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REDACTED – FOR PUBLIC INSPECTION

September 12, 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 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 EarthLink, Inc.

Enclosure

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[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).

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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 September 8, 2016, Jeanne Dale, Mark Jeary, Adam Zonneville, and Chris Murray of EarthLink, Inc. ("EarthLink") and the undersigned met with Madeleine Findley, Dan Kahn, Terri Natoli, Tavi Carare, Chris Sova (by phone), and Mike Ray of the Wireline Competition Bureau, as well as Joel Rabinovitz and Jim Bird of the Office of General Counsel. During the meeting, the representatives of EarthLink explained that the proposed acquisition of XO by Verizon, if approved, would harm competition and consumer welfare in several important respects.

For example, EarthLink explained that XO's Ethernet-over-copper ("EoC") service offers the most favorable combination of price and service quality of any wholesale Ethernet offering in many circumstances. In fact, given that many incumbent LECs and competitive LECs only offer Ethernet in the subset of locations where they have deployed fiber connections and the limited reach of other competitive LECs' EoC offerings, XO's EoC is the only Ethernet service offered at many locations, both within the Verizon incumbent LEC territory and outside of that territory. In addition, XO offers DS1 business data services at lower prices and on more favorable non-price terms and conditions than either Verizon or other providers of business data services. If Verizon were to acquire XO, it would have the incentive and opportunity to cause XO to offer Ethernet and DS1 services at higher prices, at lower service quality, and on less favorable non-price terms and conditions (e.g., subject to longer term commitments and volume commitments) than it has in the past. Verizon's incentive to engage in this conduct is especially strong in its incumbent LEC region, but its track record as a weak competitor outside of its incumbent LEC territory indicates that it will do this in those geographic areas as well. It is also likely that Verizon will eventually discontinue XO's EoC since Verizon has never provided EoC. The EarthLink representatives explained that, since there is little competition in the provision of business data services, the harmful effects of the proposed merger would not cause another competitor to take XO's place as provider of business data services. Instead, EarthLink and other wholesale purchasers would be forced to pay higher prices, to receive inferior service quality, and to accept less favorable non-price terms and conditions for business data services.

A commitment by the merging parties to honor XO's existing contracts would not protect EarthLink from the harmful consequences of the proposed merger even in the short run. That is because **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

These points are described in further detail in the attached slide deck, which was distributed during the meeting. 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 EarthLink, Inc.

Attachment

cc: Meeting participants

Verizon / XO Transaction Implications

EarthLink®

ELNK & XO Relationship

ELNK purchases TDM local access, Ethernet over Copper (EoC), and Ethernet over Fiber, and IP Transit from XO.

ELNK uses XO to extend its footprint (i.e. where ELNK does not have network / COs), and **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**

XO is an established strategic partner for ELNK based upon XO's excellent performance and XO's demonstration that it is a nimble and flexible price competitive provider and superior ILEC alternative. XO continues to add to its on-net buildings with corporate investment build projects, and like ELNK has been active as a regulatory challenger, and as a proponent of technology transitions and oversight of access pricing.

On average, 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.

EarthLink

ELNK & XO Relationship

- **[BEGIN HIGHLY CONFIDENTIAL]**
- **[END HIGHLY CONFIDENTIAL]**
- XO provides quarterly pricing updates, which historically have shown decreased prices overall.
- XO offers services on shorter circuit terms (1, 2 & 3 years) unlike ILECs where ELNK must purchase on 5 or 7 year term buying plans.

XO EoC

XO's EoC service is Industry Best; its removal would produce significant harm to ELNK and retail businesses by lessening competition – decreasing service quality and increasing prices.

- **XO Strengths**
  - Coverage – XO has both size and density
    - XO provides EoC to locations not reached by other CLEC networks.
    - XO is one of only two nationwide EoC providers, and has deep CO coverage
      [BEGIN HIGHLY CONFIDENTIAL]
      [END HIGHLY CONFIDENTIAL]
  - Superior Pricing – XO offers industry leading pricing, and XO's presence in the market forces other vendors to keep rates in line to stay competitive.
  - Service Delivery – XO is the industry leader for ease of ordering and on-time delivery.

[BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

EarthLink

XO EoC

- **[BEGIN HIGHLY CONFIDENTIAL]**
-

[END HIGHLY CONFIDENTIAL] EarthLink

XO DS1s

- [BEGIN HIGHLY CONFIDENTIAL]

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    -

[END HIGHLY CONFIDENTIAL]

EarthLink

VZ EoC

- **Verizon's Copper Strategy**
  - VZ has never offered a copper-based Ethernet solution.
- **Barriers to Entry** – Another CLEC could not step into the void left by an XO EoC loss.
  - Up front Capital costs and recurring Operating costs, starting day one
  - Few nationwide CLECs remain
  - CLECs have not been adding COs – the opposite is true – CLECs have been exiting less profitable / low utilization COs
  - Technology conversion to Ethernet – no value of CO presence for Ethernet (i.e. mileage is irrelevant); UNE restrictions also reduce value of CO presence
- **DS1 Alternative** – XO EoC is one of few competitive DS1 alternatives; the industry shift to Ethernet has provided more solutions at 50 MB+ speeds, leaving a non-competitive environment for small to medium businesses.

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VZ EoC

- **VZ Ethernet Services are not a good XO EoC replacement**
  - Coverage - TLS is not a nationwide service – it is only available in VZ's fiber footprint in the North-East
  - Rates - TLS rates are competitive at certain building addresses but not at the CO level like EoC is
  - Terms - TLS does not include circuit portability (revenue replacement to avoid ETL), whereas XO EoC does

- **EoC is often the only available Ethernet solution**
  - Entrance Facility construction requirements are cost prohibitive
  - EoHFC is not a viable alternative

EarthLink

XO DS1

- **XO DS1 service is superior to Verizon's**
  - XO pricing is more competitive and does not require volume commitments.
  - Reduced risk for ELNK
    - No risk of shortfall **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]**
    - Reduced risk of ETL – ELNK doesn't have to commit to circuit terms longer than what ELNK sells to its customers
  - Competitive pricing at shorter circuit terms allows ELNK to re-commit circuits post term end for monthly savings.
  - More flexible terms for circuit portability (i.e. replacing revenue to avoid ETL)
  - **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]

- **XO DS1 - Benefits to ELNK and other wholesale customers**
  - XO CO density allows other CLECs to benefit from reduced mileage.
  - XO may have ability to purchase UNEs where other CLECs cannot.

EarthLink

Consequences of the Proposed Transaction

- **Less Competition – fewer LEC alternatives and reduced check on remaining CLECs**
- **Increased Costs on existing business as well as go-forward cost structure**
- **Decreased Service Quality – increased monopolistic behavior**
- **Reduced DS1 Replacement Options**
- **Elimination of a provider that was adding on-net buildings to its network**

EarthLink