COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Investigation by the Department of Telecommunications and Cable of the Intrastate Switched Access rates of Competitive Local Exchange Carriers that provide service in Massachusetts.	)	D.T.C. 07-9

MOTION OF XO COMMUNICATIONS SERVICES, INC. TO COMPEL VERIZON MASSACHUSETTS, INC. TO PROVIDE FURTHER RESPONSES TO CERTAIN DOCUMENT REQUESTS

XO Communications Services, Inc. ("XO") hereby moves, pursuant to 220 C.M.R. 1.06(6)(c)(4), to compel Verizon Massachusetts, Inc. ("Verizon") to produce responses to certain discovery requests propounded by XO. Specifically, XO seeks an order compelling further responses to Item Nos. XO-VZ 2-3 and XO-VZ 2-4, dated July 28, 2008. Those requests seek documents that are directly relevant to central issues in this proceeding, bearing respectively on the reasonableness of Verizon's switched access rates and the basis for Verizon's determination that other carriers' access rates are anti-competitive. The requests are discrete and reasonable in scope, and although they may impose some burden on Verizon to review its internal systems for responsive emails, any such burden is not excessively onerous and is justified in light of the requests' relevance.

Prior to bringing this motion to compel, the undersigned conferred with Verizon's counsel to clarify Verizon's position with respect to production of the requested documents. Verizon refused to produce the documents, resulting in this motion to compel.

Request No. XO-VZ 2-3: "Following up on Verizon's response to XO-VZ-1-4, please confirm that Verizon has no internal memos, e-mails, or other documents regarding the reasonableness of Verizon's switched access rates. If any such documents do exist please provide a copy."

Verizon has objected on the grounds that 2-3 is "overly broad and unduly burdensome[,]" providing only this minimal substantive response: "The level of Verizon's intrastate switched access rates in Massachusetts were specifically addressed in Verizon's filings in D.T.E. 01-31."

Although Verizon protests that the request is unduly burdensome, Verizon is not even answering whether it has any internal memos, e-mails, or other documents regarding the reasonableness of Verizon's switched access rates. Certainly in a case where Verizon is asking for its switched access rates to be the industry standard within Massachusetts, Verizon must know whether it has had any written internal analysis or discussion about the reasonableness of those rates. In the same vein, it should not be overly difficult for Verizon to gather such internal documents. To the extent that Verizon challenges other carriers' access rates as unreasonable and/or anti-competitive, any internal evaluations of Verizon's own rates have obvious relevance to matters at issue in this proceeding. The expected burden of identifying and producing any such documents would be relatively slight compared to the expected relevance of the documents to the matters at issue in this proceeding.

Request No. XO-VZ 2-4: "Following up on Verizon's response to XO-VZ-1-6, please state whether Verizon has any e-mails on the referenced issue. If yes, please include copies."

Verizon objects to this request as "unduly burdensome." The request, which makes reference to XO-VZ-1-6, seeks emails relating to "studies and internal memoranda prepared in connection with Verizon's determination that other carriers' switched access

rates are anti-competitive." See Verizon's Reply to Request No. XO-VZ-1-6. Although Verizon has maintained that it had no studies or internal memoranda concerning its position that these rates are anti-competitive, one would reasonably expect that Verizon generated internal communications, including emails, discussing the effects and competitive implications of other carriers' switched access rates. In fact, it would seem irresponsible for a party to make such serious allegations and seek a significant expenditure of resources by the Department, unless it had made a serious review of the issues inherent in its complaint. Verizon has taken the position that "[t]he harm to competition is inherent in the structure and conditions of the market" but has declined to produce internal documents and communications addressing this position.

Although there may be some burden associated with identifying and producing responsive emails, the burden is justified given the importance of such documents to the matters at issue in this proceeding. It is only reasonable to insist that Verizon produce documents that would reflect Verizon's rationale for initiating this proceeding. Such documents would tend to shed light on the validity and *bona fides* of Verizon's position that the other carriers' rates are anti-competitive and warrant capping. The anticipated burden is slight relative to the anticipated relevance of such documents to this proceeding.

CONCLUSION

For the reasons set forth above, the Department should compel the production of further responses to Request Nos. XO-VZ-2-3 and XO-VZ-2-4.

Respectfully submitted,
XO Communications Services, Inc.

By: /s/ Eric J. Krathwohl

Eric Krathwohl, Esq.,
Rich May, PC
176 Federal Street, 6th Floor
Boston, MA 02110-2223
(617) 556-3857 (Telephone)
(617) 556-3890 (Fax)
e-mail:ekrathwohl@richmaylaw.com

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

Date: August 11, 2008