

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

---

Complaint of XO Communications Services, Inc. )  
Concerning the Unlawful Charges Imposed by ) DTC 08-\_\_  
Verizon New England Inc., d/b/a Verizon Massachusetts )

---

Complaint of Choice One Communications of )  
Massachusetts Inc., Conversent Communications of )  
Massachusetts, LLC, CTC Communications Corp. )  
And Lightship Telecom, LLC (collectively, “One ) DTC 08-3  
Communications”), Concerning the Unlawful Charges )  
Imposed by Verizon New England Inc., d/b/a Verizon )  
Massachusetts )

MOTION OF XO COMMUNICATIONS SERVICES, INC. TO CONSOLIDATE

XO COMMUNICATIONS SERVICES, INC. (“XO”) hereby moves that the Department of Telecommunications and Cable (“DTC”) consolidate the docket to be opened for review of a complaint XO filed on April 18, 2008, concerning the Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Massachusetts (the “XO Complaint”) with docket D.T.C. 08-3, Complaint of Choice One Communications of Massachusetts Inc., Conversent Communications of Massachusetts, LLC, CTC Communications Corp. and Lightship Telecom, LLC (collectively, “One Communications”), Concerning the Unlawful Charges Imposed by Verizon New England Inc., d/b/a Verizon Massachusetts (the “One Comm Complaint”).

IN SUPPORT OF SUCH MOTION, XO STATES THE FOLLOWING:

1. The XO Complaint and the One Comm Complaint involve essentially identical factual circumstances and legal issues. Both XO and One

Communications have been invoiced by Verizon New England, Inc. dedicated tandem port charges [and related charges] for services that XO and One Communications (together referred to as the “CLECs”) are not using for their respective traffic. Further, the services and the related facilities in the case of each of the CLECs are simply used by (and benefit) interexchange carriers who obtain switched access services provided jointly by the CLECs and Verizon.

2. The rule governing this Motion for Consolidation is set forth in 22 CMR 1.09:

Consolidation. The Department upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be considered for hearing on any or all of the matters in issue in such proceedings.

3. The Department has previously consolidated proceedings in similar circumstances for reasons of fairness and convenience to the affected parties.

*Petition of Dispatch Communications of New England, Inc. d/b/a Nextel Communications, Inc.*, D.P.U. 95-59-A (July 19, 1996). The Department’s rationale included an effort to allow affected entities the opportunity to address how the Department should rule on potentially precedent setting matters and “to ensure a complete record” on an issue involving common questions of law and fact. *Id.* at 5 -6.

4. Allowing consolidation will serve the public interest in several other ways as well. Specifically, rather than the Department having to adjudicate the same issues for XO as it is addressing, or may have completed addressing for One

Communications relative to the same Verizon charges, it can resolve the issues for both complainants at the same time. A consolidated hearing will ease the procedural and resource burdens on the Department and the CLECs. With multiple parties, it is also likely that a more complete record and range of arguments will exist and can be relied upon by the Department. Finally, when the Department issues its order, there will be no question about the consistency and uniformity of the decisions in the different cases.

For all the reasons set forth above, the Department should consolidate the two proceedings noted herein and review the issues and issue a binding decision in a single case.

Respectfully submitted,  
XO Communications Services, Inc.

By: /s/ Eric Krathwohl  
Eric Krathwohl, Esq.,  
Rich May, PC  
176 Federal Street, 6<sup>th</sup> Floor  
Boston, MA 02110-2223  
(617) 556-3857 (Telephone)  
(617) 556-3890 (Fax)  
e-mail:[ekrathwohl@richmaylaw.com](mailto:ekrathwohl@richmaylaw.com)

/s/Karen M. Potkul  
Karen M. Potkul, Esq.  
XO Communications Services, Inc.  
1601 Trapelo Road, Suite 397  
Waltham, MA 02451  
(781) 593-3919  
Karen.potkul.@xo.com

May 20, 2008