

Attorneys at Law

RichMay

Rich May, P.C. 176 Federal Street, Boston, MA 02110

Eric J. Krathwohl, Esq.
Direct: (617) 556-3896
Email: ekrathwohl@richmaylaw.com

May 27, 2014

VIA E-FILING AND HAND DELIVERY

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:

Enclosed on behalf of XO Communication Services, LLC ("XO"), please find one original and five copies of XO's Opposition to Verizon's Motion to Abate.

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

Very truly yours,

Eric Krathwohl ^{by.} K.Z.

Eric J. Krathwohl, Esq.

Encl.

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

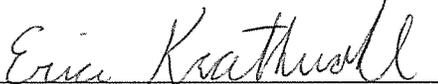
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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 27th day of May, 2014.


Eric J. Krathwohl, Esq.
Counsel

*by
K.Z.*

Of Counsel for
XO Communications Services LLC

**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 |) | DTC 13-6 |
| 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 |) | |

**XO COMMUNICATIONS SERVICES, LLC’S OPPOSITION TO VERIZON-MA’S
MOTION TO ABATE**

Pursuant to 220 C.M.R. § 1.04(5)(c), XO Communications Services, LLC (“XO”) submits this Opposition to Verizon’s MA’s¹ Motion to Abate This Proceeding and to Suspend the Post-Hearing Briefing Schedule. Verizon's Motion to Abate is simply another attempt to short-circuit this important investigation and lacks any substantive, procedural or policy basis. Therefore, XO strongly urges the Department to deny the Motion to Abate.

I. Verizon's Motion to Abate is Unprecedented and Without Merit

Verizon's latest Motion comes after months of discovery, filing of pre-filed testimony of several parties, full hearings, and in the middle of the briefing period. XO (through counsel) is unaware of any case before this Department, or historically before the predecessor to the Department (i.e. the Department of Public Utilities) where the agency gave credence to what is essentially a Motion to Dismiss, after several parties had presented evidence through witnesses, which testimony was subject to full cross-examination. Indeed, it makes no sense to

¹ Verizon New England Inc.,d/b/a Verizon MA is hereinafter referred to as Verizon

dismiss such a fully developed case. Further, if there were any merit to Verizon's Motion (which there is not) it should have been filed months ago.

The sole basis for Verizon's Motion seems to be that Sprint and the Competitive Carriers presented witnesses that were not familiar with Verizon's efforts regarding IP interconnection. Motion page 2. This argument is a red herring if there ever was one. Whether or not some carriers have decided to sign Verizon's IP Interconnection agreement is simply not dispositive of whether applicable legal standards and policy interests require filing and review of such agreements, including the specific agreements at issue in this proceeding, with the Department under sections 251 and 252 of the Telecommunications Act. To the extent that Verizon is arguing that those parties have failed to make a case, so that this proceeding should essentially be ended, Verizon seems to have forgotten that the procedural basis of this case is an investigation by the Department. Further, the Department should give latitude to the parties as to how they present their cases and determine the merits of the arguments of each side, only after a full briefing now that hearings have been held. The only proper approach for the Department at this juncture is to continue the case as scheduled, review the briefs and determine the central issue of the case -- whether the IP agreements in question in this case are subject to sections 251 and 252.

II. Important Policy Issues Should Be Decided Here and Now

The Department in its ruling on the Motion for Summary Judgment filed by the Competitive Carriers in March, essentially decided not to grant the Summary Judgment because of the importance of the issues at hand and because this was a significant case of first impression. That same theory supports a denial of the Verizon Motion to Abate now. Simply too much work has been done at this point, important issues exist that should be resolved and if those issues are

not resolved here and now, they will simply arise again and require significant re-litigation of the same issue.

In sum, the Department must deny Verizon's meritless Motion to Abate. It provides no reasoned basis to throw away considerable work by the parties and the Department and to ignore the important issue, i.e. whether Verizon's IP Interconnection Agreements should be subject to Sections 251 and 252 of the Telecommunications Act. The Department should abide by its already announced schedule.

Respectfully submitted,

XO COMMUNICATIONS
By its attorneys,

 by K.Z.

Eric J. Krathwohl
Rich May, P.C.
176 Federal Street
Boston, MA 02110
T: (617)556-3857
F: (617)556-3890
ekrathwohl@richmaylaw.com

May 27, 2014