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April 4, 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

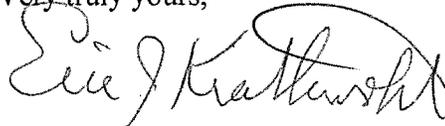
Re: *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc. , d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department/or Approval in Accordance with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

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 4th day of April, 2014.

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 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 COMPEL**

Pursuant to 220 C.M.R. § 1.04(5)(c), XO Communications Services, LLC (“XO”) submits this Opposition to Verizon-MA’s<sup>1</sup> Motion to Compel Responses to Information Requests VZ-XO 1-1 and VZ-XO 1-2, which seek the production of any XO agreements concerning, providing for, or governing the exchange of voice traffic in IP format.

1. In XO’s Responses to Verizon’s First Set of Information Requests, XO made and maintains several General Objections to such Information Requests. In addition, XO made the following Specific Objections to Information Requests VZ-XO 1-1 and VZ-XO 1-2:

XO specifically objects to this request on the ground that it is immaterial, irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, XO objects on the grounds that the request is not germane to the legal question under investigation which is whether the Verizon/Comcast agreements submitted to the Department are interconnection agreements under 47 U.S.C. § 251 and must be filed for review under § 252. In particular, and without limiting the generality of the foregoing, evidence of agreements between the XO and non-ILECs (including non-ILEC affiliates of ILECs) is not relevant to the legal issue before the Department nor would disclosure of such information be reasonably likely to lead to the discovery of admissible evidence.

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

In addition, XO objects to providing any information that is confidential, proprietary, or a trade secret.

Without waiving its objections, XO responded to the Information Requests VZ-XO 1-1 and VZ-XO 1-2 by stating that it had no such agreements with any incumbent local exchange carrier (“ILEC”) in Massachusetts. Evidently, Verizon seeks to compel XO to identify IP interconnection agreements with any other parties either inside or outside of Massachusetts and if XO has any, to produce such agreements. To the extent Verizon seeks agreements with ILECs outside of Massachusetts, XO’s supplemental response filed herewith states that, without waiving its objections, XO has no IP interconnection agreements with any ILECs. To the extent that Verizon seeks information regarding IP interconnection agreements between XO and third party entities that are not ILECs, XO’s objections stand.

2. In its Motion, Verizon totally fails to address any of the General or Specific Objections raised by XO in its Responses. For this reason alone, Verizon’s Motion to Compel further responses from XO should be denied. Rather than address the objections XO raised, Verizon discusses at some length testimony filed by other intervenors, not XO, and somehow suggests that this third party testimony necessitates compulsion of responses from XO. Obviously, the arguments with respect to the testimony of another party are not applicable to XO. These arguments therefore should be rejected out of hand with regard to compelling XO to respond further to VZ-XO 1-1 and VZ-XO 1-2.

3. The only portion of Verizon’s Motion that might remotely be construed as providing some substantive argument relevant to XO is found in a single sentence on page 5 of Verizon’s Motion, where Verizon suggests that full responses to the specified Information Requests will provide “a more complete and accurate record on which to base any public policy determinations to support its [the DTC’s] statutory interpretation.” This scant argument,

unsupported by demonstration or example, does not provide a basis for the Department to find the information and materials sought from XO to be either relevant or likely to lead to discovery of admissible evidence. As noted in XO's Specific Objections (restated above), the scope of this proceeding is very narrow. Specifically, the legal question under investigation is whether the Verizon/Comcast Agreements<sup>2</sup> at issue in this proceeding are interconnection agreements under 47 U.S.C. Section 251 **and must be filed for review under Section 252**. That is a legal determination that can be made by a review of the terms of the language of the Verizon/Comcast agreements in question and the statute. Sections 251(c) and 252 explicitly and unambiguously apply **only** to agreements between an ILEC and a requesting telecommunications carrier. *See*, 47 USC Sections 251(c) and 252(a)(1) and (b)(1). Accordingly, public policy considerations regarding agreements between two non-ILECs will not assist the Department in interpreting and applying the statute.

4. Whether Sections 251 and 252 govern an agreement for the exchange of traffic in IP format between an ILEC and a requesting carrier is to be determined, first, under that statutory language as applied to the interconnection terms and conditions of the Agreements. In that regard, the standard is clear. The Federal Communications Commission ("FCC") has held: "an agreement [between an ILEC and a requesting telecommunications carrier] 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

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<sup>2</sup> The agreements are the Traffic Exchange Agreement (including Amendment No. 1) and the VoIP-to-VoIP Agreement that Verizon New England Inc., d/b/a Verizon MA that are at issue in this proceeding (referred to herein as the "Agreements").

Section 252(a)(1).” *Qwest Communications Int’l Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Dkt. 02-89, Memorandum Opinion and Order, FCC 02-276, 17 FCC Rcd. 19337, ¶ 8 (2002)(emphasis omitted) (“2002 *Qwest Declaratory Ruling Order*”).

There is no question the standard for types of ILEC interconnection agreements that must be filed under § 252 is broad, it covers agreements that an ILEC enters voluntarily, and it applies to a variety of types of agreements.<sup>3</sup> As such, the Agreements at issue here clearly fall within that which FCC has ruled are subject to sections 251 and 252. There is no ambiguity in the statutory provisions at issue in this proceeding and accordingly no need to look at public policy considerations and certainly no need to look at agreements between XO and non-ILECs to determine the proper treatment of agreements between Verizon and Comcast.

5. Verizon suggests, as its sole substantive argument with respect to XO and without support, that the necessary statutory interpretation cannot be done, for reasons that Verizon does not actually explain, simply as a legal matter by a review of the provisions of the Comcast/Verizon Agreements. Instead, Verizon suggests that resolution will require consideration of policy factors and that this somehow requires a review of agreements that are not governed by Sections 251(c) and 252. This is not true. In fact, the information that Verizon seeks to compel from XO is wholly irrelevant. Moreover, Verizon fails to show how these non-ILEC, non-Section 252 agreements could possibly lead to information that would be admissible in this proceeding.

6. In this case, the Department need only address the statutory/legal issues and if, for some unlikely reason, it cannot resolve the issues on that basis, then it *might* consider policy

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<sup>3</sup> This point is set forth clearly and cogently in the Competitive Carriers’ Motion for Summary Judgment filed in this proceeding on March 28, 2014.

factors. However, even if the Department cannot resolve the narrow issue of the Section 252 status of the Agreements on the basis of the statute and the resulting case law, the agreements (which are *not* Section 251/252 agreements by definition given the identity of the parties thereto) that Verizon seeks to compel XO to produce will not assist in any determination on policy grounds. Whether XO has IP interconnection agreements with parties *other than ILECs* has no bearing whatsoever on the legal issue of whether the Agreements between Verizon, an ILEC, and Comcast, a requesting carrier, are Section 252 agreements. Moreover, even if Sections 251 and 252 are deemed ambiguous and the Department determines that it should look at public policy considerations to interpret whether these sections require that such ILEC agreements be filed, Verizon has not shown how the production by XO of any non-ILEC IP agreements (which clearly do not fall within the ambit of Sections 251(c) and 252) would have any bearing whatsoever on such public policy considerations.

7. Simply put, the Department can review the Agreements and make a straightforward determination whether either or both of the Agreements fall within the areas that the FCC has determined is an agreement subject to the requirements of sections 251 and 252. There is no need to look at third party agreements in order to make that determination. Furthermore, agreements between two non-ILEC entities which do not fall within the ambit of Sections 251(c) and 252 are completely unrelated to any determination the Department must make in this proceeding. In fact, given the very narrow scope of this phase of the proceeding, it is most difficult to imagine how this information will lead to evidence that would be admissible.

8. Also, to the extent that XO has any IP interconnection agreements with non-ILEC entities, those agreements would be confidential and proprietary. Even if Verizon had demonstrated a possible benefit of requiring the production of any such agreements (which it

has not) and such agreements were provided customary confidentiality protections, any such benefit would be far outweighed by the potential competitive harm. Such harm would be XO having to produce significant confidential and proprietary agreements to its largest competitor in Massachusetts who enjoys dominant market power. Verizon has failed to satisfy the standards for Motions to Compel. Indeed, it devoted only one sentence in its Motion as a basis for compelling XO to produce any non-ILEC agreements, and, as explained above, that sentence provided no support for such production. The value of the requested information to the record simply does not exist. With respect to XO, Verizon's Motion should be denied.

WHEREFORE, as discussed herein, in Information Requests VZ-XO 1-1 and VZ-XO 1-2, Verizon seeks information that is confidential and proprietary to XO, not relevant to the issues involved in this proceeding and will not lead to discovery of admissible evidence. Consequently, Verizon's Motion to Compel Responses to Information Requests VZ-XO 1-1 and VZ-XO 1-2 from XO should be denied.

Respectfully submitted,  
XO COMMUNICATIONS  
By its attorneys,



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