October 14, 2016

VIA ELECTRONIC FILING
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: XO Holdings and Verizon Communications Inc., Consolidated Applications for Consent to Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act, as Amended, WC Docket No. 16-70

Dear Ms. Dortch:

XO Holdings and Verizon Communications Inc. ("Verizon") respond to EarthLink, Inc.'s ("EarthLink") *ex parte* filing, which discusses EarthLink's business relationship with XO Communications, LLC ("XO") and Verizon's proposed acquisition of XO.[1] EarthLink misstates the competitive value of XO's Ethernet over Copper ("EoC") and DS1 product offerings and incorrectly analyzes the competitive effects of the proposed transaction. For example, EarthLink ignores the following facts:

- Verizon has already made clear that it "has no plans to discontinue XO's EoC services following the transaction." Verizon will comply with the terms of existing XO contracts and purchase arrangements for EoC.

- EoC is a transitional product, as customers today increasingly demand higher bandwidth service with assurances for installation, performance, and repair.[2]

    - EarthLink buys EoC from XO out of just **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** central

[1] *See* Letter from Thomas Jones, Counsel to EarthLink, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-70 (Sept. 12, 2016), and attached presentation "Verizon/XO Transaction Implications" ("EarthLink Ex Parte" and "EarthLink Presentation," respectively).

[2] As indicated in its response to Question 19 from the Commission staff, XO provides EoC with service level agreements for performance, but, as George Kuzmanovski, XO Vice President of Access Planning and Implementation, indicated in meeting with Commission staff, XO does not guarantee offered bandwidth will be provisioned because it does not control the availability of loop facilities and does not guarantee repairs will be made in the same four-hour timeframe that it guarantees for its on-net facilities, again because it does not control the loop facilities. *See* Letter from Thomas Cohen, Counsel to XO Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-70, at 4 (Sept. 14, 2016).

offices, of which just **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** are in Verizon's ILEC footprint.

- During the 12 month period ending in June 2016, the number of EoC circuits XO newly installed for EarthLink per quarter **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**
- As evidence of this changing dynamic, EarthLink recently agreed to purchase **[BEGIN HIGHLY CONFIDENTIAL]**

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- Even as demand for EoC services continues to decline, there are still many providers of EoC, and barriers to entry are low.
  - Many providers including Global Capacity/MegaPath, Broadview Networks, Windstream – and EarthLink itself – are EoC providers today.
  - XO has no unique advantages, and entry today is relatively easy. Collocation rates are tariffed, and UNE rates are set by state regulatory commissions.
  - At least **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** other providers collocate today in **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent of the Verizon central offices where XO collocates and offers EoC service, and at least **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** collocates in every one of these central offices.

- XO's DS1 business is not growing. XO has not expanded its TDM network capabilities or reach for over three years and today will not build to a customer just to provide off-net DS1 or multiple DS1 services. XO continues to service its installed base of DS1 customers, and Verizon has committed to honor all terms and conditions of existing contracts.

Based on these facts and the evidence that XO and Verizon have provided in this docket, the Commission should reject EarthLink's claims and grant the application.

EarthLink Ignores the Facts and Mischaracterizes XO's Participation in the Marketplace.

Verizon's Stated Plans for EoC. As Verizon has said, it "has no plans to discontinue XO's EoC services following the transaction, either outside or within Verizon's ILEC footprint."[3] Verizon noted that its "planning activity is guided by its intention to comply with the terms of existing XO contracts and purchase arrangements for EoC services" and

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[3] *See* Letter from Katharine R. Saunders, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-70 (Aug. 26, 2016) and the attached whitepaper "The Effect of Verizon's XO Acquisition on Business Data Services" at 2-4 ("Whitepaper").

that it "sees the value of this service offering in specific markets and for appropriate business applications."[4] In its efforts to create a controversy where none exists, EarthLink ignores these commitments.[5]

The EoC Product Marketplace. In broader context, EarthLink's claims do not comport with reality in the EoC product marketplace. First, notwithstanding EarthLink's emphasis on the service, EoC is of quickly diminishing importance in the market and in XO's portfolio. XO markets EoC in **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** incumbent central offices across its metro markets, including markets in Verizon incumbent territory. XO's EoC accounts for approximately **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent of its business services revenues, and that percentage continues to **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**.[6] Because of EoC's service limitations, XO has **[BEGIN HIGHLY CONFIDENTIAL]**

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XO's EoC installations for EarthLink are **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** EarthLink buys EoC from XO out of **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** As of June, 2016, XO newly installed in aggregate **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** for EarthLink. During the 12 month period ending June, 2016, **[BEGIN HIGHLY CONFIDENTIAL]**

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While EoC will continue to be available as a product, EoC has been diminishing in importance as customers seek higher bandwidth, packet-based services with assurances of bandwidth, performance, and time to repair. As the Whitepaper notes, demand for business services below 50 Mbps – which includes EoC – is projected to drop sharply (approximately 20 percent per year from 2014 to 2019), such that only 3 percent of the business services

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[4] Response to Information and Document Request by Verizon Communications Inc., WC Docket No. 16-70, at 18 (filed July 7, 2016); *see also id*. ("Because Verizon is seeking to purchase XO as a going concern, Verizon will acquire XO's EoC business intact, with the personnel, operations support systems and processes, network infrastructure, and contractual arrangements in place to operate XO's EoC business post-closing consistent with how XO is operating it currently, and in a manner that will enable Verizon to continue to comply with XO's contracts with its customers.").

[5] *See* EarthLink Presentation at 3.

[6] *See* Whitepaper at 22.

[7] *Id.* *See also* Letter from Thomas Cohen, Counsel to XO Communications, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-70, at 3-4 (Sept. 14, 2016) ("XO Ex Parte").

market is projected to receive speeds less than 50 Mbps by 2019.[8] As a technological matter, EoC cannot meet that growing demand, as services like EoC "suffer from technical constraints that limit both their geographic availability and their technical capabilities."[9] Indeed, multiple parties (represented by EarthLink's own counsel) have previously pointed to EoC's limitations, arguing that "providing Ethernet over copper loops leased as UNEs" has not "proven to be a sustainable way" to serve customers' needs.[10] Thus, the ongoing erosion of demand for XO's EoC service over the next decade will occur regardless of this transaction – and the transaction itself will not make any customer or consumer worse off.

Competitive Alternatives. Even in this declining market, competitive EoC product alternatives exist. While XO delivers a high value EoC product, its offering is not unique. As Verizon and XO have explained repeatedly, other providers offer EoC, and entry is not difficult.

- **EoC Entry –** EarthLink's claims about barriers to entry are wrong.[11] Entry is easy because EoC is relatively inexpensive to deploy, and XO has no unique advantages in providing this service. A provider only needs to collocate in an incumbent's central office and lease unbundled network elements, which are available on non-discriminatory terms.[12] Collocation rates are tariffed, and state regulatory commissions set rates for UNEs. XO also has no technical advantages, since EoC electronics are available from multiple vendors. Also, the cost of installing EoC equipment is low, and there are modest economies of scale. As a result, another provider, especially one that is already collocated, could profitably enter and provide EoC at a small scale to satisfy modest levels of demand.[13]

- **EoC Competition –** Despite the shift toward higher-speed services, many providers continue to offer EoC, including Global Capacity/MegaPath, Broadview Networks, and Windstream – and even EarthLink – in markets that XO serves. In the Verizon central offices where XO collocates and offers EoC service, at least **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** of the above identified providers also collocates and either offers EoC or could easily begin to offer that service. (In **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** percent of these offices, at least **[BEGIN HIGHLY**

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[8] Whitepaper at 16 (citation omitted).
[9] *Id.* at 2; *see also id.* at 16-18 (describing "the inherent limitations of providing digital services over copper loops," including limited bandwidth, minimal flexibility, and security disadvantages).
[10] Letter from Thomas Jones, Counsel to TDS Telecommunications Corp. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25, RM-10593 at 3 (Mar. 26, 2015); *accord* Letter from Thomas Jones, Counsel to tw telecom inc, Level 3 Communications, LLC, Integra Telecom, Inc., and Cbeyond Communications, LLC, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-9 at 4 (Aug. 20, 2014) (noting "technical limitations are one of several constraints on competitors' ability to provide Ethernet over copper").
[11] EarthLink Presentation at 7.
[12] Whitepaper at 19.
[13] *Id.* at 18-20, 22, 23, 25-27, 30-31; *see also id.* App. A (analyzing the profitability of offering EoC for a CLEC that is already collocated in a central office but does not currently offer EoC out of that central office).

> **CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** providers collocate.) Global Capacity/MegaPath, AT&T, Windstream, and EarthLink itself all collocate in **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** Verizon central offices than XO, and Broadview Networks collocates in **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** Verizon central offices as XO. Finally, EarthLink could self-provision its EoC needs. Verizon provides more copper loop UNEs to **[BEGIN HIGHLY CONFIDENTIAL]**
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> **[END HIGHLY CONFIDENTIAL]**. In sum, at least **[BEGIN HIGHLY CONFIDENTIAL]**
> **[END HIGHLY CONFIDENTIAL]** are already collocated, have been accessing copper loops, may be offering EoC in another office, and could swiftly enter and begin providing EoC service even for modest levels of demand.[14] The competition is not limited to other EoC providers, as EoC also competes with Ethernet service provided over fiber and coaxial cable. For instance, cable HFC networks using DOCSIS 3.0 support offerings that compete for lower bandwidth BDS.[15] In fact, cable-provided Ethernet over HFC is even more cost effective than EoC.[16]

Accordingly, XO is not a unique provider of EoC, and there will be just as much opportunity for EoC offerings in the marketplace after the transaction as exists today.[17]

EarthLink's Faulty Analysis. The EarthLink presentation is analytically flawed. EarthLink claims, for example, that "if ELNK were to pull XO out of its pricing tools for DS1 & EoC, the rates ELNK pays XO would increase by **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** COs that drive 80% of the volume of ELNK orders."[18] But EarthLink ignores its own purchasing behavior, and it mischaracterizes Verizon pricing, improperly aggregates DS1 and EoC products, and does not analyze individual geographic markets.

First, a month before EarthLink made its filing, Verizon offered **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] EarthLink accounts for none of these facts.

Further, EarthLink disregards the benefits that Verizon's Ethernet services like TLS

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[14] *Id.* at 23-28 and Table 3.
[15] *Id.* at 14-15. EarthLink simply asserts that "EoHFC is not a viable alternative." EarthLink Presentation at 8.
[16] Whitepaper at 24-25.
[17] Joint Opp. of Verizon and XO at 9-10 (May 27, 2016).
[18] EarthLink Presentation at 2.
[19] *Id.* at 5.

provide, and its claim that TLS is "not a good XO EoC replacement" is not credible.[20] Verizon's Ethernet services offer all the advantages of fiber (and none of the disadvantages of copper), which is one key reason why the marketplace is so quickly migrating to it as discussed above. Verizon's Ethernet services have been recognized by the Metro Ethernet Forum as a best in class product in the Carrier Ethernet space in multiple years, along with other industry recognition from Vertical Systems, Frost and Sullivan, and Gartner as a leader in Global Network Solutions.[21] A straight-up cost comparison of EoC offerings and Ethernet offerings fails to recognize the value that Ethernet offerings provide. In any event, as shown above, EarthLink has many alternatives should it seek another provider of EoC (and Ethernet as well).

And as noted, Verizon will continue to offer the EoC product and will have no incentive or ability to treat EarthLink or any other current XO customer in an anti-competitive manner.[22] Given the bevy of alternative providers to which EarthLink could readily turn, any anti-competitive behavior by any provider in this marketplace would cause it to lose a continued revenue opportunity.

In addition to its failure to assess the relevant facts, EarthLink provides a misguided and overly simplified analysis. EarthLink improperly aggregates EoC and DS1 services, at times combining its discussion of rates and offerings. It also broadly characterizes Verizon's prices and other practices as if they are uniform across all markets, rather than addressing specific circumstances or recognizing competitive forces in individual markets. Given this lack of granularity, EarthLink's discussion does not provide a meaningful portrayal of the marketplace or of the proposed transaction's impact on it.

For all of these reasons, the proposed transaction will not harm competition in the BDS market by virtue of Verizon acquiring XO's EoC business.

EarthLink's DS1 Claims are Similarly Flawed

The DS1 Product Marketplace. Like its portrayal of EoC, EarthLink's discussion of DS1 service is inaccurate as to competition in relevant markets and XO's offerings in particular. For many years, DS1 legacy (TDM) circuits were the main product XO sold. Today, however, commercial customers largely demand higher bandwidth packet-based (Ethernet) BDS. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] As a result, DS1 is a diminishing market opportunity.

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[20] *Id.* at 8.

[21] *See, e.g.*, News Release, Verizon, *Verizon Global Wholesale First to Win Metro Ethernet Forum's 'Best Wholesale Ethernet Service' Awards for North America and EMEA* (Nov. 19, 2010), http://www.verizon.com/about/news/verizon-metro-ethernet-forum-awards.

[22] Whitepaper at 35 ("Put simply, if XO's EoC service fills demand and is profitable, it will remain that way even after the transaction, and where those potential profits exist, Verizon will have added incentive to delay upgrading those central offices to fiber.").

XO provides EarthLink with approximately **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** DS1 circuits from **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** central offices, **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of which are in Verizon ILEC territory. In the 12-month period ending in June, 2016, XO provisioned **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** of which were in Verizon incumbent territory. All circuits are off-net.

XO provides DS1 circuits using wholesale inputs purchased almost exclusively from incumbent local exchange carriers, and in most buildings where it has fiber connectivity, it can provide on-net DS1 services. XO prefers providing on-net service where economically viable since it can offer superior services at more competitive prices and have larger margins. However, XO has only thousands of buildings on-net while its customers are located in many tens of thousands of buildings. **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** Further, because of the diminishing importance of DS1 service, XO would not today build to a customer to provide DS1 or multiple DS1 services. In fact, as indicated above, XO has not expanded its TDM network capabilities or reach for over three years given the overall and ongoing technology transition in commercial markets to managed IP-communications. The DS1 business, while important from an installed base perspective, has become less relevant over time. As such, XO continues to service its installed base of DS1 customers, but its primary focus is on selling packet-based, on-net BDS.

Please contact the undersigned should you have further questions.

Respectfully submitted,

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