

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of)	
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)	
Investigation of Certain Price Cap Local)	WC Docket No. 15-247
Exchange Carrier Business Data Services Tariff)	
Pricing Plans)	
)	

**OPPOSITION OF XO COMMUNICATIONS, LLC TO JOINT REQUEST FOR
EXTENSION OF TIME OF AT&T INC., VERIZON, CENTURYLINK, AND FRONTIER**

XO Communications, LLC (“XO”) respectfully requests that the Federal Communications Commission (“Commission”) deny the request of AT&T Inc., Verizon, CenturyLink, and Frontier (the “ILECs”) for a 12-week or 60-day extension of the deadline for submission of the ILECs’ Direct Cases in the above-referenced proceeding (hereafter, the “ILECs’ Request”).¹ In support of their request for an extension, the ILECs contend that they need additional time to incorporate into their Direct Cases analyses of the data set (the “Data”) that the Commission placed in the record in its order on December 4, 2015 (hereafter, the “Order”).² However, as demonstrated herein, the tasks that the ILECs claim they will undertake relating to the Data do not warrant additional time. Further, delaying the investigation, especially on the grounds proffered by the ILECs, would prejudice XO and other competitive

¹ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, Joint Request for Extension of Time of AT&T Inc., Verizon, CenturyLink, and Frontier, WC Docket No. 15-247 (Dec. 9, 2015).*

² *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, Order and Protective Orders, WC Docket No. 15-247, DA 15-1387 (rel. Dec. 4, 2015).*

carriers, as well as consumers, who continue to be harmed by the lock-in provisions of the tariffed special access plans under investigation. Therefore, the ILECs' Request should be denied.

To begin with, the Commission effectively considered this request in issuing its Order one week ago. The Commission in granting the ILECs' motion to allow them to examine and incorporate the Data as part of their Direct Cases found that it "will not unnecessarily harm or delay the investigation."³ The Commission has no basis to – and should not – retreat from its analysis and conclusion a mere week or two later by granting the ILECs' Request.

The extension sought by the ILECs is not necessary because, first, the ILEC representatives who are entitled to access the Data are already familiar with it and the process for accessing it as a result of the Special Access Reform proceeding,⁴ even if their ability to use it specifically in the investigation was confirmed only one week ago.⁵ Moreover, the portions of the Data that the ILECs identified as relevant in their Request are discrete. The analysis of the Data incorporated by the Order involves purchases of the ILECs' special access services at wholesale and are pursuant to a relatively small number of ILEC tariffs. Accordingly, the relevant Data is limited and readily accessible, and any analysis the ILECs contend to be related to this investigation can be performed quickly and by the time currently set forth for the ILECs' response.

³ *Id.* at ¶ 8.

⁴ *See generally 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*, WC Docket No. 05-25, RM-10593.

⁵ *See* ILEC's Request at 3. Indeed, the ILECs' Request indicates that they are using the same economists to review the Data for the investigation that have been reviewing it in the Special Access Reform proceeding.

Second, incorporation of most of the Data will not reflect the core of the ILECs' defense of the reasonableness of their tariff provisions under review. In the tariff investigation, the Commission is seeking responses from the ILECs that "in sufficient detail [address] the tariff pricing plan and terms and conditions being investigated."⁶ The heart of the ILECs' response will be, by necessity, information already in their control and not part of the Data requiring the Order to use, and thus was already available for the ILECs to draw upon in their Direct Cases well before the Order. In sum, even if XO were to agree with the Commission that part of the Data may be "relevant," incorporation of the portions of the Data the ILECs contend they need to analyze is unlikely to constitute the main focus of the ILECs' defense of the reasonableness of the tariffs in response to the *Investigation Initiation Order*.

Finally, the tariff investigation involves allegations that the ILECs are engaged in unreasonable and anticompetitive conduct supported by numerous competitive carrier submissions to the Commission, as the *Investigation Initiation Order* makes clear.⁷ These are serious allegations that, if true, as XO and other competitors contend, would cause tangible harm to competition and consumers. It is therefore in the public interest that the Commission investigate these allegations and adopt appropriate relief expeditiously. Accordingly, for all the

⁶ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, Order Initiating Investigation and Designating Issues for Investigation, WC Docket No. 15-247, DA 15-1194 ¶ 26 (rel. Oct. 16, 2015) ("Investigation Initiation Order").

⁷ *See id.* at ¶ 1.

reasons set forth herein, the Commission should deny the ILECs' Request.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2015, true and correct copies of the foregoing *Opposition of XO Communications, LLC to Joint Request for Extension of Time of AT&T Inc., Verizon, CenturyLink, and Frontier* were provided via first class U.S. Mail and/or electronic mail to the following:

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