

**REDACTED – FOR PUBLIC INSPECTION**

November 4, 2016

**VIA HAND DELIVERY**

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

**Re: Applications of XO Holdings LLC and Verizon Communications Inc. for  
Transfer of Control of Licenses and Authorizations, WC Docket No. 16-70**

Dear Ms. Dortch:

Over the course of nearly eight months, XO Holdings LLC and Verizon Communications Inc. (“Verizon”) (collectively, the “Applicants”) have submitted substantial material detailing how the proposed transaction will serve the public interest and not harm competition. This record already rebuts the assorted claims made in recent filings by INCOMPAS and EarthLink, Inc. (“INCOMPAS/EarthLink”), Public Knowledge and New America’s Open Technology Institute (“PK/OTI”), Windstream Services, LLC (“Windstream”), and BT Americas Inc. (“BT”), which largely reprise previous contentions and ignore record evidence that disproves them.<sup>1</sup> But to avoid any doubt about the many benefits that this transaction will deliver and the lack of harms, the Applicants respond to their submissions below.

***Benefits of the Transaction.*** The transaction will grow Verizon’s fiber-based IP and Ethernet networks, enabling it to better serve enterprise and wholesale customers (including several of the complaining parties here) and enhancing backhaul capacity for cell sites as it

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<sup>1</sup> See Letter from Thomas Jones, Counsel for INCOMPAS and EarthLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 18, 2016) (“INCOMPAS/EarthLink Letter”); Letter from Phillip Berenbroick, Senior Policy Counsel, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 18, 2016) (“PK/OTI Letter”); Letter from John Nakahata, Counsel for Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 21, 2016) (“Windstream Letter”); Letter from Sheba Chacko, BT Americas Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 27, 2016) (“BT Letter”). The Commission should disregard the untimely arguments made by BT seeing as it did not participate in this proceeding until October 25, 2016, almost five full months after the pleading cycle had closed. See *Applications Filed for the Transfer of Control of XO Communications, LLC to Verizon Communications Inc.*, Public Notice, 31 FCC Rcd 3514, 3520 (2016) (“A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. ... Absent such a showing of good cause, any issues not timely raised [during the pleading cycle] may be disregarded by the Commission.”).

densifies its 4G mobile broadband network and moves quickly to develop and deploy 5G.<sup>2</sup> Verizon has shown that with XO's fiber assets, it will be able to pursue both its 4G and 5G densification more quickly and efficiently than if it were to build redundant fiber or attempt to lease it from a third party.<sup>3</sup> Customers will continue to enjoy options from multiple competing providers post-transaction.<sup>4</sup>

**No Competitive Harms.** The opponents' filings continue a misplaced focus on the issue of competition in the overall business data services ("BDS") marketplace.<sup>5</sup> The Commission is considering that issue in a general rulemaking and is poised to resolve it soon.<sup>6</sup> In this proceeding, the Commission's responsibility is to examine the specific facts relevant to this transaction.<sup>7</sup> And the record shows that this transaction will not reduce or harm competition in any material way. In past transactions, the Commission has reviewed the level of overlap between applicants, down to a building-by-building analysis.<sup>8</sup> Under this standard, there is

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<sup>2</sup> See, e.g., Consolidated Applications to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 16-70, Exh. 1 at 6-10 (filed Mar. 4, 2016) ("Public Interest Statement"); Joint Opposition of Verizon and XO Holdings to Petitions to Deny and Comments, WC Docket No. 16-70, at 3-5 (filed May 27, 2016) ("Joint Opp.").

<sup>3</sup> Declaration of Ronald W. Hicks, Jr. ¶¶ 3-4 ("Hicks Decl."), attached to Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Sept. 30, 2016).

<sup>4</sup> See, e.g., Joint Opp. at 8-9; Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70, at 4-5 (filed Oct. 14, 2016) ("Verizon-XO Oct. 14 Letter"); Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Oct. 19, 2016) ("Verizon-XO Oct. 19 Letter").

<sup>5</sup> See, e.g., INCOMPAS/EarthLink Letter at 3-4; PK/OTI Letter at 3-4; Windstream Letter at 1.

<sup>6</sup> *Chairman Wheeler's Proposal to Promote Fairness, Competition, and Investment in the Business Data Services Market*, Fact Sheet (Oct. 7, 2016); News Release, FCC, *FCC Announces Tentative Agenda for November Open Meeting*, at 1 (Oct. 27, 2016) (stating Commission's intention to consider BDS rulemaking at its November 17, 2016 open meeting).

<sup>7</sup> See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees*, Memorandum Opinion and Order, 21 FCC Rcd 8203 ¶ 72 (2006) (limiting analysis to "the facts and evidence presented in the record").

<sup>8</sup> See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 ¶¶ 27, 36 (2007); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶¶ 20-23 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 ¶ 67 (2005); *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194 ¶ 17 (2011); *Applications Filed for the Transfer of Control of Insight Communications Company, Inc. to Time Warner Cable Inc.*, Memorandum

minimal overlap between Verizon and XO buildings, and even where buildings overlap, there is substantial existing competition. The detailed building-by-building data provided reaffirms that there are alternate fiber providers in or nearby the Verizon-XO fiber overlap buildings. Specifically, evidence in the record shows, among other things, that:

- 99.68% of the in-footprint fiber overlap buildings have at least one fiber competitor either in the building or within 0.1 miles, in addition to Verizon and XO; and
- More than 90% of the in-footprint fiber overlap buildings have at least one fiber competitor in the building, in addition to Verizon and XO.<sup>9</sup>

INCOMPAS/EarthLink do not try to disprove these data-driven conclusions – they merely state that they “do not believe” them,<sup>10</sup> an empty response that the Commission need not consider.

Similarly, PK/OTI’s and BT’s claims about Ethernet-over-copper (“EOC”) lack merit and fail to take account of evidence in the record.<sup>11</sup> As the Applicants have explained, these arguments misstate the competitive value of XO’s EoC offerings and incorrectly analyze the competitive effects of the transaction.<sup>12</sup> To begin with, XO provides **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** EoC circuits to BT.<sup>13</sup> In addition, XO has no unique advantages in providing EoC, a significant number of other providers offer it, and entry remains relatively easy.<sup>14</sup> And, Verizon has already made clear that it has no plans to discontinue XO’s EoC services, even though demand for EoC is declining.<sup>15</sup> So BT’s claims of “rate shock and turmoil” are just hyperbole. There is no reason for the Commission to interfere with existing contractual arrangements by extending them (let alone for 5 years as BT insists) or to require Verizon to provide some sort of EoC alternative.<sup>16</sup>

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Opinion and Order, 27 FCC Rcd 497 ¶ 19 (2012); *Applications Filed for the Transfer of tw telecom inc. to Level 3 Communications, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 12842 ¶¶ 16-18 (2014).

<sup>9</sup> Letter from Bryan N. Tramont and Adam D. Krinsky, Wilkinson Barker Knauer, LLP, Counsel to Verizon, and Thomas W. Cohen, Kelley Drye & Warren LLP, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70, at 2 (filed Oct. 6, 2016); *see also* Verizon-XO Oct. 19 Letter at 2 (providing a further update and more detail with respect to competitors in certain buildings).

<sup>10</sup> INCOMPAS/EarthLink Letter at 2 n.7.

<sup>11</sup> PK/OTI Letter at 1-2; BT Letter at 1.

<sup>12</sup> Verizon-XO Oct. 14 Letter at 2-6.

<sup>13</sup> **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]**

<sup>14</sup> Verizon-XO Oct. 14 Letter at 4-5.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> BT Letter at 1; Letter from Sheba Chacko, BT Americans Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70 (filed Nov. 2, 2016).

Other assorted claims about competitive harm are also unfounded. Windstream repeats its speculative claim that this deal will lead to coordinated activities between Verizon and AT&T. There is no support for this theory. And Windstream does not acknowledge the Commission's recent rejection of that argument in a much larger transaction.<sup>17</sup> PK/OTI's claims about the harm to wholesale competition,<sup>18</sup> and INCOMPAS/EarthLink's assertion that XO is "one of the few firms" able to serve multi-location customers,<sup>19</sup> are likewise off-base: The transaction will enable Verizon to compete more effectively with various national and regional high-capacity service providers (including cable companies, competitive telephone companies, and other non-traditional players), creating an even more robust stable of options for multi-location customers.<sup>20</sup>

**No Risk to Investment.** INCOMPAS/Earthlink's assertion that Verizon has no plans to use XO's fiber assets in-region lacks credibility.<sup>21</sup> From a strategic perspective, Verizon would not plan to strand assets – which would eviscerate the transaction rationale as summarized above. Indeed, Verizon's plans for the out-of-region assets it will acquire and the critical benefits those assets will provide are reason enough to approve this deal.<sup>22</sup> But in-region, Verizon's ILEC fiber footprint is not ubiquitous. The record shows that XO has fiber in nearly one hundred buildings within Verizon's ILEC footprint that Verizon does not serve with fiber. Moreover, as future technologies (like 5G) and new applications (like the Internet of Things) evolve, they are going to require additional fiber-optic connections to link antennas, cameras, sensors, and myriad other devices to the Internet and to managed networks. As compared with much of the in-region fiber Verizon has deployed that uses passive-optical-networking architecture, XO's local fiber networks are more frequently deployed with point-to-point fiber optic cables, which may be particularly well suited for supporting these applications as providers migrate their systems to new types of architectures (in particular, Cloud- or Centralized-Radio Access Networks, and use of the Common Public Radio Interface (CPRI) standard). Having XO's point-to-point fiber networks in-region may complement Verizon's existing point-to-point and PON networks. As Verizon learns more about the location, technical characteristics, available capacity, and other aspects of XO's fiber networks, it expects to find opportunities to leverage those networks wherever they are located.

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<sup>17</sup> *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 31 FCC Rcd 6327 ¶¶ 228-35 (2016) (dismissing the notion that, post-transaction, "New Charter" would coordinate with Comcast to harm competition on the national and local levels, finding that New Charter's mere increase in size "does not, in and of itself, constitute sufficient evidence" that a strategy of coordination is likely); *see also* Joint Opp. at 18.

<sup>18</sup> PK/OTI Letter at 2.

<sup>19</sup> INCOMPAS/EarthLink Letter at 4.

<sup>20</sup> *See, e.g.*, Public Interest Statement at 8; Response to Information and Document Request by Verizon Communications Inc., WC Docket No. 16-70, at 37-45 (filed July 7, 2016) ("Verizon RFI Response") (response to RFI 24).

<sup>21</sup> INCOMPAS/EarthLink Letter at 4-5.

<sup>22</sup> *See generally* Hicks Decl. ¶¶ 19-24 & Appendices 1-3.

INCOMPAS/EarthLink's reference to "cost avoidance" via reductions in network investment are a red herring.<sup>23</sup> This argument was raised by DISH, and INCOMPAS/EarthLink merely repeat it. The Applicants have already shown that this contention exaggerates any reduction in network spending resulting from the transaction: Cost savings from XO's "OnNet Program" will be a fraction of what DISH asserted, and while those cost savings will minimize duplicative investment, they will not stop network expansion or otherwise harm competition.<sup>24</sup>

***No Reduction in Service Quality.*** Verizon has a proven track record of incorporating assets successfully without disruption or diminution of service quality, and it is unconvincing to claim that the transaction will reduce service quality.<sup>25</sup> First, Verizon has won awards for its Ethernet service – reinforcing its recognized ability to deliver superior service.<sup>26</sup> Second, Verizon has invested heavily in an industry-leading back-office system and expects that it will spend [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] to migrate XO IT and back-office systems and data onto Verizon's platforms, systems, and data warehouse (among other integration expenditures).<sup>27</sup> Verizon has explained that over time it will migrate XO customers to its highly touted Verizon Rapid Delivery ("VRD") ordering platform – a platform that demonstrates Verizon's high level of competence in handling massive integration projects and which will benefit current XO customers (Verizon will also maintain XO back-office systems to the extent necessary to avoid service disruptions and ensure that the highest level of customer care is maintained).<sup>28</sup> Verizon will consolidate duplicative back-office functions, not eliminate back-office support – a common synergy in mergers like this one.<sup>29</sup> INCOMPAS/EarthLink's speculation about a reduction in service quality thus has no merit.

***No Harms for Internet Transit.*** PK/OTI's passing effort to revive its assertion of harm in connection with Internet transit is unpersuasive.<sup>30</sup> The marketplace for transit services is dynamic, decentralized, and competitive.<sup>31</sup> PK/OTI offer nothing new to rebut that showing.

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<sup>23</sup> INCOMPAS/EarthLink Letter at 5.

<sup>24</sup> Letter from Bryan Tramont, Counsel to Verizon Communications Inc. & Thomas Cohen, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70, at 2 (filed Oct. 27, 2016).

<sup>25</sup> INCOMPAS/EarthLink Letter at 6-7.

<sup>26</sup> Verizon-XO Oct. 14 Letter at 6 (citing 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>).

<sup>27</sup> Verizon RFI Response at 32 (response to RFI 23).

<sup>28</sup> *Id.* at 44-45 (response to RFI 24).

<sup>29</sup> *See, e.g., Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972 ¶ 57 (2010) (discussing synergies from the consolidation of back-office systems and asking only whether they are sufficiently verifiable to be considered a transaction-specific benefit).

<sup>30</sup> PK/OTI Letter at 2-3.

<sup>31</sup> Joint Opp. at 18-22.

*No Evidence Undermining Transaction.* INCOMPAS/EarthLink cite to isolated portions of internal Verizon documents in a misleading effort to cast doubt on Verizon’s reasons for entering the transaction and to obscure its benefits.<sup>32</sup> For instance, in citing an email exchange from November 2015 (months before the transaction was agreed upon) considering the business case for the deal, they ignore that the statement they quote also adds, **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** They cite another email exchange in an attempt to suggest that Verizon saw no revenue synergies in the deal, but they fail to acknowledge that the assessment was preliminary and hindered by the fact that Verizon at the time **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**

Far more relevant to the transaction rationale are the documents that reflect subsequent phases of the diligence process and Verizon’s ultimate decision making. For instance, an email exchange from one executive that builds on those cited by INCOMPAS/EarthLink confirms the **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** And a March 2016 version of a presentation to Verizon’s Board of Directors **[BEGIN HIGHLY CONFIDENTIAL]**

**[END HIGHLY CONFIDENTIAL]** The Commission should not be misled by INCOMPAS/EarthLink’s effort to manufacture doubt on this subject.

*No Conditions Are Necessary.* Finally, the absence of any transaction-specific harms means that there is no need for the Commission to impose any conditions, and the list of recent demands is baseless. In particular, Windstream’s self-serving demands for conditions relating to pricing and volume commitments are not transaction specific and are instead at issue in the Commission’s BDS rulemaking.<sup>37</sup> As noted above, BT’s EoC demands do not comport with marketplace realities. And Windstream’s assertions regarding special construction are not relevant here<sup>38</sup> – Verizon has explained that its special construction practices for CLEC customers differ from its ILEC practices, and its CLEC practices will govern XO assets post-

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<sup>32</sup> INCOMPAS/EarthLink Letter at 2-3.

<sup>33</sup> **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**

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<sup>37</sup> Windstream Letter at 1-2.

<sup>38</sup> *Id.* at 2.

transaction.<sup>39</sup> Windstream has attempted to raise its allegations about Verizon's ILEC practices in other proceedings, and its focus here on those practices is non-transaction-specific.<sup>40</sup>

For all of these reasons, the Commission should reject all of these objections and demands and approve the proposed transaction.

Please contact the undersigned should you have further questions.

Respectfully submitted,

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<sup>39</sup> Verizon RFI Response at 24-25 (response to RFI 21).

<sup>40</sup> Joint Opp. at 16.