WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

REDACTED – FOR PUBLIC INSPECTION

October 18, 2016

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
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 of 1934, As Amended*, WC Docket No. 16-70**

Dear Ms. Dortch:

On behalf of INCOMPAS and EarthLink, Inc., I hereby submit the redacted version of the attached notice of ex parte pursuant to the terms of the *Protective Order*[1] in the above-referenced proceeding. The Highly Confidential version of this submission has been filed with the Secretary's Office.

Please contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

Counsel for INCOMPAS and EarthLink, Inc.

Enclosure

---

[1] *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 of 1934, As Amended*, Protective Order, 31 FCC Rcd. 5318 (2016).

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

REDACTED – FOR PUBLIC INSPECTION

October 18, 2016

VIA ECFS ***NOTICE OF EX PARTE***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
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 of 1934, as Amended*****, WC Docket No. 16-70**

Dear Ms. Dortch:

On October 18, 2016, Angie Kronenberg of INCOMPAS and Chris Murray of EarthLink, Inc., along with Mia Guizzetti Hayes and the undersigned of Willkie Farr and Gallagher LLP, met with Johanna Thomas, Legal Advisor to Commissioner Rosenworcel. During the meeting, we reiterated the harms to competition and consumer welfare posed by Verizon's proposed acquisition of XO, as set forth in INCOMPAS's Petition to Deny.[1] Additionally, after Ms. Kronenberg and Mr. Murray left the meeting, Ms. Hayes and I described documents and data submitted by the Applicants, as well as a recent DISH ex parte,[2] all of which confirm that significant harm will result if the transaction is approved. We explained that, for those reasons and for reasons detailed in other Petitions to Deny filed in this proceeding,[3] the public interest requires that the Commission deny the transaction as proposed.

---

[1] Petition to Deny of INCOMPAS, WC Docket No. 16-70 (filed May 3, 2016).

[2] Letter from Pantelis Michalopoulos & Stephanie Roy, Counsel for DISH Network Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 5, 2016) ("DISH Ex Parte").

[3] *See* Petition to Deny of DISH Network Corp., WC Docket No. 16-70 (filed May 3, 2016); Petition to Deny and Comments of Public Knowledge, WC Docket No. 16-70 (filed May 12, 2016).

Transaction rationale. We explained that Verizon's documents suggest that its acquisition of XO's wireline assets is **[BEGIN HIGHLY CONFIDENTIAL]**

---

[4] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[5] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

[6] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[7] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Reduced business services competition. The proposed transaction will eliminate XO as an aggressive, independent competitor in both wholesale and retail markets for business services, including business data services. Verizon has no use for the business services that XO provides via its own network and via facilities leased from other carriers, or for the vast majority of XO's network facilities. Aside from a small amount of fiber outside of Verizon's incumbent LEC territory that Verizon appears to think it can use to provide 4G and 5G services (fiber Verizon could deploy itself in any event), the only discernable benefit to Verizon of acquiring the XO wireline business is the opportunity to eliminate a competitor and to increase business services prices post transaction.

There is no question that the transaction will result in the elimination of a facilities-based business data services competitor in the **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** buildings in Verizon's incumbent LEC territory to which both Verizon and XO have deployed fiber connections. We explained that, based on his empirical analysis of data submitted in the Commission's business data services proceeding, Dr. Jonathan Baker has concluded that he "cannot say that the presence of even as many as four in-building rivals and four nearby rivals would be enough to lead ILECs to set fully competitive prices."[11]

[END HIGHLY CONFIDENTIAL]

[8] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[9] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[10] Verizon/XO Oct. 7 Letter, at 2.

[11] Reply Declaration of Jonathan Baker on Competition and Market Power in the Provision of Business Data Services, ¶ 13, attached to Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143, 15-247, & 05-25, RM-10593 (filed Aug. 9, 2016).

Thus, for example, in locations where the transaction would reduce the number of competitors from five to four, four to three, or three to two, the result is likely to be higher prices and reduced service quality for business customers.

Approval of the transaction also would entrench Verizon's dominance in the provision of business services to multi-location customers by removing one of the few firms potentially able to compete in this market. The Commission has observed that providers must "have a broad regional footprint without significant gaps in coverage to serve large enterprises with multiple sites across given geographic regions effectively," and that "[s]uch providers may be relatively rare."[12] Incumbent LECs including Verizon are those rare providers: "an outsized presence in [the business data services] industry, especially when counting their CLEC operations outside of their ILEC markets."[13] The only providers that have any hope of competing with them are those competitors like XO that have significant fiber network assets already deployed and the ability to deploy more such facilities in the future.

In addition, we observed that Verizon still does not appear to have developed plans to use XO's metro fiber assets within the Verizon incumbent LEC region for any legitimate business purpose. There is little reason to think that Verizon has any such plans because it has a ubiquitous, fiber-rich network in its incumbent LEC territory. **[BEGIN HIGHLY CONFIDENTIAL]**

---

[12] *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, ¶ 201 (2016) (internal citations and quotation marks omitted).

[13] Marc Rysman, Empirics of Business Data Services, at 25 (rev. June 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-340040A6.pdf.

[14] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

We also explained that, for as little consideration as Verizon appears to have given to the fate of XO's in-region metro fiber, Verizon devoted significant effort to unearthing **[BEGIN HIGHLY CONFIDENTIAL]**

---

[15] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[16] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[17] *See* DISH Ex Parte at 3-4.

[18] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[19] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[20] **[BEGIN HIGHLY CONFIDENTIAL]**
[END HIGHLY CONFIDENTIAL]

[21] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

[22] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

In the end, the only real benefit to Verizon of acquiring the XO wireline business is reduced competition. **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Reduced service quality. We explained that customers will experience reduced service quality as a result of the transaction. **[BEGIN HIGHLY CONFIDENTIAL]**

---

[23] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[24] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

[25] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[26] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

[27] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

Please do not hesitate to contact me if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

Counsel for INCOMPAS and EarthLink, Inc.

cc: Johanna Thomas

---

[28] **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**

[29] **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]