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April 28, 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 Supplemental Response to Verizon’s Information Request VZ-XO-1-2 and a Motion for Confidential Treatment pursuant to the Department’s April 17 ruling on Verizon’s Motion to Compel. The attachment to the Supplemental Response is designated **HIGHLY SENSITIVE CONFIDENTIAL INFORMATION** and accordingly is provided under seal (and served only to persons having signed the Protective Agreement) to protect it from public disclosure.

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

Information Requests

VZ-XO-1-2

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 28th 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)	D.T.C. Docket No. 13-6
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)	
)	

**XO COMMUNICATION SERVICES, LLC
MOTION FOR CONFIDENTIAL TREATMENT**

XO Communications Services, LLC ("XO") hereby respectfully requests that the Department of Telecommunications and Cable ("Department") grant confidential treatment and prevent the public disclosure of certain information submitted by XO in response to discovery. The information submitted by XO contains competitively sensitive, proprietary and/or confidential information that is entitled to confidential treatment and protection from public disclosure. XO seeks confidentiality protection for the proprietary, commercial agreement (the "Agreement") it submits in response to VZ-XO-1-2, which Agreement is also referenced in XO responses to VZ-XO-1-1.

XO requests the Department grant its Motion for those reasons provided below, and in accordance with G.L. ch. 25C, § 5.

1. Under Massachusetts law "the Department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter." G.L. c. 25C § 5. Information appropriately protected has been described as "... information which is used in one's

business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *J. T. Healy and Son, Inc. v. James Murphy and Son, Inc.*, 357 Mass. 728, 736, 260 N.E.2d 723, 729 (1970). Factors to be considered in determining whether certain information qualifies for protection from disclosure include: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and its competitors; (5) the amount of effort or money expended by the employer in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Jet Spray Cooler, Inc. v. Crampton*, 282 N.E.2d 921, 925 (1972). As stated herein, the Agreement qualifies for protection from public disclosure and protective treatment under G. L. c. 25C § 5. See Hearing Officer Ruling dated June 28, 2013 (the "June 28 Confidentiality Ruling") (pages 7-15) in this proceeding, which similarly granted protective treatment for Verizon's intercarrier agreement covering the exchange of traffic in IP format.

2. The Agreement is not known outside of XO and its counterparty, and XO makes serious efforts to keep the contract and its terms confidential.

3. XO has certain attorneys and personnel that are responsible for the negotiation of intercarrier agreements. These employees have developed considerable expertise in the negotiation of agreements to exchange traffic, including in IP format. They have developed knowledge, skills and expertise regarding the issues that are germane and unique to IP traffic exchange, and they have developed contracts and processes for contracting with other carriers to exchange traffic including in IP format. These skills, knowledge, expertise, contracts, and

processes represent an investment of time, labor and capital by XO. XO benefits from its ability to use and rely on these resources and also from other industry participants not having access to the resources XO has developed. Making the Agreement available to other industry participants would deprive XO of the value of its investment, enable industry participants to appropriate the value of XO's investment, and enable industry participants to avoid investment costs of their own.

4. Both XO and the contracting party to the Agreement are at risk of competitive injury from disclosure of information contained in the Agreement. Release of the Agreement or certain data contained in the Agreement would have serious injurious consequences as it would uniquely benefit XO's competitors, including Verizon and other participants in this docket, by affording them access to information regarding XO's negotiated terms for the exchange of traffic in IP format, which information they would otherwise be unable to obtain. While a Massachusetts ILEC, like Verizon, is required under federal law to file with the Department interconnection agreements, regardless of whether the traffic exchanged is in IP format, no such obligation exists regarding the XO Agreement which is not with an ILEC. This reflects a public policy that seeks to prevent incumbent carriers from manipulating the market by offering favorable terms to some competitors, but not others.

5. In its information request responses XO raised, and here renews, objections regarding the relevance, discoverability, and admissibility of the Agreement. XO's production of the Agreement is not intended, and should not be construed, in any way, as a waiver of XO's objections. XO reserves the right to renew its objections at such time as may be necessary.

6. The Agreement is proprietary, confidential, competitively sensitive, and constitutes a trade secret. The Agreement is not available to XO's competitors. And the

Agreement has competitive and financial value to XO and its competitors. These are the grounds supporting the June 28 Confidentiality Ruling and should be applied equally here.

WHEREFORE, XO respectfully requests that the Department grant this Motion, afford confidential treatment to the Agreement submitted hereunder, and exclude the Agreement submitted hereunder from inclusion in public record in this docket.

Respectfully submitted,

XO COMMUNICATIONS
By its attorneys,



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Dated: April 28, 2014

XO COMMUNICATIONS SERVICES, LLC RESPONSES TO
FIRST SET OF INFORMATION REQUESTS OF
VERIZON MA
D.T.C. 13-6

VZ-XO 1-2 Please produce all agreements identified in response to VZ-XO 1-1, including all attachments, exhibits and schedules.

OBJECTION: XO incorporates by reference its objections to VZ-XO 1-1 above.

RESPONSE: XO incorporates by reference its response to VZ-XO 1-1 above.

SUPPLEMENTAL RESPONSE: Please see the HIGHLY SENSITIVE CONFIDENTIAL agreement attached.