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November 22, 2013

By Hand and E-Filing

Catrice C. Williams, Secretary
Department of Telecommunications & Cable
1000 Washington Street, 8th Floor, Suite 820
Boston, MA 02118-6500

Re: *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/or Approval in Accordance with 47 U.S.C. § 252, Dkt. No. D.T.C 13-6*

Dear Ms. Williams:

Pursuant to the Hearing Officer Ruling on the Verizon MA Motion for Abeyance, dated November 4, 2013 (the "Ruling"), this letter is filed on behalf of XO Communications Services, Inc. ("XO") and provides XO's comments on a potential schedule for this proceeding.

XO has participated in two telephonic meet and confer sessions and is aware of the different positions that various parties apparently will be taking. As directed by the Ruling, this letter will address the difference between proposals and why XO is not supporting the schedule(s) proposed and/or agreed upon by certain other parties.

As the Department noted in its May 13, 2013 Order opening this proceeding, "the central question presented to the Department is whether the identified agreement is an interconnection agreement under 47 U.S.C. §251". May 13 Order at 9. The Department proceeded to observe: "state commissions, based on the statutory role provided by Congress and their experience, 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.'" *Id.* at 10.

Simply put, XO believes that this central question of whether a contract is a section 251 interconnection agreement can be determined by the Department in its expertise simply on the bases of: (a) the terms of the agreement that is now on file with the Department (the "Agreement"), and (b) established law concerning when contracts must be filed with state commissions pursuant to 47 U.S.C. §252. XO is not asking for any further determinations, such as whether the agreement should be approved or not.

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In this context, XO suggests that the Department can , and should, efficiently resolve this threshold issue before embarking on a time consuming and potentially costly proceeding to develop a factual record, including significant discovery and hearings. Therefore, XO suggests that the only schedule that should now be set is as follows:

December 11, 2013 Simultaneous Initial Briefs on the issue of whether the Agreement is an interconnection agreement under 47 U.S.C. §§251/252.

December 20, 2013 Simultaneous Reply Briefs

XO further submits that no additional schedule or procedural conference should be set at this time. Rather, XO urges the Department to focus on the legal question of whether the Agreement now on file with the Department is a Section 251 interconnection agreement subject to review under Section 252 of the Communications Act. The Department can make that determination by reviewing Sections 251 and 252, Federal Communications Commission and Department orders interpreting Section 251 and 252, and terms of interconnection agreements that the Department has reviewed and approved over the years.¹ The Agreement speaks for itself and there is no further factual development necessary for the Department to confirm the nature of the Agreement and whether it falls within the scope of Sections 251 and 252. Such determination would provide useful guidance not just to CLECs on issues that may be addressed in the Agreement, but would guide all carriers in terms of what traffic exchange agreements must be filed with the Department. Indeed, the Department noted in the May 13 Order that: “The FCC also encourages state commissions ‘to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval.’” May 13 Order at 10.

In sum, the threshold issue of whether the agreement is an interconnection agreement under 47 U.S.C. §251 can be determined by reference to the agreement itself without further factual development and consequently the Department can make its ruling on the basis of legal arguments through briefs and consideration of the terms of the agreement. At most, the Department may find the need for limited introduction of evidence on narrow points to assist in the determination of this question of law. If that is the case, the need for evidence can be addressed without the requirement of a full-blown proceeding.

Finally, to address the specific requirements of the November 4, 2013 Ruling, XO states that there is no need for testimony, discovery, evidentiary hearings, and oral arguments, or a pre-hearing conference. Verizon and XO disagree whether the Department may determine whether the agreement is jurisdictional without an extensive factual review, so they could not agree on a schedule. To the extent that other CLECs have joined with Verizon in proposing a schedule including full evidentiary hearings, XO leaves the

¹ Full discussion of such terms and why they support the legal conclusion that this is a §251 interconnection agreement will be described by XO in briefs pursuant to the suggested schedule..

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explanation of differences to those parties. XO understands that Earthlink and some other CLEC parties are taking essentially the same position as XO suggests herein on the schedule and the approach generally.

Any questions on this matter should be directed to the undersigned.

Very truly yours,



Eric J. Krathwohl, Esq.

Encl.

cc: Michael Scott, Esq., Hearing Officer
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-6

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached document upon all parties of record in this proceeding.

Dated at Boston, Massachusetts this 22nd day of November, 2013.

A handwritten signature in black ink, appearing to read "Eric J. Krathwohl", written over a horizontal line.

Eric J. Krathwohl, Esq.
Counsel

Of Counsel for
XO Communications Services, Inc.