rejected.

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[49] *CAF Order* at fn. 2043 (as the example describes an interexchange call, interconnection under Section 251(a)(1) is used in the text of the example because unlike CLECs (subject to Sections 251(a) and (b)) or ILECs (subject to Sections 251(a),(b) and (c)), interexchange carriers ("IXC") are subject only to Section 251(a)). It cannot be doubted that the FCC's observations regarding the obligation to complete calls would be no different if the call were local and a CLEC partner was substituted for the VoIP provider's IXC partner.

[50] *See also In the Matter of Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-39, at ¶ 21 (rel. Nov. 8, 2013)("We conclude that long-distance voice service providers, including LECs, IXCs, CMRS providers, and interconnected and one-way VoIP service providers, must comply with these rules when they make the initial long-distance call path choice.").

[51] **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**

B. Consistent with FCC Precedent, Interconnection Rights and Obligations Under the Act Apply to Contracts Between an Interconnected VoIP Service Provider and an ILEC like Verizon MA

The above discussion illuminates the FCC's approach to regulating Interconnected VoIP service providers. In each instance the FCC has chosen to apply telecommunications carrier and telecommunications service obligations to Interconnected VoIP service providers. The FCC has striven to apply the principles of non-discrimination, competitive neutrality, regulatory parity, and prevention of regulatory arbitrage. In each instance the FCC has concluded that applying consistent regulatory treatment was necessary to protect consumers and ensure companies make decisions based on legitimate business reasons, not artificial regulatory distinctions.

In the *Time Warner Declaratory Ruling*,[52] the FCC's Wireline Competition Bureau ("WCB") reviewed the issue of whether the provision of Interconnected VoIP service to an end user negates the right to interconnect arising under the Act. The WCB concluded that the underlying service was entirely irrelevant to the right to interconnect. "The regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under Section 251."[53] The WCB concluded that "our decision today is consistent with and will advance the [FCC's] goals in promoting facilities-based competition as well as broadband deployment ... *[E]nsuring the protections of section 251 interconnection is a critical component for the growth of facilities-based local competition.*"[54]

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[52] *In the Matter of 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*, 22 FCC Rcd. 3513, Memorandum Opinion and Order (rel. March 1, 2007) (decision of Wireline Competition Bureau) ("*Time Warner*"); *see also CRC Communications of ME., Inc. v. Time Warner Cable, Inc.*, 26 FCC Rcd 8259, 8273 at ¶ 26 (rel. May 26, 2011).

[53] *Id.* at ¶ 15.

[54] *Id.* at ¶ 13 (emphasis added). Verizon itself underscored this point. "Simply put, just as the availability of VoIP drives both providers to deploy and end-users to purchase broadband services, state commission decisions that effectively prevent consumers from using their broadband connections for VoIP telephony discourage the

Verizon MA urges the Department to ignore the plain logic of *Time Warner* which held that the right to interconnect exists independent of the service provided or the identity of the originating/terminating carrier. Under Verizon MA's suggested rubric, an ILEC is obligated to interconnect for traffic originated or terminated by an Interconnected VoIP service provider so long as such traffic is exchanged through an intermediary, but no rights or obligations apply when the Interconnecting VoIP service provider exchanges such traffic directly. According to Verizon MA, this result arises from the nature of the *carrier* providing service.

Such a conclusion is contrary to the plain logic and intent of *Time Warner*. There, the WCB acted to prevent ILECs from refusing to interconnect for the exchange of certain traffic with certain carriers. It would be illogical to conclude that despite the WCB's statement that the format of traffic and service provided are irrelevant to whether interconnection rights apply, relevancy hinges of the presence or absence of an intermediary carrier. Verizon MA's approach places form over substance and leads to exactly the results that *Time Warner* sought to avoid.

There is other support for the conclusion that ILECs may not escape their interconnection obligations based on the format of traffic or type of carrier involved. In the *CAF Order*, the FCC indicated that such a result is unacceptable and that the exchange of traffic in IP format does not dilute or eliminate interconnection obligations under Section 251(c).[55] Opining on whether traffic exchanged by an Interconnected VoIP service provider – when exchanged in IP – would constitute "the transmission and routing of telephone exchange service and exchange access,"[56] the FCC indicated that "we do not believe that their regulatory status should change if they

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deployment and use of broadband." *Id.* at fn. 37. Verizon's statement was made in support of the FCC's decision to overturn decisions by state utility commissions in Nebraska and South Carolina that had denied interconnection rights to Time Warner and its business partners due to the traffic originating or terminating in IP format. Verizon's present position is directly contrary to its position in Time Warner as Verizon now seeks to deny interconnection rights to other carriers based on whether traffic originates and terminates in IP.

[55] *CAF Order* at ¶ 1342.

[56] 47 U.S.C. § 251(c)(2)(A).

simply performed the same or comparable functions using a different protocol, such as IP.[57] The FCC further stated that good-faith negotiation "of interconnection requirements under the Communications Act [] does not depend upon the network technology underlying the interconnection whether TDM, IP or otherwise[,]"[58] and that the FCC "agree[s] with commenters that "nothing in the language of Section 251 limits the applicability of a carrier's statutory interconnection obligations to circuit-switched voice traffic" and that the language is in fact technology neutral."[59] The foregoing illustrates the FCC's position that interconnection rights and obligations under Section 251 extend to Interconnected VoIP service providers when they interconnect in a manner consistent with Section 251; in such an instance, an Interconnected VoIP service provider is, in effect, a carrier. The matter at bar is just such an instance.

The Department must conclude that a ruling in Verizon MA's favor, finding that ILECs avoid their duties under Sections 251/252 by directly interconnecting with Interconnected VoIP service providers (and as a corollary, that Interconnected VoIP service providers have neither rights nor duties regarding interconnection under the Act), is contrary to the FCC precedent and policies reviewed above. Such a ruling would not be *competitively neutral* as it would create a category of interconnecting carriers with a different set of rights and obligations under the Act, despite providing an undifferentiated service: voice telephony. *Regulatory parity* would not be endorsed by such a ruling as Interconnected VoIP service providers would be subject to separate regulatory treatment from the carriers against whom they compete. And ILECs would be incented to enter into interconnection deals with such carriers on terms that could be more favorable than those offered to other requesting carriers because the incumbent could do so while avoiding the Act's interconnection obligations. Carriers could be incented to engage in

[57] *CAF Order* at ¶ 1389.
[58] *CAF Order* at ¶ 1335.
[59] *CAF Order* at ¶ 1381 (emphasis added).

regulatory arbitrage by determining what agreements to enter into and what facilities to use for the exchange of traffic based on differentials contained in unfiled contracts. An Interconnected VoIP service provider that *holds itself out as a telecommunications carrier* should be regulated in a parallel fashion. If an Interconnected VoIP service provider enters into interconnection agreements, those agreements and that carrier must be treated the same as would be the case if a telecommunications carrier took the same action.

Cleary, neither Congress nor the FCC intended for an ILEC to be able to avoid its Section 251/252 obligations by entering into an agreement that by any other measure is a Section 251/252 interconnection agreement, but is removed from the statutory scheme merely by the identity of the non-ILEC contracting party. All of these results are contrary to the public interest, sound public policy, FCC precedent, and the Act.

The Department is fully empowered to reach a decision in this case that prevents these consequences from unfairly altering the Massachusetts telecommunications marketplace.[60] State commissions are empowered to interpret the Act, including Sections 251 and 252, and reviewing courts will defer to state commissions as it is the role of the state commissions to administer the Act.[61] Congress vested in state commissions the authority to enforce and administer Sections 251 and 252 of the Act, which includes the authority to determine whether an agreement is an interconnection agreement.[62] And as the Second Circuit recently explained, the Department is vested with authority to make

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[60] The Department should ignore as specious Verizon MA's argument that the *CAF Order* preempts the Department from its traditional role under Sections 251/252 regarding interconnection agreements. Verizon Br. at 4-5. The *CAF Order* indicates that the FCC expects carriers to negotiate in good faith, *see CAF Order* at ¶ 1011, and the Department is the statutory arbiter of that issue in the context of rights and obligations arising under Sections 251/252.

[61] *See e.g. Centennial Puerto Rico License Corp. v. Telecomms. Regulatory Bd. Of P.R.*, 634 F.3d 17, 26 (1st Cir. 2011).

[62] *Order Opening Investigation* at 7 and 10.

decisions regarding interconnection rights so long as such decision does not violate federal law.[63]

The FCC has consistently applied to Interconnected VoIP service providers rights and obligations parallel to those imposed by the Act on telecommunications carriers and telecommunications services. Accordingly, the Department is free to apply interconnection rights and obligations arising under the Section 251 of the Act to Interconnected VoIP service providers because the Act "permits state commissions to regulate interconnection obligations" in a manner consistent with federal law. Taking *the same approach the FCC has taken* regarding the application to Interconnected VoIP service providers of obligations imposed by the Act on telecommunications carriers cannot be anything but consistent with federal law.

III. Congress' Legislative Intent Prevails Over Corporate Affiliate Relationships

Verizon MA asserts that the identity of the signatory to the VoIP-to-VoIP Agreement, Comcast IP rather than Comcast Phone, is the determinative factor as to whether that agreement is an interconnection agreement. It contends that rights under Section 251(c) accrue to telecommunication carriers only, so a contract between and ILEC and a non-telecommunications carrier cannot be deemed an interconnection agreement under the Act. Verizon MA argues that because the signing party is Comcast IP, not a CLEC and allegedly not a telecommunications carrier,[64] the VoIP-to-VoIP Agreement cannot be an interconnection agreement.[65] Verizon MA makes other common law contract arguments as well and finds it unpersuasive that the service provided to Comcast's customers is not and cannot be provided by Comcast IP without services

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[63] *S New England Tel Co v Comcast Phone of Conn, Inc*, 718 F.3d 53, 58 (2d Cir 2013) ("*SNET v. Comcast*") (internal citations omitted).

[64] *Verizon Br.* at 33. Sprint does not address whether Comcast IP is a telecommunications carrier (a questions not determined squarely by the FCC) because it is of no consequence to the Department's determination. The Act is technology agnostic and any request for interconnection triggers Section 251. *See* 2Tr. p. 131, lines 1-17.

[65] Verizon Br. at 5, 24 and 37-38. The identity of Comcast IP as the signatory to the VoIP-to-VoIP Agreement is not made confidential. Verizon Br. at 5, 37-38.

and facilities obtained from its CLEC affiliate, Comcast Phone. Verizon MA's position is wrong as a matter of policy and law.

The controlling case on prohibiting ILECs from leveraging affiliate relationships to avoid obligations arising under the Act is *Association of Communications Enterprises v. FCC*, 235 F3d 662, 668 (DC Cir) (amended Jan. 18, 2001) ("*ASCENT*"). The *ASCENT* case was the appeal of an FCC decision that authorized the 1998 merger of Ameritech and SBC.[66] There, the FCC approved the merger and decided that Section 251(c) obligations applied to ILECs and their successors and assigns, but not to separate affiliates.[67] According to the FCC's reasoning, any ILEC would be entitled to "set up a similar affiliate and thereby avoid § 251(c)'s resale obligations."[68]

The D.C. Circuit reversed the FCC. The court analyzed the structure of the Act, including Section 251, and concluded that because Congress specified in Section 271 when obligations may be avoided through use of an affiliate, "we must assume that Congress did not intend for § 251(c)'s obligations to be avoided by the use of such an affiliate."[69] *ASCENT* has been good law for over ten years. And in the *CAF Order*, the FCC invoked the *ASCENT* case again, this time to address industry concerns that ILECs were attempting to avoid their Section 251(c) IP Interconnection obligations by using affiliates to offer certain services:

> In addition, the record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services, and we would be concerned if that were the case. We note that the D.C. Circuit has held that "the Commission

[66] *ASCENT*, 235 F3d at 663.
[67] *Id.* at 665.
[68] *Id.*
[69] *Id.*

> may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."[70]

Recognizing that well-settled law prohibits Verizon MA from leveraging *its own* affiliate relationships to avoid 251(c) obligations under the Act, Verizon MA attempts to succeed by merely rearranging the deck chairs. Verizon MA is arguing in the matter at bar that although it cannot avoid 251(c) obligations by using a particular affiliate of its own as the contracting party, it can nevertheless avoid those obligations if it contracts with the non-LEC affiliate of an interconnecting company such as Comcast IP. This despite the clear holding in ASCENT, and the FCC's concern noted in the CAF order, that 251(c) obligations cannot be permitted to be avoided through use of corporate affiliates.[71] The fact that in the case at bar the statute-evading affiliate is a Comcast affiliate rather than an ILEC affiliate is of no consequence. The resulting harm is the same and the ILEC is still leveraging an affiliate relationship to avoid its obligations arising under the Act.[72]

Applying common law doctrine to Verizon's newest scheme still leads to the same conclusion reach in ASCENT: that the Department must not allow the use of corporate affiliates to defeat Congress' legislative intent as reflected in the Act. The Supreme Court explained in *Schenley Distillers Corp. v. United States* that "corporate entities may be disregarded when they are made the implement for avoiding a clear legislative purpose," and preserving such formalities

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[70] *CAF Order*, ¶ 1388 (quoting *ASCENT*).

[71] A case addressing a similar issue is *General Tel. Co. v. United* States, 449 F.2d 846, 854-55 (5th Cir. 1971). That case resolved a situation in which a telephone provider sought to evade pro-competitive FCC certification requirements related to the operation of affiliated CATV systems by operating such a system without certification through a commonly-owned affiliate. *Id.* at 855. The Fifth Circuit affirmed the FCC's decision to treat the two companies as one entity to avoid frustrating a federal legislative purpose. *Id.* The court explained that "under these circumstances, the activities of the non-common carrier affiliate may be imputed to the common carrier parent." The court reiterated that ignoring corporate affiliate structures for the sake of preserving a regulatory purpose was justified, and that "the ends [the Commission] sought could not be achieved without drawing carrier affiliates under the aegis of [the statute], and this we find is permissible."

[72] The Department should be mindful that if it allows Verizon to avoid Section 251(c) obligations via the identity of the contracting party, there can be no doubt Verizon will pursue contracts with only such entities as will allow its contracts to be exempt and this will effectively stymy IP interconnection directly between ILECs and CLECs. This is not a path the Department should explore.

is appropriate only where "no violence to the legislative purpose is done by treating the corporate entity as a separate legal person."[73] Federal courts have applied this rule across a broad swath of Federal statutes, including the Communications Act.[74] Federal courts and regulatory agencies apply this rule to ensure that the corporate form cannot be used to defeat legislative objectives.

The First Circuit has followed the Supreme Court and other circuits by examining an enterprise as a whole, rather than as independent affiliates. In one early case, Chief Judge Aldrich wrote that "however important it may be in other respects, the fiction of the corporate entity cannot stand athwart sound regulatory procedure."[75] In a later case, the First Circuit again applied this rule.[76] Basing its conclusion on a case regarding the Communications Act of 1934, the court examined the purpose of the statute in question to determine whether its language explicitly protected the corporate form, and whether recognition of the distinct entities would interfere with "the interests of public convenience, fairness, and equity."[77] Where a question of this type arises as the result of a federal statute or regulation, "the policy underlying a federal statute may not be defeated by an assertion of state power[,]" such as the corporate form or affiliate relationships.[78] As corporations are entities arising out of state rather than federal law, protection of their form or relationship cannot trump a federal statute, and "in federal question cases, courts are wary of allowing the corporate form to stymie legislative policies."[79]

Were the Department to accept Verizon MA's reasoning the federal legislative purpose which underlies Sections 251 and 252 would be defeated by Comcast's corporate structure.

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[73] *Schenley Distillers Corp v. United States*, 326 US 432, 437 (1946).
[74] *See Mansfield Journal Co. (FM) v. FCC*, 108 F.2d 28, 37 (D.C. Cir. 1950); *see generally Brookline v. Gorsuch*, 667 F.2d 215, 222 (1st Cir. 1981) (identifying several statutes to which this rule has been applied).
[75] *H. P. Lambert Co. v. Sec'y of Treasury*, 354 F.2d 819, 822 (1st Cir. 1965) (citing *Mansfield Journal Co., supra.*)
[76] *See Brookline, supra*, at 221-22.
[77] *Id.* at 221 (quoting *Capital Tel. Co. v. FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974).
[78] *Brotherhood of Locomotive Eng'rs v. Springfield Terminal Ry.*, 201 F.3d 18, 26 (1st Cir. 2000) (quoting *Anderson v. Abbott*, 321 U.S. 349, 365 (1944)).
[79] *Id.* at 27 (quoting *Untied Elect., Radio and Mach. Workers of Am. V. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1091 (1st Cir. 1992).

While not using the foregoing case law as its guide, the FCC found that legislative intent must take precedence over corporate structure. As discussed *supra*, the FCC recognized that it could not allow the use of affiliate relationships to defeat the legislative intent, clearly expressed in the Communications Act, to promote Local Number Portability. The FCC concluded that the Local Number Portability obligation must be broadly construed. It stated that "[t]o find otherwise would permit carriers to avoid numbering obligations simply by creating an interconnected VoIP provider affiliate and assigning the number to such affiliate."[80]

Verizon MA's reliance on the Comcast corporate structure to defeat the legislative intent behind the Act must fail. With cases from the Supreme Court, the First Circuit, the FCC, and elsewhere as precedent, the Department can and must look past Verizon MA's corporate shell-game argument. To permit Verizon's ruse to succeed would place the preservation of corporate form above the pro-competitive purposes which led Congress to enact Sections 251 and 252 in the first place. This the Department must not abide.

IV. Assertion of Jurisdiction Will Not Lead to a Patchwork of Regulations, but Will Foster Competition Through the Presence of a Regulatory Backstop.

Verizon MA argues that if state commissions, like the Department, assert the jurisdiction granted to them under federal law, the result will be a patchwork of regulation that will thwart IP interconnection.[81] Verizon MA also attacks the Michigan Public Service Commission's ("MPSC") recent IP interconnection decision finding in Sprint's favor.[82] Verizon MA's assertion that the ability of multiple state commissions to exercise jurisdiction over IP interconnection will thwart competition, the proliferation of IP services or lead to inefficiencies

[80] *Numbering Requirements for IP-Enabled Services* at ¶ 23.
[81] Verizon Br. at 3, 37 and 41-42.
[82] Verizon Br. at 3-4, 11, 17, and 39. *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 (December 6, 2013) ("*MPSC IP Interconnection Order*").

is inaccurate. The record illustrates that none of these adverse consequences will result. Similarly, Verizon MA's criticism of the *MPSC IP Interconnection Order* is misplaced.

The record is clear that the state commissions have played an important role in fostering competition over the last 18 years.[83] They have fostered competition by ensuring that disputes over the terms of interconnection will be resolved with finality by a designated neutral arbiter. They have also fostered competition by serving as a repository for interconnection agreements that can be reviewed and adopted by competing carriers – thereby reducing transaction costs and enhancing competition in the retail market by preventing discrimination and other ills in the wholesale market.[84]

While ILECs, like Verizon MA, typically argue that the market today is different and more competitive than it was when the Act was passed, this ignores the reality that corporate conglomerates like Verizon remain the largest carriers in America with a scope and scale of operations that dwarfs other competitors. Verizon's market share includes Verizon MA's TDM and VoIP operations, Verizon's CLEC operations, broadband service, video service, and its wireless affiliate. Furthermore, in markets in which Verizon is an ILEC, like Massachusetts, Verizon also maintains disproportionate control of wholesale interconnection and last-mile access facilities – critical inputs without which competitors (both wireline and wireless) cannot compete. Thus, Verizon has the incentive and ability to leverage its legacy local infrastructure to harm competitors in all segments of the industry. Considered in the proper context, it is obvious that the need for state commissions as a regulatory backstop is still acute. Even if there was no such need – and Sprint insists there is – it would not change the result in the case at bar.

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[83] *See* Sprint Ex. No. 2 at p. 3, line 20 – p. 4, line 2.

[84] *Qwest Corporation Apparent Liability for Forfeiture,* Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 5169, ¶ 46 (2004) ("Through this mechanism, competitive carriers avoid the delay and expense of negotiating new agreements with the incumbent LEC and then awaiting state commission approval.").

Aside from this obvious legal flaw in Verizon MA's argument, the record shows that having state commissions serve in the regulatory backstop role designed to them by the Act presents no issues or difficulties.[85] Verizon MA claims repeatedly that LATA boundaries and state boundaries will thwart efficiencies inherent to IP interconnection. This is simply untrue. First, it is not competing carriers that demand to interconnect at multiple points, but rather ILECs, like Verizon MA, that insist that carriers must interconnect deep within the incumbent's network and at multiple points therein.[86] Second, the record illustrates clearly that the natural points of interconnection – which may well be outside LATA or state boundaries – are not thwarted by exercise of state commission jurisdiction.

For instance, the record establishes that state, LATA and MSA boundaries have not been a cause of delay in implementing IP interconnection, but rather such delay has been occasioned by the refusal of ILECs, like Verizon MA, to negotiate IP interconnection under the rubric of Sections 251 and 252.[87] The record also established that in the only arbitration in the nation that has resulted in the filing of an interconnection agreement with terms requiring IP interconnection, the arbitrated agreement specifically allows the parties, of which Sprint is one, to interconnect at a location to be determined without regard to state, LATA or MSA boundaries.[88] Even if a state were to require carriers to interconnect within the state – and that is *not* a result for which Sprint advocates, a carrier like Sprint that currently has eighteen (18) points of interconnection with Verizon's affiliates in Massachusetts for the exchange of traffic

[85] 2Tr. p. 32, line 12 – p. 33, line 3.
[86] *See* Sprint Ex. 2 at p. 11, lines 15-16.
[87] 2Tr. p. 49, line 15 – p. 51, line 8; 2Tr. p. 132, lines 9-21. *See* Sprint Initial Post-Hearing Brief at 45-46.
[88] 2Tr. p. 134, line 14 – p. 135, line 10; and s*ee* Sprint Exhibit 3.

would still recognize tremendous efficiencies and savings from a single point of interconnection within each state.[89]

Other than Verizon MA's allegations, there is nothing on the record that establishes any issue that would support its position that state commission involvement in the role assigned to them by Section 252 would slow implementation of IP interconnection. Frankly, the record makes clear that "rules generally do not address technical issue,"[90] and "state commissions do not create interconnection rules, they enforce Section 251 and any rules established by the FCC."[91] There is no reason to believe state commission decisions will not be reasonably consistent.[92] Even if there was an imminent danger of inconsistency, however, that would not be relevant to a determination in this case that the IP Interconnection Agreements are interconnection agreements that must be filed with the Department. As with much of Verizon MA's Brief, the issue raised is not pertinent to the case and need not be addressed by the Department in order to conclude that the IP Interconnection Agreements are interconnection agreements under Sections 251/252 of the Act.

As for Verizon MA's attacks on the *MPSC IP Arbitration Order*, Sprint finds Verizon MA's analysis misguided at best. The MPSC appropriately ruled that the nature of traffic and the facilities used to deliver traffic are not relevant to the question of whether carriers have a right to interconnect.[93] Due to the considerable overlap with Sprint's arguments presented to the Department in the instant docket, Sprint will not here reiterate the legal analysis adopted by the MPSC in the *MPSC IP Arbitration Order*.

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[89] 2Tr. p. 56, line 18 – p. 57, line 23.
[90] Sprint Exhibit No. 2 at p. 11, lines 8-9.
[91] *Id.* at p. 11, lines 16-18.
[92] *See* CC Exhibit No. 2 at p 15, line 21 – p. 16, line 4.
[93] *MPSC Arbitration Order* at 6-7.

V. Verizon's Other Legal Arguments

Verizon MA raises a host of other legal arguments, but none of them are particularly persuasive. For instance, Verizon MA argues that the Department should cease to oversee the market because the market has changed and Verizon MA is no longer a monopolist.[94] It may be reasonable to infer from the record that Verizon MA no longer enjoys a monopoly in the Massachusetts wireline telecommunications retail market, but it remains among the largest carriers in the market and the ILEC, with all the advantages of incumbency. This is irrelevant, however. Every carrier, Verizon included, has monopoly power over the termination of traffic to its own customers.[95] Thus, whether directly or indirectly, Sprint is forced to deliver to Verizon MA all traffic bound for Verizon MA's customers. Sprint cannot avoid this reality, and if Verizon MA refuses or offers unreasonable terms to interconnect in IP with Sprint directly, Sprint has no alternative means to directly interconnect with Verizon MA. Accordingly, the appropriate inquiry is not whether Verizon MA remains a market dominating monopolist for retail services, but whether Verizon MA has monopoly control over the termination of traffic to its customers – and it does. In such circumstances, regulatory oversight or action is appropriate, and in the case at bar, necessary, because Verizon MA is an ILEC subject to the obligations of Section 251 and 252 and the interconnection obligations arising thereunder.

Intervenors' and Sprint's IP Traffic Exchange Agreements. At the hearing, Verizon MA focused on, and discusses in its Brief, whether the intervenors and Sprint have IP traffic

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[94] Verizon Br. at 17 – 18.

[95] 2Tr. p. 150, lines 1 – 8. *See Petition of Verizon New England, Inc., MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, DTC Docket No. 07-9, Final Order, at 11 (June 22, 2009) (" The Department finds this lack of alternatives [for call termination] to be compelling evidence of the existence of market power.").

exchange agreements with other voice providers.[96] As discussed *infra*, the answer is of no consequence. Even if Verizon MA were correct, and it is not, that none of the IP traffic exchange agreements produced by intervenors and Sprint do in fact pertain to IP traffic exchange, it has no bearing on whether Verizon MA is violating the Act by not filing an interconnection agreement. Verizon MA's efforts to deflect attention from its statutory violations may make for hearing-room drama, and certainly fills pages in its Brief, but the entire line of argument is irrelevant to the Department's investigation. The Department should not be distracted by Verizon MA's introduction of extraneous matters and arguments. Furthermore, **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted][97] [redacted][98] **[END HIGHLY SENSITIVE CONFIDENTIAL]** Agreements that address IP traffic exchange in very generic terms, leaving the technical details to business and engineering personnel, are IP traffic exchange agreements nonetheless. Not all carriers prefer the 100+ page tombs that are typical of ILEC interconnection agreements.

2002 Qwest Order. Regarding the standard for submission of agreements "relating" or "pertaining" to obligations arising under Sections 251(b) or (c) of the Act,[99] Verizon MA relies on an obscure footnote from a case regarding a request by Qwest for authorization to provide

[96] *See* 2Tr. pgs. 100-119; Verizon Br. at 10-11.
[97] *See* Verizon MA Exhibit 3 (responses to CC-VZ 1-6(a) & (b). **[BEGIN HIGHLY SENSITVE CONFIDENTIAL]** [redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]**
[98] *See e.g.* Sprint's Initial Post-Hearing Brief at 24-25.
[99] *See* Verizon Br. at 21-22, analyzing application of *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)(l)*), WC Docket No. 02-89, Mem. Op. and Order, FCC 02-276, ¶ 10 (Oct. 4, 2002) ("*2002 Qwest Order*").

intraLATA long distance service and reaches an unlikely conclusion.[100] Verizon MA relies on this case as support for the counter-intuitive conclusion that the 2002 Qwest Order is to be narrowly construed (despite the broad language contained in the Order itself, as well as its traditionally broad interpretation given that case). Unfortunately for Verizon MA, the case supports no such conclusion. Other than the FCC's listing of the title of the agreement that Verizon MA bases its argument upon, there is little indication of what the agreement was or the terms it contained. Following Verizon MA's logic to its conclusion, if the IP Interconnection Agreements use the term "interconnection," then those agreements can be deemed interconnection agreements with no further review. Sprint is content with such a conclusion, but it suspects Verizon MA will not concur. In the case Verizon MA relies on, the FCC indicates that "we are troubled by Qwest's previous failure to file certain agreements with the states,"[101] and "[s]tates are best equipped to resolve fact-specific issues as they arise, such as whether or not an" interconnection agreement exists.[102] Sprint agrees with this sentiment, and as *properly* applied to this case: the IP Interconnection Agreements must be filed with the Department, and the Department is best equipped to determine whether the IP Interconnection Agreements are interconnection agreements.

As for Verizon MA's reference to its own 2005 arbitration before the Department,[103] Verizon MA fails to address the actual reason for the Department's conclusion: the FCC's unbundling obligations were no longer enforceable. The issue addressed by the Department was not one arising under Section 251, but the pricing of facilities *formerly* required to be offered

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[100] *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming,* 17 FCC Rcd 26303 (2002) (*Nine State Order).*
[101] *Nine State Order* at ¶463.
[102] *Nine State Order* at ¶478.
[103] Verizon Br. at 21-22.

under Section 251(c), and whether facilities no longer required to be offered under the Act were nevertheless required to be contained in a Section 251 interconnection agreement. It should come as no surprise that facilities no longer, at the time of the arbitration, required to be offered under Section 251(c) were not required to be contained in a Section 251/252 agreement. Verizon's weak argument to the contrary is wholly unavailing.

Section 251(b)(5) Applies Only When Traffic is TDM at One End.[104] Verizon MA contends that the statute's obligation to establish reciprocal compensation arrangements only applies if traffic is TDM at one end.[105] Verizon MA argues that because the FCC defined the compensation applicable to a particular type of traffic, VoIP-PSTN traffic, then traffic without any TDM component will not be subject to reciprocal compensation. This is simply inaccurate. The FCC was clear that under the *CAF Order*, it is "bringing *all* traffic within section 251(b)(5)..."[106] "All traffic" includes VoIP-to-VoIP traffic. To indicate that the FCC exempted VoIP-to-VoIP traffic from Section 251(b)(5), is flatly wrong.[107]

Other Misrepresentations of the *CAF Order*. In several places Verizon MA makes erroneous arguments based on inaccurate readings of the *CAF Order*. For instance, Verizon MA argues that the *CAF Order* has created an exemption such that "commercial agreements" are not subject to review by state commissions.[108] This is, of course, untrue. The FCC never indicates

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[104] Sprint declines to address in a contract-clause-by-contract-clause manner Verizon MA's opinions about whether the IP Interconnection Agreements are interconnection agreements. As Sprint described at length in its Initial Post-Hearing Brief, those three agreements are each interconnection agreements. Thus, while the argument Sprint refutes here is embedded in Verizon MA's specific interpretation of its interconnection agreements with Comcast, Sprint addresses the flawed legal argument globally, not necessarily as Verizon MA specifically applies it to its contracts. The Department is expert at reading and interpreting interconnection agreements and Sprint trusts that Sprint's earlier recitation of its specific opinions about the various clauses in the contracts and whether they meet the relevant criteria is sufficient for the Department's purposes.

[105] Verizon Br. at 27 & 31.

[106] *CAF Order* at fn. 1905 (emphasis added).

[107] The FCC did leave VoIP-to-VoIP traffic exempt from interstate access charges under the ESP Exemption to the extent it was exempt previously. *See CAF Order* at fn. 1905. This is a far-cry from exempting it entirely from Section 251(b)(5) as Verizon MA claims.

[108] Verizon Br. 28-29.

in the *CAF Order* that it is taking any action to deprive state commissions of their role under Sections 251 and 252. To the contrary, the FCC indicates that it expects parties to negotiate in good faith, an obligation arising under Sections 251 and 252, and that state commissions are designated the role of ensuring that negotiations are conducted in good faith.[109] Furthermore, the *CAF Order* citation relied upon by Verizon MA lends no support to its position. The FCC indicated that carriers may negotiate commercial agreements that depart from the *access charge* regime, but nowhere does the FCC say that ILECs may enter into commercial agreements instead of the interconnections agreements they are obligated to arbitrate or negotiate under Sections 251 and 252.[110] From the FCC's simple statement Verizon MA reaches the far-fetched conclusion that the FCC has stripped state commissions of their interconnection agreement oversight role. Verizon MA is wrong.

Verizon MA spends considerable time reminding the Department that the FCC has yet to affirmatively indicate whether IP-to-IP interconnection is subject to Sections 251 and 252 of the Act.[111] Sprint has thoroughly discussed this issue *supra* as it is embedded in several of Verizon's other arguments and Sprint's responses thereto. Rather than reiterate its position, Sprint merely points out that this is an argument Verizon MA already raised to the Department. In response the Department stated:

> 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. 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.[112]

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[109] *CAF Order* at ¶ 1011.
[110] *CAF Order* at ¶ 769 and fn. 1290.
[111] Verizon Br. 33-35, 38-39.
[112] *Order Opening Investigation* at fn. 6 (internal citations omitted).

The Department's action "in accord with statutory requirements" was to open and preside over the instant investigation. Clearly the Department has decided to exert its statutory jurisdiction to decide this issue. Verizon MA's argument is repetitive and at this late juncture, odious.

VI. The Only Party Attempting to Score Regulatory Points is Verizon MA

Among the arguments that Verizon MA presented to the Department that have absolutely no bearing on the matter at bar is its unsavory attack on other carriers regarding their insistence on negotiating for IP interconnection without forfeiting their rights under Sections 251/252. While the argument itself has *literally* no bearing on the Department's decision in the matter at bar, it is far and away Verizon's favorite topic. *See* Verizon Br. at 1, 2, 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 26, and 27. The Department already indicated its disapproval of this Verizon MA argument by ignoring Verizon MA's meritless Motion to Abate the proceeding after evidentiary hearings, and its June 25, 2013 Motion for Abeyance which made substantially the same argument.

In a pattern clearly established during the hearing, Verizon MA's Brief seeks to shift attention away from the IP Interconnection Agreements. Verizon MA's strategy is obvious: attempt to put the intervenors on trial for their 'refusal' to negotiate, and thereby draw attention away from Verizon's prerequisite demand that they forfeit those rights guaranteed to them by the Act. While the volume of Verizon MA's analysis of the intervenors' insistence on the vindication of their statutorily derived rights is considerable, the substance of those arguments, in contrast, is assuredly not.

Before turning to Verizon MA's specific arguments, however, it is important for the Department to acknowledge that Verizon's alleged interest in negotiating for IP interconnection agreement with intervenors was motivated purely by its desire to skew the narrative regarding its

approach to IP interconnection. The ink was hardly dry on the Department's *Order Opening Investigation*, issued May 13, 2013, when Verizon forwarded to the intervenors letters seeking to open IP interconnection negotiations (and the ink was hardly dry on those letters when Verizon MA, a mere two weeks after sending them, alleged in its Motion for Abeyance that the intervenors had not yet entered into negotiations based on the letters).[113]

Another fact that Verizon would rather not address squarely is that the letters invited discussion only of the exchange of a narrow category of traffic: the exchange in IP of traffic that both originates and terminates in IP (i.e. not TDM at any point).[114] While Verizon MA intimates that it was made aware of the intervenors' interest in IP negotiations via their intervention in the instant docket, this ignores the fact that most or all of the intervenors have filed comments with the FCC indicating the importance of IP interconnection – a fact of which Verizon is undoubtedly aware. The intervenors were also aware of Verizon's general position that IP interconnection is not subject to Sections 251 and 252 of the Act. Cast in the spotlight and stripped of guile, Verizon's invitation to engage the parties in IP interconnection negotiations was limited to a terribly narrow scope of traffic,[115] carried a prerequisite demand that the parties abandon their Section 251/252 rights, and failed when parties refused to forfeit their rights.[116] The only analysis the Department need conduct, however, is whether the IP Interconnection

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[113] *See* Verizon MA Exhibit 5 (letters dated June 11 and 12, 2013). It is apparent that Verizon MA has manufacturing this argument from nearly the inception of this case.

[114] *See* 1Tr. p. 80, lines 18 – 22 ("Q: So you're saying that this offer invited Sprint to exchange traffic with Verizon. Traffic that originated or terminated on the PSTN but is exchanged in IP? … A. No."

[115] Verizon's prefiled testimony illustrates the disproportionate percentage of Verizon MA's customer base that is TDM compared to VoIP. One would expect the volume of voice-traffic generated by each segment of the customer base to be roughly proportional. Accordingly, negotiation for interconnection of IP traffic only is a narrow slice of Verizon MA's overall traffic. Additionally, not all carriers generate traffic in IP, or have substantial IP operations. For such carriers, Verizon's offer would be of little or no value.

[116] *See* Verizon MA Exhibit 5; 2Tr. p. 55, lines 3 – 18; *see also* 2Tr. p. 51, lines 6 – 8 (Verizon's low success rate is proof its approach is not working).

Agreements are subject to filing under the Act. Sprint, nevertheless, addresses Verizon MA's sophistic argument below.

Verizon MA first attempts to impugn the intervenors' witnesses due to their lack of knowledge of the status of IP interconnection negotiations between intervenors and Verizon. The status of negotiation for IP interconnection between the intervenors and Verizon has no bearing on whether the IP Interconnection Agreements must be filed under the Act.[117] There is a strong possibility that some intervenors may prefer to consider the value of adopting the IP Interconnection Agreements, as is their right under the Act,[118] and thus are awaiting the Department's ruling to determine how best to proceed.

Furthermore, and contrary to Verizon MA's aspersions, it is logical and advisable for carriers to explore IP interconnection with Verizon while simultaneously participating in the Department's investigation. Such conduct is logically in furtherance of the intervenors' rights and obligations guaranteed by and arising under the Act. The Act ensures that carriers can review the rates, terms and conditions for interconnection available to other carriers in the market, so the intervenors are of course interested in uncovering the interconnection terms Verizon has made available to Comcast in order to ensure the terms Verizon has offered them are non-discriminatory.

Verizon MA attempts repeatedly to characterize Sprint as uninterested in including IP interconnection terms in interconnection agreements submitted to state commissions, and as more interested in scoring regulatory points. These allegations are laughable. Sprint is at the

[117] Sprint here notes for the Department that Verizon MA violates the terms of the Non-Disclosure Agreement Verizon has with Sprint by detailing the parties' negotiations. It would appear that Verizon interprets its Non-Disclosure Agreement to require confidentiality only when Verizon finds that convenient. As highlighted below, it appears Verizon's counsel and witness had differing interpretations of the requirements under the Non-Disclosure Agreement.

[118] 47 U.S.C. § 252(i).

forefront of this issue, challenging the two largest ILECs in America, Verizon and AT&T, in state commission proceedings focusing on obtaining IP interconnection pursuant to Sections 251 and 252 of the Act.[119] Sprint and AT&T jointly filed the language that the MPSC approved in *MPSC IP Arbitration Order* and the MPSC approved the resulting interconnection agreement that contains IP Interconnection rates, terms and conditions.[120] Currently, Sprint is defending against AT&T's appeal to federal district court regarding the IP interconnection language approved by the MPSC, and Sprint filed its Answer denying AT&T's argument that IP interconnection is not subject to sections 251 and 252 of the Act.[121] While true that Sprint is no longer appealing the IP interconnection portion of the Illinois Commission's arbitration ruling, Sprint's defense of AT&T's appeal of the *MPSC IP Arbitration Order* addresses the same IP interconnection questions squarely. Verizon MA's mischaracterization of Sprint's strategic decision not to appeal the Illinois decision after prevailing in Michigan on the same fundamental issue, and defending the *MPSC IP Arbitration Order* on appeal, is misleading.

While Verizon's nearly unlimited resources allow it to be petitioner, respondent, appellant, and appellee all while simultaneously negotiating to deprive competing carriers of their statutory rights, Sprint's resources are more limited. Mr. Burt alluded to the difficulty and expense ILECs put carrier through by forcing them to litigate to obtain that to which they are entitled to under the Act.[122] Even so, the entire issue is irrelevant and Verizon MA's feigned outrage at Sprint and other intervenors is a mere artifice.

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[119] *See*, Order, *In the Matter of the Petition of Sprint Spectrum, L.P. for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996to Establish Interconnection Agreements with Michigan Bell Tel. Co. d/b/a AT&T Michigan,* Case No. U-17349 (December 6, 2013).
[120] Order, *In the Matter of the Joint Submission of Sprint Spectrum, L.P. and Michigan Bell Tel. Co. d/b/a AT&T Michigan for approval of an interconnection agreement,* Case No. U-17569 (April 15, 2014).
[121] See, Answer of Sprint Spectrum, L.P. in *Michigan Bell Tel. Corp. v. Quackenbush et al. and Sprint Spectrum, L.P.* Case No. 1:14-CV-000416 (United States District Court, Western District of Michigan) filed May 2, 2014.
[122] 2Tr. p. 55, lines 13 – 18.

Further, Verizon MA's listing of IP interconnection agreements it has with other providers has no bearing on the Department's investigation. That some carriers are willing to enter into IP interconnection arrangements with Verizon without seeing the IP Interconnection Agreements are business decisions that those carriers have made. To the extent the Department considers Verizon's agreements with other carriers or the status of carriers' negotiations with Verizon, **[BEGIN HIGHLY SENSITIVE CONFIDENTIAL]** [redacted][123] [redacted][124] [redacted][125] [redacted][126] [redacted][127] [redacted][128]

[123] 2Tr. p. 139, line 24 – p. 140, line 3.
[124] *See* Verizon MA Exhibit 3 (response to CC-VZ 1-6(b) at 2 [redacted].
[125] *Id.* at [redacted].
[126] Verizon MA Exhibit 3 (response to CC-VZ 1-6(a) at p. 13, § 23); *see also* 2Tr. p. 139, lines 15 – 33.
[127] Verizon MA Exhibit 3 at p. 13, § 23.1.
[128] 1Tr. p. 145-146. The record illustrates that Verizon has IP interconnection agreements with a mere 3 CLECs. In Massachusetts alone 133 CLECs are registered. Verizon's success rate in Massachusetts would be a mere 2.25%

with CLECs. Verizon also indicates that no party has argued that Verizon's template is unreasonable. Sprint has raised just such an argument herein, and in its Initial Post-Hearing Brief.

[129] 2Tr. p. 55, lines 3 – 18; *see also* 2Tr. p. 51, lines 6 – 8 (Verizon's low success rate is proof its approach is not working).

[130] Verizon Br. at 3, 13 and 26.

[131] 1Tr. p. 83, lines 14 – 20.

[132] 1Tr. p. 87, lines 7 – 11.

[redacted][133] [redacted]
[redacted][134] [redacted]
[redacted][135] [redacted]
[redacted][136] [redacted]
[redacted][137]
[redacted]

[133] 1Tr. p. 178, lines 21 – 24.
[134] 1Tr. p. 181, lines 7 – 8.
[135] *See* Verizon MA Exhibit 3 (response to CC-VZ 1-6(b) at 2 [redacted].
[136] 1Tr. p. 175, lines 17 – 20.
[137] 2Tr. p. 74, lines 2 – 14.

[redacted][138][redacted]

[redacted][139][redacted]

[redacted][140]

[redacted][141][redacted]

[redacted][142][redacted]

[redacted][143][redacted]

[redacted][144][redacted]

[138] 2Tr. p. 145, line 5 – p. 146, line 14.
[139] *See* Verizon MA Exhibit 3 (response to CC-VZ 1-6(b) at 2 [redacted].
[140] *See* 1Tr. p. 139, line 15 – p. 141, line 11.
[141] *See* 1TR. p. 80, lines 18 – 22.
[142] *See* Sprint's Initial Post-Hearing Brief at 36 – 41.
[143] *See* Verizon MA Exhibit 3 (response to CC-VZ 1-6(b) at 2 [redacted].
[144] Sprint's Initial Post-Hearing Brief at 36-37.

[redacted][145][redacted]

[redacted] **[END HIGHLY SENSITIVE CONFIDENTIAL]** If Sprint's attempt to shed light on Verizon's practices is 'scoring regulatory points' then so be it. Sprint trusts that the Department will recognize that Verizon MA is guilty of gamesmanship, not Sprint or the intervenors.

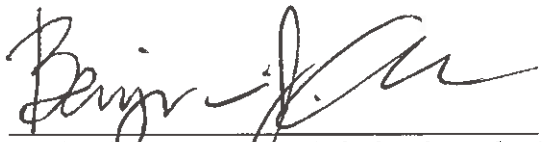
VII. Conclusion

For the reasons stated herein and in Sprint's Initial Post-Hearing Brief, the Department should find the IP Interconnection Agreements are interconnection agreements under the Act. In so concluding, the Department must order the IP Interconnection Agreements to be filed with the

[145] 47 U.S.C. § 252(i).
[146] *See* Sprint's Initial Brief at 36 – 41.

Department as required under Section 252(e), and, if approved by the Department, made available for inspection and adoption under Section 252(i).

Respectfully Submitted,



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