The Continuing Role for State Commissions in an IP World: §§ 251/252

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The Importance of State Filings

- The Act fosters commercial negotiation by encouraging voluntary agreements.
- Voluntary agreements must be filed with state commissions - §252(a)(1)
- States can only reject voluntary agreements if they find that §252(e)(2)(a):
  - The agreement discriminates against a carrier not a party to the agreement or
  - The agreement is not in the public interest.
- Approximately 90% of the carriers adopt filed interconnection agreements.

It is the States' Responsibility to See That IP Interconnection Agreements are Filed

*Qwest Declaratory Ruling (2002):**

[W]e believe that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements.

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Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and, if so, whether it should be approved or rejected.

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* *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, FCC 02-276, (Rel. October 4, 2002) ("*Qwest Declaratory Ruling*") at ¶7 and ¶10. (http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-02-276A1.pdf)

The Standards are Clear

- **Any agreement that creates:**

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

But there is an "open rulemaking"

- In the *ICC/USF Transformation Order*, the FCC brought all IP-PSTN, PSTN-IP and IP-IP traffic under §§ 251/252, but only when exchanged in TDM (i.e., requested comment on IP exchange).**

- In the *AT&T in the Middle Order*, the FCC concluded a format change between networks or within networks would not change the nature of the traffic.***

- Although an open rulemaking exists, there is no "needle to thread."

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* *Qwest Declaratory Ruling* at ¶7.

** See *In the Matter of Connect America Fund*, WC Dkt. No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 ("*ICC Transformation Order*") (released Nov. 18, 2011) at ¶ 954.

*** *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, (2004)("*IP-in-the-Middle Order*")

Specific Agreements Exist

- **Verizon has 11 Agreements (5 Implemented) that had to be filed in California.* Sample provisions:**
  - **Interconnection**

    1. General

    The Parties desire to interconnect their networks to exchange Voice Calls using Session Initiation Protocol (SIP) Interconnection Facilities.

  - **Reciprocal Compensation**

    9. **Compensation Arrangements**

    9.1 The Compensation Rates billed by Verizon to [redacted] shall be as set forth in the Pricing Attachment.

    9.2 The Compensation Rates billed by [redacted] to Verizon shall be as set forth in the Pricing Attachment.

  - **Number Portability**

    12. **Local Number Portability (LNP)**

    12.1 The Parties shall provide Local Number Portability (LNP) in accordance with rules and regulations as from time to time prescribed by the FCC or the Commission.

* *See* Verizon-California Advice Letter No. 12725, U 1002 C, February 26, 2016 ("February 26th Advice Letter") and Verizon-California Advice Letter No. 12725A, U 1002 C, March 8, 2016 ("*March 6th Advice Letter*").

Current Status

- Michigan Commission required that IP Interconnection be subject to arbitration (Sprint-AT&T). Decision on appeal.

- Massachusetts has a pending proceeding addressing the Verizon-Comcast agreement.*

- California ordered Verizon to file all agreements under §252 for approval prior to their transfer to Frontier. Agreements filed (but not clear all agreements will continue post-merger).

    - Eleven agreements; 6 were never implemented.

    - Names of counterparty were redacted. There is a request to redact the execution dates (but contracts are already public).

- AT&T has stated that it has executed IP Interconnection Agreements, but where and with whom is a mystery.

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* *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252,* DTC 13-6