

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY  
CHICAGO, IL  
HOUSTON, TX  
LOS ANGELES, CA  
SAN DIEGO, CA  
PARSIPPANY, NJ  
STAMFORD, CT  
BRUSSELS, BELGIUM  
AFFILIATE OFFICE  
MUMBAI, INDIA

October 15, 2019

**BY HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: XO Communication Services, LLC, Request for Review of Decision of the  
Universal Service Administrative Company, WC Docket No. 06-122  
**Request for Confidential Treatment**

Dear Ms. Dortch:

On behalf of XO Communication Services, LLC ("XOCS" or the "Company"), enclosed please find a Request for Review of Decision of the Universal Service Administrator ("Request") filed in response to the August 15, 2019 USAC Internal Audit Division Final Determination Letter regarding its Audit of XO Communication Services, LLC's, 2008 Form 499-A Rules Compliance.<sup>1</sup> In submitting this Request and certain information in the exhibits ("Designated Exhibit"),<sup>2</sup> XOCS has provided company-specific information and competitively sensitive information regarding the Company's finances, customer base and business operations that is not ordinarily disclosed to any person or entity. Accordingly, pursuant to sections 0.457 and 0.459 of the Commission's rules,<sup>3</sup> XOCS requests that the Commission afford confidential treatment to XOCS' Designated Exhibit.

---

<sup>1</sup> Letter from USAC to Robert Mutzenback, VP, Taxes, XO Communications, Inc. [sic] re Final Determination: *Ten Percent Rule Clarification Order* and USAC Audit of XO Communications Services, Inc., August 15, 2019 ("Final Determination Letter").

<sup>2</sup> Specifically, XOCS requests confidential treatment of Exhibit 1, which contains the *Final Determination Letter*.

<sup>3</sup> 47 C.F.R. §§ 0.457, 0.459.

Ms. Marlene H. Dortch  
October 15, 2019  
Page 2

**REQUEST FOR CONFIDENTIAL TREATMENT**

XOCS requests confidential treatment for the Designated Exhibit because it contains sensitive commercial information including details regarding XOCS' finances, customer base and business operations. Disclosure of this information would cause harm to XOCS. The information for which XOCS requests confidentiality comprises sensitive commercial and financial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").<sup>4</sup>

Exemption 4 allows parties to withhold from public information "trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection." Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairment of the government's ability to obtain necessary information in the future; or (2) causation of substantial harm to the competitive position of the person from whom the information was obtained.

Section 0.457(d)(2) of the Commission's rules allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) of the FOIA to file a request for non-disclosure. The requirements governing such requests are set forth in section 0.459(b). In accordance with the specifications delineated in that rule, XOCS hereby submits the following:

1. IDENTIFICATION OF SPECIFIC INFORMATION FOR WHICH  
CONFIDENTIAL TREATMENT IS SOUGHT (SECTION 0.459(B)(1))

XOCS seeks confidential treatment of Exhibit 1 (the Designated Exhibit) because the information contained therein comprises financially and commercially sensitive information that falls within Exemption 4 of the FOIA.

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH  
THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE  
CIRCUMSTANCES GIVING RISE TO THE SUBMISSION (SECTION 0.459(B)(2))

XOCS is filing the Designated Exhibit as part of its Request for Review of the August 15, 2019 *Final Determination Letter* issued by USAC in connection with its audit of the XO Communication Services, LLC 2008 Form 499-A.

---

<sup>4</sup> See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

Ms. Marlene H. Dortch  
October 15, 2019  
Page 3

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED (SECTION 0.459(B)(3))

The Designated Exhibit contain specific information about XOCS' finances, internal business operations and customer base, which XOCS does not ordinarily disclose. The Designated Exhibit for which XOCS seeks confidential treatment accordingly contains sensitive financial and commercial information that competitors could use to XOCS' disadvantage. The Commission has broadly defined commercial information, stating that "[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations."<sup>5</sup>

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION (SECTION 0.459(B)(4))

XOCS provides telecommunications services in the United States subject to intense competition from numerous industry participants. Disclosure of information about XOCS could be used by competitors or others to harm XOCS. This competition makes it imperative that the Commission afford confidential treatment to the Designated Exhibit.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM (SECTION 0.459(B)(5))

Release of the information for which XOCS requests confidentiality could have a significant impact on its commercial operations and would provide competitors with an unfair competitive advantage.

6. IDENTIFICATION OF ANY MEASURES TAKEN TO PREVENT UNAUTHORIZED DISCLOSURE (SECTION 0.459(B)(6))

XOCS ordinarily does not disclose information about its internal business operations, customer base or finances. XOCS requires all of its employees, agents and contractors to maintain the confidentiality of this information.

---

<sup>5</sup> *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

Ms. Marlene H. Dortch  
October 15, 2019  
Page 4

7. IDENTIFICATION OF WHETHER THE INFORMATION IS  
AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE  
OF THE INFORMATION TO THIRD PARTIES (SECTION 0.459(B)(7))

The information contained in the Designated Exhibit has not been disclosed to third parties.

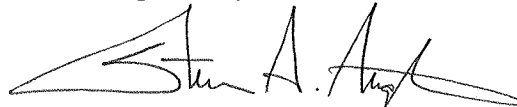
8. JUSTIFICATION OF PERIOD DURING WHICH THE SUBMITTING  
PARTY ASSERTS THAT THE MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC  
DISCLOSURE (SECTION 0.459(B)(8))

XOCS respectfully requests that the Commission withhold the information contained in the Designated Exhibit from public inspection indefinitely.

As demonstrated above, the information for which XOCS seeks confidential treatment is entitled to exemption from disclosure under both FOIA and the Commission's rules.

If any person or entity requests disclosure of the enclosed Designated Exhibit, please notify counsel for XOCS immediately in order to permit it to oppose such request or take such other action to safeguard its interests as it deems necessary. Please direct any questions as to this matter, including the request for confidential treatment, to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven A. Augustino", with a stylized flourish at the end.

Steven A. Augustino

*Counsel to XO Communication Services, LLC*

Attachment