

EXHIBIT E

**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’s¹ 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.

¹ 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 Agreements² 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

² 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").