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October 20, 2009

**Via Electronic Transmission
& Hand-Delivery**

Sharla Dillon, Docket Room Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505
Email: sharla.dillon@tn.gov

filed electronically in docket office on 10/20/09

**RE: Docket No. 09-00165 - Joint Application of CIMCO
Communications, Inc. and Comcast Phone of Tennessee, LLC
for Approval of the Transfer of Customer Base**


Dear Ms. Dillon:

On behalf of CIMCO Communications, Inc. and Comcast Phone of Tennessee, LLC (collectively "the Applicants"), enclosed for filing are an original and four (4) copies of Applicants' response to Data Request No. 1 in the above-referenced docket issued on October 13, 2009. Applicants request confidential treatment of the Applicants' Asset Purchase Agreement provided in Exhibit B.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,

FARRIS MATHEWS BOBANGO PLC


Charles B. Welch, Jr.

Enclosure
cc: Carlos Black (TRA) (via email)

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

IN THE MATTER OF THE JOINT)
APPLICATION OF CIMCO)
COMMUNICATIONS, INC. AND)
COMCAST PHONE OF TENNESSEE, LLC)
FOR APPROVAL OF THE TRANSFER OF)
CUSTOMER BASE)

DOCKET NO: 09-00165

**JOINT RESPONSES TO TENNESSEE REGULATORY AUTHORITY'S
DATA REQUEST NO. 1**

CIMCO Communications, Inc. ("CIMCO") and Comcast Phone of Tennessee, LLC ("Comcast Phone") (together, "Applicants"), by their undersigned counsel, hereby supplies responses to the Tennessee Regulatory Authority's ("TRA") Data Request No. 1. The numbered questions below correspond to the individual data requests.

Question No. 1: Have the applicants filed similar applications or notices with the FCC? If so, list any action taken and the associated docket number. If a schedule to complete the review of your application has been established by the FCC, provide such with your response.

Response to Question No. 1: Applicants filed a combined international and domestic application with the Federal Communications Commission ("FCC") on October 7, 2009 for authority to assign certain interstate and international customers and assets pursuant to Section 214 of the Communications Act of 1934, as amended, and sections 63.04 and 63.24 of the FCC's rules ("Joint 214 Application"). A copy of the Joint 214 Application is attached hereto as **Exhibit A**. The FCC has not taken any action in connection with the Applicants filing of the Joint 214 Application other than assigning a docket number, WC Docket No. 09-183, to the domestic component of the filing and a file number, File No. ITC-ASG-20091007-00438, to the

international component of the filing. Applicants anticipate that a schedule to review the Joint 214 Application will be established upon the FCC's issuance of a public notice(s). Applicants will supplement this response when that information becomes available.

Question No. 2: As required by FCC Rules in CC Docket No. 00-257, provide a copy of the self-certification letter filed with the FCC regarding transfer of customer base.

Response to Question No. 2: To date, Comcast Phone has not filed a self-certification letter with the FCC but intends to file a copy of the letter with the FCC no less than 30 days before the date of the transfer of the customer base in full compliance with the FCC's customer migration rules. Applicants will supplement this response with that letter once it has been filed.

Question No. 3: Provide a copy of the Asset Purchase Agreement the applicants entered into on September 16, 2009, that governs the customer base transfer.

Response to Question No. 3: The Applicants provide *confidentially and under seal* a copy of the Asset Purchase Agreement that the Applicants entered into on September 16, 2009 as **Exhibit B**. Due to the sensitive nature of this information, the Applicants respectfully request confidential treatment of the information provided in this Exhibit.

Respectfully submitted,

FARRIS MATHEWS BOBANGO PLC



Charles B. Welch Jr.
618 Church Street, Suite 300
Nashville, Tennessee 37219
Tel: (615) 726-1200
Fax: (615) 726-1776
Email: cwelch@farrismathews.com

Counsel for Applicants

Dated: October 20, 2009

LIST OF EXHIBITS

Exhibit A

Joint 214 Application

Exhibit B

Asset Purchase Agreement [**CONFIDENTIAL** – *Filed Under Seal*]

EXHIBIT A

Joint 214 Application

LAWLER, METZGER, KEENEY & LOGAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

CHARLES W. LOGAN
PHONE (202) 777-7724

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

October 7, 2009

Via Federal Express

Marlene H. Dortch, Secretary
Federal Communications Commission
c/o U.S. Bank – Government Lockbox # 979091
SL-MO-C2-GL
1005 Convention Plaza
St. Louis, MO 63101

Attention: FCC Government Lockbox – P.O. Box 979091

Re: Application of CIMCO Communications, Inc., Assignor, and
Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and
Comcast Business Communications, LLC, Assignees

Dear Ms. Dortch:

Enclosed for filing please find the Application of the above-referenced parties for authorization to assign certain customers and assets from CIMCO Communications, Inc. to Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC, together with a Form FCC 159 and a check in the amount of \$1,015 for the filing fee.


Please date-stamp the enclosed copy of this filing and return to me in the enclosed Federal Express envelope provided for that purpose.

The Application contains Confidential information subject to a request for confidential treatment pursuant to 47 C.F.R. §§ 0.457 and 0.459, a copy of which is attached. Therefore, the confidential information has been redacted in the enclosed public version of the Application. An unredacted, confidential version is being concurrently filed, under seal, with the Secretary's office in Washington, DC, together with the request for confidential treatment.

Marlene H. Dortch
October 7, 2009
Page 2 of 2

If you have any questions, please do not hesitate to call.

Sincerely,


Charles W. Logan

Enclosures

cc: William Dever
Christopher Killion
David Krech
Nancy Murphy
Tim Stelzig
Donald K. Stockdale, Jr.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
CIMCO Communications, Inc.)
Assignor,)
)
and)
)
Comcast Phone, LLC)
Comcast Phone of Michigan, LLC,)
and Comcast Business Communications, LLC)
Assignees,)
)
Combined International and Domestic Application)
for Authority Pursuant to Section 214 of)
the Communications Act of 1934, as Amended,)
to Assign Certain Customers and Assets of)
an Authorized Domestic and International Carrier)

APPLICATION

CIMCO Communications, Inc. ("CIMCO") and Comcast Phone, LLC ("Comcast Phone"), Comcast Phone of Michigan, LLC ("Comcast-MP"), and Comcast Business Communications, LLC ("Comcast-Business") (collectively, "Assignees")¹ (CIMCO and Assignees collectively, the "Applicants"), through their undersigned counsel, hereby request authorization pursuant to section 214 of the Communications Act of 1934, as amended, ("Communications Act"),² and sections 63.04 and 63.24 of the rules of the Federal

¹ Assignees are the Comcast entities that will be obtaining the interstate and international customers and related telecommunications assets from CIMCO and are each wholly-owned subsidiaries of Comcast Corporation ("Comcast").

² 47 U.S.C. § 214.

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Communications Commission (“Commission” or “FCC”),³ to assign certain interstate and international customers and assets of CIMCO to Assignees.

After expending billions of dollars in new investments over the past several years, Comcast, through its subsidiaries, now provides innovative voice services to over seven million residential customers. Comcast has become an effective competitive alternative to the incumbent telephone companies, thereby advancing the Commission’s goal of promoting intermodal competition in the residential marketplace. The proposed transaction will help Comcast to continue to expand this intermodal competition to serve medium-sized and enterprise business customers in the Chicago metropolitan area. Comcast currently serves few medium-to-large business voice customers and hence is effectively a new entrant to this market segment. Acquiring CIMCO’s enterprise customer base and other assets will enhance Comcast’s ability to compete with the incumbent local exchange carriers (“ILECs”) to serve those larger commercial customers. The proposed transaction will thus serve the public interest by promoting greater competition and consumer choice.

I. DESCRIPTION OF THE APPLICANTS

Comcast Corporation, through its operating subsidiaries including Assignees, provides video and data services to customers in 39 states and the District of Columbia, and also provides voice services to customers in 37 of those states plus the District. The contact information for Comcast is provided below in section III.

CIMCO offers a wide variety of telecommunications services including local exchange, long distance, and data services. CIMCO also offers certain information and

³ 47 C.F.R. §§ 63.04 and 63.24.

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telecommunications-related services. CIMCO's customer base consists almost exclusively of medium-sized and enterprise business customers. The contact information for CIMCO is provided below in section III. CIMCO's primary service area is Illinois, and in particular the Chicago metropolitan area, where it provides local exchange, interexchange and other telecommunications and data services. CIMCO also provides local exchange and other telecommunications services in Indiana, Michigan, Ohio, and Wisconsin (together with Illinois, the "Ameritech States"). In order to accommodate its customers within the Ameritech States who may have small operations in states other than the Ameritech States, CIMCO provides interexchange long distance telecommunications services and other data and information services, including in some locations local telephone services provided on a Voice over Internet Protocol ("VoIP") platform, in 44 states (including the District of Columbia) outside of the Ameritech States.

II. DESCRIPTION OF THE TRANSACTION

CIMCO and Assignees entered into an Asset Purchase Agreement dated September 16, 2009 ("Agreement") by which CIMCO will sell to Assignees and their operating subsidiaries a variety of domestic and international telecommunications assets, including telephone service customer accounts and related data, databases, and customer records needed to support the provision of interstate, interexchange and international telecommunications services to those customers in 46 states, including primarily in the Ameritech States. The instant transaction is part of a larger transaction in which the Assignees will acquire the telecommunications, data and information services businesses of CIMCO and its affiliate, Capraro Development, LLC ("Capraro Development"). Specifically, Assignees, by themselves and through their operating

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subsidiaries, will acquire CIMCO's telecommunications operating assets applicable to their individual service areas and Comcast Phone of Illinois, LLC ("Comcast-Illinois") will acquire the assets and business of Capraro Development through the merger of Capraro Development with and into Comcast-Illinois.⁴ The proposed transactions will not result in the loss or impairment of service to any customers.

III. INFORMATION REQUIRED BY SECTION 63.24 OF THE COMMISSION'S RULES

In accordance with section 63.24(e)(2) of the Commission's rules,⁵ the Applicants submit the following information in support of this Application:

- (a) CIMCO has a principal business address of 1901 South Meyers Road, 7th Floor, Oakbrook Terrace, Illinois 60181 and a telephone number of 877-691-8080.

Assignees have a principal business address of One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, Pennsylvania, 19103 and a telephone number of 215-286-5286.

- (b) CIMCO is a corporation organized under the laws of the State of Illinois.

Assignees are a limited liability companies organized under the laws of the State of Delaware.

- (c) Correspondence concerning this application should be sent to:

Correspondence to CIMCO

William F. Dvorak, Jr. Chief Financial Officer
CIMCO Communications, Inc.
1901 South Meyers Road, 7th Floor
Oakbrook Terrace, IL 60181
630-691-9112

⁴ Capraro Development provides resold wholesale local exchange services on an intracompany basis only to CIMCO in Illinois. It therefore currently operates solely as a private carrier and the merger of Capraro Development with and into Comcast-Illinois will therefore not involve the transfer of any customers or lines that would constitute an assignment requiring Commission approval pursuant to Section 214.

⁵ 47 C.F.R. § 63.24(e)(2).

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with a copy to:

Jean L. Kiddoo
Brett P. Ferenchak
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006
202-373-6034
jean.kiddoo@bingham.com
brett.ferenchak@bingham.com
Counsel to CIMCO Communications, Inc.

Correspondence to Assignees

Kathryn Zachem
Vice President
Comcast Corporation
2001 Pennsylvania Avenue N.W., Suite 500
Washington, DC 20006
202-379-7134

with a copy to:

A. Richard Metzger, Jr.
Charles W. Logan
Stephen J. Berman
Lawler, Metzger, Keeney & Logan, LLC
2001 K Street, N.W., Suite 802
Washington, DC 20006
202-777-7700
blogan@lawlermetzger.com
Counsel to Comcast

- (d) CIMCO is authorized to provide domestic interstate common carrier services pursuant to blanket authority under section 63.01 of the Commission's rules⁶ and, on June 12, 1993, was granted authority under section 214 of the Communications Act to resell the international switched services of other carriers (File No. ITC-214-19930419-00064 (Old File No. ITC-93-168)).

Assignees are authorized to provide domestic interstate common carrier services pursuant to blanket authority under section 63.01 of the Commission's rules.⁷ In

⁶ 47 C.F.R. § 63.01.

⁷ *Id.*

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addition, the Assignees have been granted authority under section 214 of the Communications Act for the following international services:

- Comcast Phone, LLC, Global Resale (File No. ITC-214-19970801-00449);
 - Comcast Phone of Michigan, LLC, Global Resale and Global or Limited Global Facilities-Based (File No. ITC-214-20031017-00480);
 - Comcast Business Communications, LLC, Limited Global Resale (File No. ITC-214-19961122-00593).
- (e) Comcast hereby certifies that no party other than Comcast Corporation and its wholly-owned intermediate subsidiaries owns a 10 percent or greater direct or indirect interest in Assignees. Comcast Corporation is a United States corporation organized under the laws of the State of Pennsylvania with a principal place of business at One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, Pennsylvania, 19103 and has a principal business of providing video, voice and data services through its operating subsidiaries. Please note that Mr. Brian L. Roberts, Comcast Corporation's Chairman and Chief Executive Officer, is the beneficial owner of stock that represents 33-1/3 percent of the combined voting power of the two classes of Comcast Corporation's voting common stock. Mr. Roberts is a United States citizen and his address is One Comcast Center, 1701 John F. Kennedy Boulevard, Philadelphia, Pennsylvania, 19103.
- (f) By the attached certification, Assignees certify that they are not foreign carriers, as defined in section 63.09(d) of the Commission's rules, nor are they affiliated with a foreign carrier within the meaning of section 63.09(e) of the Commission's rules, nor do they have interlocking directorates with a foreign carrier within the meaning of section 63.09(g) of the Commission's rules.⁸
- (g) By the attached certification, Assignees certify that they do not seek to provide international telecommunications services to any destination country to which paragraphs (j)(1) through (j)(4) of section 63.18 of the Commission's rules apply.⁹
- (h) Sections 63.18(k) through (m) of the Commission's rules are not applicable to Assignees.
- (i) By the attached certification, Assignees certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any

⁸ 47 C.F.R. § 63.09(d)-(e), (g).

⁹ 47 C.F.R. §§ 63.18(j)(1)-(4).

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United States international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

- (j) By the attached certifications, Assignees and CIMCO certify, pursuant to sections 1.2001 through 1.2003 of the Commission's rules, that no party to this Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

IV. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES

The information required under section 63.04 of the Commission's rules is provided below.¹⁰

Sections 63.04(a)(1) through (a)(5)

Section III(e) above provides information concerning Assignees' ownership structure.

William A. Capraro, Jr., CIMCO's founder, directly or indirectly controls 100 percent of CIMCO's equity. Mr. Capraro is a U.S. citizen with an address of c/o CIMCO Communications, Inc., 1901 South Meyers Road, 7th Floor, Oakbrook Terrace, Illinois 601.

Paragraphs (a) through (c), (e), and (j) of the preceding section of this Application contain the remainder of the information required by sections 63.04(a)(1) through (a)(5) of the Commission's rules.

Section 63.04(a)(6) – Description of Transaction

The transaction is described in section I of this Application.

Section 63.04(a)(7) – Geographic Areas

Assignees' affiliates offer retail interconnected VoIP service to residential and business customers. To provide this service, Assignees' VoIP affiliates, which operate as uncertificated

¹⁰ 47 C.F.R. § 63.04.

information service providers, obtain wholesale telecommunications services (including transport, interconnection with the public switched telephone network ("PSTN"), access to emergency services, exchange access, and numbering resources) from Assignees' state-certificated competitive local exchange carrier ("CLEC") affiliates, with the Comcast CLECs entering into interconnection agreements with ILECs.¹¹ Assignees' CLEC affiliates are authorized to offer domestic telecommunications services in a number of states, including the Ameritech States, which are the geographic areas where CIMCO provides local exchange services, and 31 of the other 41 states where CIMCO provides domestic and international telecommunications services.¹²

CIMCO provides local exchange, interexchange, and data telecommunications services in the Ameritech States. CIMCO also provides intrastate and/or interstate long distance and/or data telecommunications services in the following other states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

¹¹ Assignees' VoIP affiliates may also lease interconnection facilities from unaffiliated telecommunications carriers.

¹² To the extent that no Comcast CLEC affiliate is authorized to provide intrastate long distance telecommunications services in a state where CIMCO provides intrastate long distance telecommunications services, a new Comcast CLEC affiliate will obtain such authority prior to the transaction being completed.

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As described in more detail below, the market segments that Assignees and CIMCO serve have little overlap. Assignees primarily serve mass market customers, with a small number of medium-sized and enterprise business customers, whereas CIMCO primarily services medium-sized and enterprise business customers with a small number of small-sized business customers. CIMCO has no residential customers.

Section 63.04(8) – Streamlined Treatment

Applicants have not requested streamlined treatment of the Application.

Section 63.04(a)(9) – Other Applications

Except for the filing of this application in the FCC’s International Bureau Filing System (“IBFS”) to accomplish the assignment of CIMCO’s international section 214 authorization, Applicants have not submitted any other applications to the Commission that are related to the transaction described in this Application.

Section 63.04(a)(10) – Special Consideration

Applicants do not request special consideration because neither CIMCO nor Assignees is facing imminent business failure.

Section 63.04(a)(11) – Waiver Requests

In section V of this application, Applicants request a waiver of section 652(b) of the Communications Act¹³ in the event that the Commission deems that statutory provision to apply. There are no separately filed waiver requests being sought in connection with the transaction described in this Application.

¹³ 47 U.S.C. § 572(b).

Section 63.04(a)(12) – Public Interest Statement

The Commission's approval of this Application would serve the public interest, convenience and necessity. Adding CIMCO's expertise in providing voice and data services to medium-sized and enterprise business customers to Comcast's network and other resources will enhance Comcast's ability to compete and bring consumers the benefits that derive from robust competition. Moreover, Assignees' operations are overseen by a well-qualified management team with substantial experience and technical expertise, which will be augmented by the employees of CIMCO and CIMCO's expertise in serving business customers.

The transaction will greatly benefit CIMCO's existing customers. Assignees' affiliates are proven industry leaders in upgrading their broadband transmission systems and providing residential customers with innovative, high quality facilities-based voice, data, and Internet access services. Assignees look forward to delivering that expertise and leadership to medium to large enterprise customers as augmented by the expertise and resources CIMCO has developed in serving that market segment. The proposed transaction will not disrupt service to CIMCO's current customers. Assignees propose to offer service on the same rates, terms, and conditions of the services that CIMCO currently offers, although, as with any other service provider, these rates, terms, and conditions may be subject to change in the future as part of the normal course of business. Assignees are committed to ensuring that the affected customers continue to receive high-quality voice and other services. Finally, customers whose accounts would be transferred to Assignees or their subsidiaries in accordance with the Agreement will be notified of the proposed transaction and the change in their provider from CIMCO to Assignees in accordance with the applicable FCC and state rules.

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V. THE PROPOSED TRANSACTION SATISFIES THE WAIVER CRITERIA SET FORTH IN SECTION 652 OF THE COMMUNICATIONS ACT

Section 652(b) of the Communications Act generally prohibits a cable operator from acquiring certain types of local exchange carriers (“LECs”) when its cable franchise area overlaps with the LEC’s telephone service area.¹⁴ The Applicants request a waiver of the buy-out prohibition under section 652(d)(6)(A)(iii).¹⁵ Under that provision, the Commission may grant a waiver where “the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served” and the local franchising authorities in question approve of the waiver.¹⁶

¹⁴ Section 652(b) of the Act states:

No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator’s franchise area.

47 U.S.C. § 572(b). *See also* 47 C.F.R. § 76.505(b).

¹⁵ 47 U.S.C. § 572(d)(6)(A)(iii). Applicants believe that the Commission could reasonably interpret section 652(b) as not applying to the proposed transaction because CIMCO did not begin offering telephone exchange service until after January 1, 1993. *See* 47 U.S.C. § 572(e). Applicants, however, request that the Commission process their application on the basis of their waiver request, and to assume that section 652(b) applies to this transaction without deciding whether, in the context of a cable operator’s acquisition of a CLEC, section 652(b) applies to CLECs that were not providing telephone exchange service as of January 1, 1993. This would permit the Commission to process the instant application more expeditiously and on the narrow grounds presented by the waiver request. In the event the Commission addresses the broader question of the scope of section 652(b) in this or a future proceeding, Applicants reserve their right to express their views on this issue in an appropriate filing at such time.

¹⁶ 47 U.S.C. § 572(d)(6)(A)(iii) & (B).

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The proposed transaction satisfies these waiver criteria. The proposed transaction will have no anticompetitive effects, because CIMCO and Comcast have focused their voice services on different market segments and for the most part do not compete with each other. Rather, the transaction's primary effects will be to (i) help Comcast to compete more effectively in the medium-sized and enterprise business marketplace, (ii) provide substantial benefits to CIMCO's existing customers, and (iii) promote facilities-based competition. In these ways, the transaction will help meet "the convenience and needs of the community to be served."¹⁷

A. The Transaction Will Have No Anticompetitive Effects

The proposed transaction will have no anticompetitive effects. CIMCO and Comcast have marketed their voice service primarily to different market segments, and the two companies for the most part do not compete with one another. Although CIMCO serves some smaller-size business customers, it generally targets customers [Begin Confidential] [REDACTED] [REDACTED]¹⁸ [End Confidential] and CIMCO's customer base primarily consists of what Comcast would consider to be the medium to large business segment. CIMCO does not provide service to residential consumers.¹⁹ In contrast to CIMCO, Comcast has to date predominantly focused on providing services to "mass-market" customers. The large majority of these mass-market customers are residential customers served by Comcast Digital Voice ("CDV").

Comcast's mass-market customer base also includes small businesses [Begin Confidential]

[REDACTED] [End Confidential] served by Comcast Business Class service,

¹⁷ 47 U.S.C. § 652(d)(6)(A)(iii).

¹⁸ Declaration of William A. Capraro, Jr., attached as Appendix A, ¶ 7 (Oct. 5, 2009) ("Capraro Declaration").

¹⁹ *Id.*

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which Comcast initiated in 2007. The cable modem and voice service provided to Comcast Business Class customers are technically very similar to those that Comcast sells to its residential customers, and Comcast's Business Class customers generally are offered standardized voice products similar to those offered to residential customers, although the Business Class offerings do include certain business-oriented features.²⁰

[Begin Confidential] [REDACTED]

[REDACTED]²¹ [End Confidential] Unlike CIMCO, Comcast has only recently initiated efforts to market voice, data, and Internet access products to the medium-sized business market segment, [Begin Confidential] [REDACTED]

²⁰ Declaration of William Stemper, attached as Appendix B, ¶¶ 5-7 (Oct. 6, 2009) ("Stemper Declaration"). Because Comcast Business Class voice customers are generally small businesses and receive services similar to those received by CDV customers, it would be appropriate, therefore, for the Commission to treat all current CDV and Comcast Business Class Voice customers as "mass-market" customers. *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review; Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, ¶ 22 n.72 (2007); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 89 n.259 (2007) ("*AT&T-BellSouth Merger Order*"). The Commission has distinguished the mass-market customer segment from the retail enterprise market segment, including medium to large-size businesses. *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914, ¶ 10 (2003); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 124 (2003), as amended by *Errata*, 18 FCC Rcd 19020 (2003), *rev'd in part on other grounds*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*Triennial Review Order*"); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, ¶ 24 (1998) ("*MCI-WorldCom Merger Order*").

²¹ Stemper Declaration ¶ 6; Capraro Declaration ¶ 7.

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[REDACTED] [End Confidential] As a result, in the Chicago area, Comcast

[Begin Confidential] [REDACTED]

[REDACTED] [End Confidential] and currently serves only a small number of medium-sized and enterprise business customers with multiple locations.²²

Because Comcast and CIMCO focus on different market segments, the transaction will have no material impact on horizontal concentration in any relevant product market. Even to the extent there is some small horizontal product market and geographic market overlap between the Applicants (such as in the provision of service to small business customers in the same area), the transaction will have no anticompetitive effect since [Begin Confidential] [REDACTED]

[REDACTED]²³ [End

Confidential] The total number of CIMCO access lines is [Begin Confidential] [REDACTED] [End Confidential] of the number of switched access lines served by AT&T's retail business group (21.8 million) [Begin Confidential] [REDACTED] [End Confidential] of the total number of business lines served by all carriers (64.8 million).²⁴ CIMCO's local exchange customers are spread across the five Ameritech States. [Begin Confidential] [REDACTED]

²² Stemper Declaration ¶ 7.

²³ Capraro Declaration ¶ 7.

²⁴ Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, "Local Telephone Competition: Status as of June 2008," at Table 2 (July 2009), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf>; AT&T's 2008 Annual Report at 39 (*available at*: <<http://www.att.com/gen/investor-relations?pid=9186>>).

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[REDACTED]

[REDACTED] 25

[End Confidential] Even after their proposed acquisition of CIMCO, Comcast will face robust competition from much larger market participants.²⁶

B. The Transaction Will Foster Competition

The transaction will further Comcast's efforts to offer competitive voice, data, and Internet access services to medium-sized and enterprise business customers in the Chicago metropolitan area and elsewhere, while also providing significant benefits to CIMCO's current customers. AT&T and Verizon (the "Bell Operating Companies" or "BOCs") are clearly the leading providers of these services to medium-sized and enterprise business customers, including the states in the former Ameritech region (now part of AT&T's footprint) where CIMCO primarily offers service. The Commission has stated that "the market share calculations indicate a high level of concentration in most franchise areas for all relevant services for both *mid-sized* and *large* enterprise customers with significant operations in SBC's region after the [SBC – AT&T] merger."²⁷ The Commission has also previously stated that the "[l]arge interexchange carriers and the BOCs currently have the biggest share of the market."²⁸ The Bell Operating

²⁵ Capraro Declaration ¶ 8. [Begin Confidential] [REDACTED] [End Confidential] *Id.*

²⁶ See, e.g., *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 73 (2005) (*SBC-AT&T Merger Order*) (finding no anticompetitive effects arising from the AT&T-SBC merger in the retail enterprise segment, and describing market conditions in this segment in Illinois and other markets).

²⁷ *Id.* ¶ 70 (emphasis in original).

²⁸ *Id.* ¶ 73.

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Company share of the medium-sized and enterprise business marketplace has subsequently increased after two of the nation's largest interexchange carriers, legacy AT&T and MCI, were acquired by SBC and Verizon, respectively, and AT&T subsequently merged with BellSouth.²⁹

Cable operators, on the other hand, have "only the smallest fraction of [the enterprise marketplace] revenue pie."³⁰ In a 2007 order denying Verizon's request for forbearance in a number of markets, the Commission noted the "comparatively limited role of the cable operators in serving enterprise customers."³¹ The Commission further stated that "[m]ost of the cable operators state that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages."³² The Commission previously found record evidence "suggest[ing] that most of the businesses served by cable companies are not large enterprise customers, but mass market small businesses," and that it is "reasonable to infer that most of the businesses that cable companies serve, or are likely to serve, are home

²⁹ See *SBC-AT&T Merger Order*, *id.*; *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) ("*Verizon-MCI Merger Order*"); *AT&T-BellSouth Merger Order*, 22 FCC Rcd 5662.

³⁰ "Cable vs. Telcos: The Battle for the Enterprise Market," 4 Heavy Reading No. 2, Executive Summary at 1 (Feb. 2006), *available at*: <<http://www.heavyreading.com/>> ("Cox Communications, which is widely acknowledged as the most aggressive MSO in commercial services, generates only 6 percent of its total revenue from the enterprise sector, and its 2004 enterprise revenue total of \$386 million represents less than 0.4 percent of that year's total enterprise spending on telecom services.").

³¹ *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293, ¶ 37 (2007).

³² *Id.* ¶ 37 n. 116.

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offices or very small stand-alone businesses.”³³ Cable operators have traditionally provided cable modem service to these small business customers. As the Commission indicated, “bandwidth, security, and other technical limitations on cable modem service render it an imperfect substitute for service provided over DSL loops” that are typically demanded by enterprise customers.³⁴

Although Comcast has established a firm foothold in the residential voice sector, with over seven million CDV customers, it is only in the early stages of entering the medium-sized and enterprise business marketplace. To succeed in this endeavor, Comcast must develop the resources to meet the unique demands of the medium-sized and enterprise business sector. Comcast’s cable networks currently are primarily located in residential areas and, consequently, Comcast’s focus until recently has been on serving residential customers. Thus, in expanding its product offerings to include medium-sized and enterprise business customers, Comcast clearly will need to extend its facilities, including high-capacity facilities, to provide more extensive coverage of business districts.

In addition, as the Commission has found and as described in the Stemper Declaration, the voice, data, and Internet access products as well as the sales expertise needed to serve medium-sized and enterprise business customers are quite different from those needed to serve residential and small business customers.³⁵ As the Commission has stated, “[t]o meet the

³³ *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, ¶ 193 (2005), *petition for review denied*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (2006) (“*Triennial Review Remand Order*”).

³⁴ *Id.*

³⁵ Stemper Declaration ¶ 9.

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business demands of enterprise customers, competitive carriers must meet more stringent design and operational standards with higher capacity and more reliability.”³⁶ The Commission has also observed that enterprise customers “tend to be sophisticated purchasers of communications services,”³⁷ and that they “demand extensive, sophisticated packages of services.”³⁸ Enterprise customers often select their communications providers after extensive negotiations that involve a range of tangible and intangible factors that go well beyond price. These customers require quality of service guarantees for the data and Internet services they use, and providers typically must issue credits when service falls below the contractually specified levels.

The proposed transaction will bolster Comcast’s ability to meet the unique demands of the medium-sized and enterprise business market segment, and thus contribute to Comcast’s successful entry into this sector as a competitive alternative to the BOCs in the Chicago area and elsewhere. As described in the Stemper Declaration, the transaction will enable Comcast to take advantage of the experience, expertise, and capabilities of CIMCO’s sales force and key managers to market voice, data, and Internet access products to sophisticated commercial customers.³⁹ Following years of experience in this sector, CIMCO understands the complex needs of medium-sized business customers, and has well-developed, efficient processes for marketing, selling, and providing service to this market segment. Overall, Comcast’s ability to leverage this expertise should allow it to establish its brand more quickly and more efficiently

³⁶ *Triennial Review Order* ¶ 46.

³⁷ *SBC-AT&T Merger Order* ¶ 75.

³⁸ *Triennial Review Order* ¶ 129.

³⁹ Stemper Declaration ¶ 10.

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among medium-sized and enterprise business customers than if Comcast had to develop those assets through its own marketing efforts.

As described in the Stemper Declaration, the proposed transaction will also generate significant benefits for CIMCO's customers located in buildings that can be served by Comcast's existing plant.⁴⁰ First, Comcast's extensive Chicago-area infrastructure will allow Comcast to deliver new, more valuable services, such as Metro Ethernet, to CIMCO's customers. Today, CIMCO provides service to these customers by leasing high-capacity loop and transport facilities and associated services from the ILECs and other network operators, either on an unbundled network element ("UNE") basis under section 251(c)(3) of the Communications Act or on the basis of UNE-replacement arrangements following the Commission's 2005 decision limiting the availability of certain UNEs under section 252(c)(3).⁴¹ In addition to local loops, CIMCO leases T1 lines and PRI service (digital handoff of a T1 to the customer's PBX). CIMCO also offers services on a resale basis to some of its customers in Illinois and to all of its customers outside of Illinois. Following the transaction, Comcast anticipates that in many cases it will make operational sense – for both the customers and Comcast – to move Chicago area customers from leased facilities and resold services to Comcast facilities. The migration of CIMCO customers to Comcast facilities will promote facilities-based competition in the medium-sized and enterprise

⁴⁰ *Id.* ¶¶ 11-13.

⁴¹ *See Triennial Review Remand Order* ¶ 3.

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business market, an objective that the Commission has characterized as a fundamental policy goal of the Communications Act.⁴²

Second, in buildings that Comcast's existing network can serve, the transaction will allow CIMCO customers to gain access quickly to an expanded array of innovative service offerings. Utilizing its existing infrastructure, Comcast will be able to provide many of CIMCO's existing customers with Metro-Ethernet-based services and other high-capacity data products. These services will provide these customers with much greater bandwidth and functionality than CIMCO's legacy TDM-based voice and data technology. In addition, Comcast's extensive resources and its research and development efforts will help ensure that the services provided to CIMCO's customers keep pace with any new or innovative offerings elsewhere in the industry.⁴³

Current CIMCO customers will also gain access to other Comcast services, separately and in bundles. These services include Comcast's cable television service, Hosted Microsoft Communications Services, and wireless broadband Internet access service. With respect to the latter, Comcast this summer began offering its Portland, Oregon customers wireless broadband cards so that they can connect their laptops to the Internet through Clearwire's mobile WiMAX

⁴² See *Bright House Networks, LLC, et al. v. Verizon California, Inc., et al.*, Memorandum Opinion and Order, 23 FCC Rcd 10704, ¶ 27 (2008) (noting that the Commission has repeatedly described the promotion of facilities-based competition as a fundamental policy of the Communications Act); *Triennial Review Remand Order* ¶ 3 (adopting rules intended to "spread the benefits of facilities-based competition to all consumers"); *Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, 16 FCC Rcd 20641, ¶ 5 (2001) (subsequent history omitted) (stating that "facilities-based competition, of the three methods of entry mandated by the Act, is most likely to bring consumers the benefits of competition in the long run").

⁴³ *Verizon-MCI Merger Order* ¶ 207 (recognizing that, by broadening its customer base, a service provider "will have an increased incentive to engage in basic research and development").

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network. Comcast plans to extend wireless broadband options to its customers in other markets as well. In the future, Comcast's medium-sized business customers, including CIMCO's customers, should be able to take advantage of these and other innovative offerings.

C. LFA Approvals

Section 652(d)(6) states that the Commission may waive section 652(b) if any of the criteria set forth in subsection (A) are satisfied and if "the local franchising authority approves of such waiver."⁴⁴ Neither section 652 nor the legislative history defines the process for obtaining such local franchising authority (LFA) approvals, leaving it to the Commission's reasonable discretion to do so. The Commission should establish LFA procedures for this proceeding so that the LFAs in question have a reasonable opportunity to express their view of the waiver request, while at the same time avoiding an overly burdensome process that would effectively nullify the waiver provision Congress established.

In particular, the Applicants urge the Commission to establish the following process for obtaining approvals from the LFAs in areas in which CIMCO is providing telephone exchange service in a Comcast franchise area.⁴⁵ The Applicants suggest that in the Public Notice seeking comment on the instant application, the Commission include a separate section that invites the LFAs in the overlap areas to file comments expressing their approval or disapproval of the Applicants' waiver request. The Public Notice would further state that (1) the Commission will not grant the Applicants' waiver request in any local franchise area in which an LFA has expressed disapproval on grounds related to the proposed transaction unless Comcast resolves

⁴⁴ 47 U.S.C. § 572(d)(6)(B).

⁴⁵ See Appendix C (listing overlap areas).

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the issues raised by the LFA and the LFA withdraws its disapproval by the time the FCC acts on the application; and (2) the Commission will deem an LFA to have approved of the waiver request if the LFA does not file comments within 30 days of being served with the Public Notice. The Public Notice would instruct the Applicants to serve the Public Notice on each of the LFAs in the overlap areas. The Commission should also clarify in the Public Notice that LFAs may only object to the waiver request on grounds related to the proposed transaction, and that objections or claims based on unrelated or extraneous matters will not constitute grounds for denying the waiver request.⁴⁶

The process described above would establish a reasonable mechanism for implementing the LFA approval process under section 652(d)(6)(B). The process would provide the LFAs with actual notice of the waiver request and a sufficient opportunity to express their views concerning the request. An LFA that objects to the transaction can take the simple step of filing comments with the Commission within thirty days. LFAs that do not object can either file

⁴⁶ Such a clarification is necessary to implement the waiver process established by section 652(d)(6). Section 652(d)(6)(B) limits the LFA's approval authority to reviewing "such waiver," *i.e.*, a waiver based on a finding that "the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." 47 U.S.C. § 572(d)(6)(A)(iii) (emphasis added). The text of the statute thus limits the LFA's review to the effects of the proposed transaction, not matters unrelated to the transaction. If LFAs were permitted to object on unrelated grounds, parties would effectively be denied the opportunity to seek a waiver based on the criteria spelled out in the statute, an outcome that clearly would run contrary to Congressional intent. Restricting LFA objections to matters related to the transaction is also consistent with the Commission's longstanding policy against entertaining extraneous issues and disputes raised by parties in license transfer proceedings. *See, e.g., Applications of Craig O. McCaw and American Tel. & Tel. Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, ¶ 123 (1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995); *MCI-WorldCom Merger Order* ¶ 215; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc. to AOL Time Warner, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 6547, ¶ 6 (2001).

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comments expressing approval or take no further action, thereby minimizing the burden section 652(d)(6)(B) places on LFAs. The reasonableness of this proposed process is demonstrated by the fact that there are numerous other contexts in which LFAs are similarly deemed to have approved a transaction or application if they do not act within thirty days or less.⁴⁷

Without such a process, the Applicants would potentially face indefinite delays in the processing of their waiver request which would effectively result in the denial of their application. There are 274 franchising authorities that are subject to the LFA approval process for this proposed transaction under section 652(d)(6)(B).⁴⁸ There is a significant likelihood that a large number of these LFAs will take no steps to express their view regarding the waiver request, even though they have no objection to the request. Comcast's experience in the Adelphia-Comcast-Time Warner license transfer transactions illustrates the potential problem.⁴⁹

⁴⁷ See 47 C.F.R. § 76.502(b) (requiring LFAs that find a cable operator's Form 394 request to transfer a cable television franchise to be incomplete to inform the cable operator of any missing information within 30 days or be deemed to have accepted the filing as complete); 47 C.F.R. §§ 76.907(a), 76.7(b)(1) (providing that the LFA has 20 days to file an opposition after a cable operator files a petition for effective competition with the Commission); 47 C.F.R. § 76.1603(c) (requiring cable operators to give the LFA 30 days advance notice of changes to rates, programming services, or channel positions); Michigan CL § 484.3303(3) (providing the LFA 30 days to act on a franchise application or the application is deemed granted).

⁴⁸ As of the date of this filing, there are 298 LFAs in which Comcast provides cable television service and in which CIMCO provides telephone exchange service. (This number is subject to change to the extent any future gain or loss of customers by either company affects the number of overlap areas.) However, 25 of these LFAs are in Indiana, where the Indiana Utility Regulatory Commission ("IURC") has been designated as the sole franchising authority for the provision of video service in Indiana. See Indiana Code § 8-1-34-16(a). Counting the IURC, there are consequently 274 franchising authorities implicated by the waiver approval process for this transaction.

⁴⁹ See *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Filed by Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006).

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The parties to that transaction notified more than 1500 LFAs as part of the LFA regulatory review process, yet almost half of those LFAs took no action within the time period provided by Communications Act, and the transfer requests were deemed approved by these LFAs.⁵⁰ There are likely to be a far higher percentage of LFAs that elect to take no action with respect to the instant waiver request given that the proposed transaction involves very few customers in any individual LFA as well as the fact that the LFAs do not regulate CIMCO's service and CIMCO does not use any local rights of way. With such a high non-response rate from LFAs that do not actually disapprove of the waiver request, the proposed transaction would effectively be denied without a thirty-day notice – "deemed approval" process. This outcome would be directly contrary to Congressional intent, as it would nullify the waiver process established by Congress in section 652(d)(6).

In addition, the delays and uncertainty created by an indefinite LFA approval process would have a significant adverse impact on CIMCO's business. Delay between the announcement of a transaction and its consummation creates substantial uncertainty and therefore disruption of the business of the company to be acquired. Operation of the CIMCO business 'in the ordinary course' during an extended approval process would become virtually impossible, as it would be difficult for CIMCO to make long term strategic decisions and to enter into vendor and other contracts during the transition period. Moreover, competitors typically use the opportunity to inject uncertainty in the minds of both customers and employees of the business to lure them away, a result that would substantially devalue the CIMCO business. The

⁵⁰ 47 U.S.C. § 537.

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Commission's specification of a procedure that enables the waiver process to move forward promptly and with a defined timetable is therefore essential to avoid substantial harm to CIMCO.

The Applicants consequently request that the Commission adopt the procedure described above for purposes of determining whether the LFAs in the Comcast-CIMCO overlap areas approve of the waiver request. The Commission has ample authority to adopt LFA approval procedures in this adjudicatory proceeding.⁵¹


⁵¹ Although administrative agencies may not use adjudicatory proceedings to establish new, generally applicable and enforceable standards of conduct in the absence of a pre-existing binding norm, they do have discretion to use an adjudicatory proceeding to develop policies and procedures for applying existing regulatory requirements. For example, in its proceedings reviewing the section 271 applications filed by the Bell Operating Companies, the Commission established policies and procedures specifying the showings that were required to satisfy the various elements of the section 271 check list without the use of a notice and comment rulemaking process. See, e.g., *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization to Provide In-Region, InterLATA Services in California*, Memorandum Opinion and Order, 17 FCC Rcd 25650, ¶ 19 (2002). Moreover, neither rulemaking proceedings nor prior notice is required to establish procedures governing applications or waiver requests, including the proposed LFA approval process described above. See 5 U.S.C. § 553(b) (unless notice or hearing is required by statute, no rulemaking is necessary for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice"); *Bachow Communications, Inc. v. Federal Communications Commission*, 237 F.3d 683, 685-90 (D.C. Cir. 2001) (denying a claim that the Commission should have initiated a rulemaking proceeding before abrogating an applicant's right to cure mutual exclusivity because such rules are procedural and therefore are "exempt from the Administrative Procedure Act's notice and comment requirement"); *Ranger v. Federal Communications Commission*, 294 F.2d 240, 243-44 (D.C. Cir. 1961) (denying an argument that the Commission should have initiated a rulemaking proceeding to adopt procedural rules for assessing applications for broadcast stations and finding that procedural changes are not subject to formal rulemaking requirements).

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VI. CONCLUSION

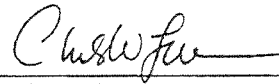
For the reasons stated herein, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the above-described transaction.

Respectfully submitted,



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Counsel for Assignees

Dated: October 7, 2009

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CERTIFICATION

I, Brian A. Rankin, Vice President and Deputy General Counsel, Comcast Cable Communications, LLC, hereby certify that the information in this attached application as it pertains to Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC (collectively, "Comcast") and their affiliates is true and correct to the best of my knowledge and that Comcast:

- (1) is not (a) a foreign carrier, as defined in Section 63.09(d) of the Federal Communications Commission's ("FCC's") rules or (b) affiliated with a foreign carrier within the meaning of Section 63.09(e) of the FCC's rules;
- (2) does not seek to provide international telecommunications services to any destination country to which paragraphs (j)(1)-(4) of Section 63.18 of the FCC's rules apply;
- (3) has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future; and
- (4) pursuant to Sections 1.2001 through 1.2003 of the Commission's rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a, as amended), is not subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this fifth day of October 2009.




Brian A. Rankin
Vice President, Deputy General Counsel
Comcast Cable Communications, LLC

VERIFICATION

I, William Dvorak, state that I am Chief Financial Officer of CIMCO Communications, Inc. ("CIMCO"), a party to the foregoing filing; that I am authorized to make this Verification on behalf of CIMCO; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document with respect to CIMCO are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29 day of September, 2009.



William Dvorak
Chief Financial Officer
CIMCO Communications, Inc.

Appendix A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
CIMCO Communications, Inc.)
Assignor,)
)
and)
)
Comcast Phone, LLC)
Comcast Phone of Michigan, LLC, and)
Comcast Business Communications, LLC)
Assignees,)
)
Combined International and Domestic Application)
for Authority Pursuant to Section 214 of)
the Communications Act of 1934, as Amended,)
to Assign Certain Customers and Assets of)
an Authorized Domestic and International Carrier)

DECLARATION OF WILLIAM A. CAPRARO, JR.

I, William A. Capraro, Jr., hereby declare that the following is true and correct to the best of my knowledge, information and belief:

1. I am the founder and Chief Executive Officer of CIMCO Communications, Inc. ("CIMCO"). I founded CIMCO in 1986 and currently directly or indirectly control 100% of CIMCO's equity.

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2. My business address is 1901 S. Meyers Road, 7th Floor, Oakbrook Terrace, Illinois 60181. I oversee much of the day-to-day operations of CIMCO and am familiar with all aspects of CIMCO's business operations.

3. I understand that this declaration will be used in connection with the Applications being filed the above-captioned matter.

4. CIMCO began providing long distance telecommunications services in 1989. In 1995, CIMCO began offering data and Internet services, and in 1997 CIMCO began offering telephone exchange services. After providing service solely through resale for a number of years, CIMCO acquired its own switch and began providing facilities-based telecommunications services in 2004 in Illinois and certain other states, but continues to use the "last mile" local loop facilities of other carriers. CIMCO did not provide telephone exchange service in any market, either as a reseller or as a facilities-based carrier, on or before January 1, 1993.

5. CIMCO currently offers a wide range of integrated communications services. These services include traditional local exchange and interexchange telecommunications services, voice over Internet protocol ("VoIP") and data services, frame relay, private line, MPLS/VPN services, network managing services, data center services, conferencing services, and billing services.

6. CIMCO's primary service area is Illinois, and in particular the Chicago metropolitan area. CIMCO also provides local exchange and other telecommunications services in Indiana, Michigan, Ohio, and Wisconsin (the "Ameritech States"). However, nearly all of CIMCO's local exchange customers are located in, or have at least one service location in, Illinois. In states other than the Ameritech States, CIMCO provides various data and voice information services and interexchange long distance telecommunications services, primarily as

an accommodation to its customers within the Ameritech States who may have small operations in other areas. However, any local telephone services offered in those states is provided on a VoIP platform.

7. ****Begin confidential** [REDACTED] **End confidential**** Generally, CIMCO targets business customers ****Begin confidential** [REDACTED] **End confidential**** but also serves some smaller business customers. CIMCO does not provide telecommunications or other services to residential consumers. ****Begin confidential** [REDACTED] **End confidential****

8. Based on information regarding Comcast's local franchise areas provided to CIMCO by Comcast, CIMCO provides local exchange telephone services to business customers in approximately 298 local service areas throughout the Ameritech States in which Comcast or one of its affiliates holds a franchise to offer cable television service. However, in the majority of those Comcast local cable franchise areas, the number of CIMCO local exchange customers is very small:

****Begin confidential**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

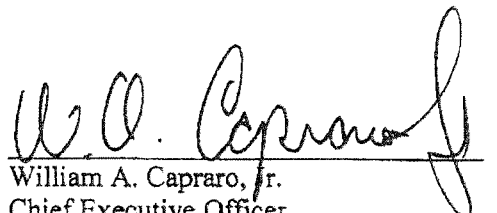
End confidential**

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9. Because of the specialized telecommunications needs of business customers, CIMCO's primary competitor for those services is the incumbent local telephone company ("ILEC") serving the local area. Throughout the Ameritech States, that ILEC is primarily AT&T (formerly Ameritech). CIMCO also competes with other competitive local exchange carriers ("CLECs") that target similar business customers in the Ameritech states such as PAETEC, Access One, and First Communications. To date, Comcast appears to have targeted residential local service customers, and has therefore not been a significant competitor of CIMCO's.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed on October 5, 2009.

BY:


William A. Capraro, Jr.
Chief Executive Officer
CIMCO Communications, Inc.

Appendix B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
CIMCO Communications, Inc.)
Assignor,)
)
and)
)
Comcast Phone, LLC)
Comcast Phone of Michigan, LLC,)
and Comcast Business Communications, LLC)
Assignees,)
)
Combined International and Domestic Application)
for Authority Pursuant to Section 214 of)
the Communications Act of 1934, as Amended,)
to Assign Certain Customers and Assets of)
an Authorized Domestic and International Carrier)

DECLARATION OF WILLIAM STEMPER

1. I am the President of Comcast Business Services at Comcast Corporation.
2. My business address is One Comcast Center, 1701 JFK Boulevard, Philadelphia, Pennsylvania 19103.
3. Comcast, through its operating subsidiaries, currently provides voice and data services to customers in 37 states and the District of Columbia. In particular, Comcast provides digital voice services to over seven million customers. The large majority of these customers are residential consumers, but they also include small businesses. Comcast also provides voice services to a small number of medium-sized and enterprise business customers with multiple locations.

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4. Comcast's business customers subscribe to Comcast Business Class service, which Comcast initiated in 2007. Comcast's Business Class service generally is designed to provide a competitive voice and Internet access service to small businesses that have no more than 20 employees, although larger businesses do currently subscribe to this product.

5. The cable modem and voice services provided to Comcast Business Class consumers are technically very similar to those that Comcast sells to residential customers. Specifically, Comcast Business Class consumers receive cable modem service over the same DOCSIS technology, featuring data speeds of up to 50 Mbps, that is used to serve residential consumers. Comcast also provides its Comcast Business class customers with cable television service.

6. Similarly, Comcast provides its Business Class voice service to these small business customers primarily via the same cable facilities that are used to serve residential customers, and generally offers these consumers standardized voice products that are similar to Comcast's offerings to its residential subscribers (although the Business Class offerings do include certain business-oriented features). [Begin

Confidential] [REDACTED]

[REDACTED] [End

Confidential]

7. Comcast has only recently initiated efforts to market voice, data, and Internet access products to the medium-sized business market segment, [Begin Confidential]

[REDACTED]

[REDACTED]

REDACTED FOR PUBLIC INSPECTION

[Redacted] [End

Confidential] Comcast historically has not focused on obtaining customers in this larger-sized business and enterprise market segment.

8. Comcast provides its current small number of medium-sized and enterprise business customers with Metro-Ethernet, and other high-capacity data products. Comcast's Metro-Ethernet service provides a competitive, attractive offering to medium-sized businesses by offering up to 1 Gigabit per second of data throughput with the ability to manage other technical service attributes. This service is cost-effective for data intensive applications. Using its Metro-Ethernet capability, Comcast can create multipoint networks that tie together multi-location customers with dedicated links. These private lines can be scaled to customers' quality of service and bandwidth needs.

9. Notably, the voice, data, and Internet access products as well as the sales expertise needed to serve medium-sized and enterprise business customers are quite different from those needed to serve residential and small business customers. Medium-sized and enterprise business customers generally have more sophisticated requirements for voice, data, and Internet access services and typically have more stringent design and operational standards, and need greater service capacity and reliability assurances. These commercial customers often select their service providers after extensive negotiations that involve a range of tangible and intangible factors, of which price is only one consideration. In particular, these customers require quality of service guarantees for the data and Internet services they use, and providers typically must issue credits when service falls below the contractually specified levels.

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10. The proposed transaction will help Comcast to compete more effectively for customers in this medium-sized business market segment, and also to compete for the larger-sized and enterprise business customers that to date it has not actively pursued. Comcast will be able to take advantage of the experience, expertise, and capabilities of CIMCO's sales force and key managers to market voice, data, and Internet access products to sophisticated commercial customers. CIMCO understands the complex needs of medium-sized business customers, and has well-developed, efficient processes for marketing, selling, and providing service to this market segment. In particular, CIMCO has proven service monitoring and service quality assurance processes. Overall, Comcast's ability to leverage CIMCO's well-established sales, management, and operational expertise should enable it to establish its brand more quickly and more efficiently among medium-sized and enterprise business customers than if Comcast had to develop those assets through its own marketing efforts.

11. Following approval of the proposed transaction, CIMCO's existing customers also will experience substantial benefits. First, Comcast's extensive Chicago-area infrastructure will allow Comcast to deliver new, more valuable services, such as Metro Ethernet, to CIMCO's customers. Today, as I understand it, CIMCO provides service to these customers by leasing high-capacity loop and transport facilities and associated services from the incumbent local exchange carrier ("LEC") and other network operators, either on an unbundled network element ("UNE") basis or on the basis of UNE-replacement arrangements. I also understand that in addition to local loops, CIMCO leases T1 lines and PRI service (digital handoff of a T1 to the customer's PBX). CIMCO

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also offers services on a resale basis to some of its customers in Illinois and to all of its customers outside of Illinois.

12. Following the transaction, Comcast anticipates that in many cases it will make operational sense for both the customers and Comcast for Comcast to move these customers over a transition period from leased facilities and resold services to Comcast facilities. In particular, these substitution possibilities arise with respect to leased network transport and local loops. Comcast estimates that it already provides service to

[Begin Confidential] [REDACTED]

[End Confidential] and that it has facilities within 1000 feet of another [Begin Confidential] [REDACTED] [End Confidential] The transaction will consequently promote more efficient service for customers and greater facilities-based competition in the medium-sized and enterprise business market.

13. In addition, the transaction will allow CIMCO customers in buildings that Comcast's existing network can serve to gain access quickly to an expanded array of innovative service offerings. It is my understanding that today, CIMCO uses legacy T-1 lines and Primary Rate Interface trunks to provide legacy, TDM-based voice and data services to its customers. Utilizing its existing infrastructure, Comcast will be able to provide many of these customers with Metro-Ethernet-based services and coaxial-based services. These services will provide much greater bandwidth and functionality than CIMCO's existing technology. In addition, Comcast's extensive resources and its research and development efforts will help ensure that the services provided to CIMCO's customers keep pace with any new or innovative offerings elsewhere in the industry.

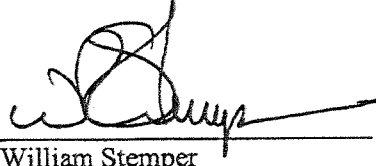
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14. Current CIMCO customers will also gain access to other Comcast services, separately and in bundles. These services include Comcast's cable television service, Hosted Microsoft Communications Services, and wireless broadband Internet access service. With respect to the latter, Comcast this summer began offering its Portland, Oregon customers wireless broadband cards so that they can connect their laptops to the Internet through Clearwire's mobile WiMAX network. Comcast plans to extend wireless broadband options to its customers in other markets as well. In the future, Comcast's medium-sized business customers, including CIMCO's customers, should be able to take advantage of these and other innovative offerings.

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I, William Stemper, declare under penalty of perjury under the laws of the United States that the foregoing declaration is true and correct to the best of my knowledge and belief.

BY:


William Stemper

Executed on October 6, 2009.

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Appendix C

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

1	Beach Park	IL
2	Burbank	IL
3	Canton	IL
4	Creve Coeur	IL
5	Deer Park	IL
6	DeKalb	IL
7	Flossmoor	IL
8	Forest View	IL
9	Glenview NAS	IL
10	Hawthorn Woods	IL
11	Highwood	IL
12	Inverness	IL
13	Island Lake	IL
14	Kildeer	IL
15	Manteno	IL
16	Mazon	IL
17	Newark	IL
18	North Barrington	IL
19	North Chicago	IL
20	Park City	IL
21	Peotone	IL
22	Prairie Grove	IL
23	River Grove	IL
24	Riverdale	IL
25	Riverside	IL
26	Robbins	IL
27	Saint Anne	IL
28	Sauk Village	IL
29	South Chicago Heights	IL
30	Sterling	IL
31	Stickney	IL
32	Summit	IL
33	Sycamore	IL
34	Thornton	IL
35	Urbana	IL
36	Volo	IL
37	Bloomington	IN
38	Covington	IN
39	Crown Point	IN
40	Dyer	IN
41	Fort Wayne	IN
42	Granger (Unincorporated St. Joseph County)	IN
43	Kokomo	IN

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

44	Lebanon	IN
45	Lowell	IN
46	Veedersburg	IN
47	Ada	MI
48	Allen Park	MI
49	Bloomfield Hills	MI
50	Burton	MI
51	Canton	MI
52	Comstock Park	MI
53	Dearborn Heights	MI
54	Eastpointe	MI
55	Ferndale	MI
56	Flint	MI
57	Flushing	MI
58	Fort Gratiot	MI
59	Garden City	MI
60	Grosse Pointe Woods	MI
61	Howell	MI
62	Jackson	MI
63	Lincoln Park	MI
64	Madison Heights	MI
65	Milan	MI
66	Monroe	MI
67	New Buffalo	MI
68	Oak Park	MI
69	Portage	MI
70	Rochester	MI
71	Roseville	MI
72	Shelby Township	MI
73	Southgate	MI
74	Sterling Heights	MI
75	Troy	MI
76	Waterford Township	MI
77	Wayne	MI
78	West Bloomfield	MI
79	Westland	MI
80	Wyandotte	MI
81	Manitowoc	WI
82	Bartonville	IL
83	Berkeley	IL
84	Brookfield	IL
85	Calumet Park	IL
86	Country Club Hills	IL

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

87	East Peoria	IL
88	Ford Heights	IL
89	Glencoe	IL
90	Glenwood	IL
91	Lake Barrington	IL
92	Lake in the Hills	IL
93	Lindenhurst	IL
94	Lyons	IL
95	Maywood	IL
96	Midlothian	IL
97	Quincy	IL
98	Rosemont	IL
99	Western Springs	IL
100	Worth	IL
101	Columbus	IN
102	East Chicago	IN
103	Michigan City	IN
104	Mishawaka	IN
105	Benton Harbor	MI
106	Byron Center	MI
107	Detroit	MI
108	Holland	MI
109	Royal Oak	MI
110	Wyoming	MI
111	Bannockburn	IL
112	Bradley	IL
113	Burnham	IL
114	Chicago Ridge	IL
115	CLARENDON HILLS	IL
116	Dolton	IL
117	Hillside	IL
118	Hodgkins	IL
119	Homewood	IL
120	McCook	IL
121	Norridge	IL
122	Palos Hills	IL
123	Palos Park	IL
124	Park Forest	IL
125	South Barrington	IL
126	West Dundee	IL
127	Yorkville	IL
128	Whiting	IN
129	Clinton Township	MI

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

130	Grand Rapids	MI
131	BELLWOOD	IL
132	Bourbonnais	IL
133	Cary	IL
134	Crestwood	IL
135	Decatur	IL
136	East Dundee	IL
137	Hanover Park	IL
138	Harwood Heights	IL
139	Hickory Hills	IL
140	Markham	IL
141	South Elgin	IL
142	University Park	IL
143	Griffith	IN
144	Saint John	IN
145	Battle Creek	MI
146	Calumet City	IL
147	Crete	IL
148	Ingleside	IL
149	Lansing	IL
150	Lincolnshire	IL
151	Loves Park	IL
152	Minooka	IL
153	North Aurora	IL
154	Olympia Fields	IL
155	Peru	IL
156	Rockford	IL
157	Round Lake Beach	IL
158	Merrillville	IN
159	Lansing	MI
160	Antioch	IL
161	Batavia	IL
162	Champaign	IL
163	Darien	IL
164	Elmwood Park	IL
165	Hazel Crest	IL
166	La Grange	IL
167	Lake Bluff	IL
168	Lincolnwood	IL
169	Matteson	IL
170	Montgomery	IL
171	Roselle	IL
172	Round Lake	IL

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

173	Schiller Park	IL
174	Streamwood	IL
175	Wilmette	IL
176	South Bend	IN
177	Algonquin	IL
178	Blue Island	IL
179	Braidwood	IL
180	Channahon	IL
181	Forest Park	IL
182	Homer Glen	IL
183	Huntley	IL
184	Shorewood	IL
185	Willowbrook	IL
186	Winnetka	IL
187	Munster	IN
188	Schererville	IN
189	Grayslake	IL
190	Lake Villa	IL
191	Northfield	IL
192	Northlake	IL
193	Palos Heights	IL
194	River Forest	IL
195	Warrenville	IL
196	Westchester	IL
197	Highland	IN
198	Indianapolis	IN
199	Bridgeview	IL
200	Countryside	IL
201	Fox Lake	IL
202	Kankakee	IL
203	Mundelein	IL
204	South Holland	IL
205	Zion	IL
206	Bartlett	IL
207	Morton Grove	IL
208	Oak Lawn	IL
209	Romeoville	IL
210	Wauconda	IL
211	Romulus	MI
212	Broadview	IL
213	Danville	IL
214	Harvey	IL
215	Oak Forest	IL

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

216	Park Ridge	IL
217	Wheeling	IL
218	Alsip	IL
219	Berwyn	IL
220	Glendale Heights	IL
221	Hinsdale	IL
222	McHenry	IL
223	Wood Dale	IL
224	Gary	IN
225	Addison	IL
226	Deerfield	IL
227	Highland Park	IL
228	Peoria	IL
229	Villa Park	IL
230	Woodstock	IL
231	Evergreen Park	IL
232	Frankfort	IL
233	Hoffman Estates	IL
234	Lemont	IL
235	Mount Prospect	IL
236	Niles	IL
237	Hammond	IN
238	Bedford Park	IL
239	Crest Hill	IL
240	Gurnee	IL
241	Mokena	IL
242	Palatine	IL
243	Springfield	IL
244	Vernon Hills	IL
245	Winfield	IL
246	BARRINGTON	IL
247	Buffalo Grove	IL
248	Chicago Heights	IL
249	Cicero	IL
250	Rolling Meadows	IL
251	Bensenville	IL
252	Lake Forest	IL
253	Westmont	IL
254	Wilmington	IL
255	Burr Ridge	IL
256	Franklin Park	IL
257	Lake Zurich	IL
258	Morris	IL

Comcast Local Franchise Areas In Which CIMCO Is Providing Telephone Exchange Service

259	Skokie	IL
260	Glen Ellyn	IL
261	Oak Park	IL
262	Oswego	IL
263	Plainfield	IL
264	Evanston	IL
265	Oakbrook Terrace	IL
266	Glenview	IL
267	Libertyville	IL
268	Northbrook	IL
269	Tinley Park	IL
270	Woodridge	IL
271	Itasca	IL
272	Melrose Park	IL
273	Crystal Lake	IL
274	Waukegan	IL
275	Bolingbrook	IL
276	Lisle	IL
277	New Lenox	IL
278	Orland Park	IL
279	Lockport	IL
280	Arlington Heights	IL
281	Carol Stream	IL
282	Geneva	IL
283	Des Plaines	IL
284	West Chicago	IL
285	Saint Charles	IL
286	Elgin	IL
287	ELMHURST	IL
288	Oak Brook	IL
289	Schaumburg	IL
290	Elk Grove Village	IL
291	Bloomingtondale	IL
292	Lombard	IL
293	Wheaton	IL
294	Aurora	IL
295	Downers Grove	IL
296	Naperville	IL
297	Joliet	IL
298	Chicago	IL

**CONFIDENTIAL INFORMATION –
REQUEST FOR CONFIDENTIAL TREATMENT
PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

October 7, 2009

VIA HAND DELIVERY

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

Re: CIMCO Communications, Inc., Assignor, and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC, Assignees – Application to Assign Certain Interstate and International Customers and Assets Pursuant to Section 214 of the Communications Act – Request for Confidential Treatment

Dear Ms. Dortch:

CIMCO Communications, Inc. (“CIMCO”) and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC (“Comcast” or “Assignees”) (CIMCO and Assignees, collectively, the “Applicants”), are filing today an application to assign certain interstate and international customers and assets pursuant to Section 214 of the Communications Act of 1934, as amended (“Communications Act”), and sections 63.04 and 63.24 of the rules of the Federal Communications Commission (“Commission” or “FCC”). The public version of the Application contains certain information that has been redacted due to its confidential and competitively sensitive nature.

Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4), and the Commission’s rules, Applicants, through their undersigned counsel, hereby request confidential treatment for the information redacted in the public version and provided in the attached unredacted, confidential version of the Application filed concurrently today under seal. The Application contains company-specific, confidential, and/or proprietary commercial information that is redacted in the public version and clearly identified as confidential in the confidential version (“Applicant Information”). The Applicant Information is protected from disclosure by FOIA Exemption 4 and the Commission’s rules protecting information that is “not routinely available for public inspection” and that “would customarily be guarded from competitors.”¹ Below is the information required by 47 C.F.R. § 0.459(b)(1)-(9) for requests for confidential treatment:

¹ 47 C.F.R. §§ 0.457(d)(1)-(2).

1. *Identification of the specific information for which confidential treatment is sought.* The Applicants request that the Applicant Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect commercial and other information not routinely available for public inspection. The Applicant Information contains company-specific, competitively-sensitive, business confidential and/or proprietary, commercial data concerning the Applicants' customers, operations, and marketing strategies that would not routinely be made available to the public, and customarily would be guarded from competitors. If such information were disclosed, the Applicants' competitors could use it to determine the Applicants' competitive position and performance, and could use that information to gain a competitive advantage over the Applicants.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* This information is provided in conjunction with the Applicants' Application requesting authorization pursuant to section 214 of the Communications Act and sections 63.04 and 63.24 of the Commission's rules to assign certain interstate and international customers and assets of CIMCO to the Assignees.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Applicant Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial and operational information. It provides sensitive information regarding the Applicants' marketing strategies, business operations and customers. This information would not customarily be made available to the public and customarily would be guarded from all others, especially competitors. If this information were not protected, the Applicants' competitors could use it in an effort to determine how best to undercut the Applicants' business.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates directly to the provision of voice, data, and Internet access services, which are subject to vigorous competition. If the information is not protected, the Applicants' competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since this type of information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm because the Applicants' competitors could assess aspects of the Applicants' customers and operations and use that information to undermine the Applicants' competitive position.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The Applicant Information is not available to the public, and has not otherwise been disclosed previously to third parties. The Applicants routinely treat this information as highly confidential and/or proprietary. The Applicants assiduously guard against disclosure of this information to others.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* The Applicants request that the Applicant Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* The Applicant Information would, if publicly disclosed, enable the Applicants' competitors to gain an unfair competitive advantage. Under applicable Commission and federal court precedent, the information provided by the Applicants on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information. *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained.'") (citation omitted). Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to policy issues under its jurisdiction.


The Applicants are aware that the Commission typically adopts a protective order to ensure that any proprietary or confidential information submitted in conjunction with applications for assignment or transfer of control is afforded adequate protection. The Commission's customary protective order permits counsel for parties to the proceeding to access this confidential information, but only after complying with the safeguards and procedures established by that order. Applicants anticipate that the Commission will issue such a protective order in response to their above-referenced application. The Applicant Information requires the level of protection that the Commission typically provides for "confidential" material in its first protective order in transactional proceedings. The Applicants have not submitted any

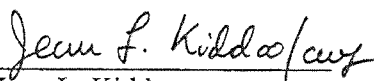
information that would require the heightened protection that the Commission normally provides for "highly confidential" material in its second protective order in such proceedings.

Until a protective order is released, Applicants request that the Commission treat the Applicant Information as confidential pursuant to this request for confidential treatment submitted pursuant to 47 C.F.R. §§ 0.457 and 0.459. If a request for disclosure occurs before the issuance of a protective order, or if a request for disclosure is made under FOIA at any time, please provide sufficient notice to the undersigned prior to any such disclosure to allow the Applicants to pursue appropriate remedies to preserve the confidentiality of the Applicant Information, as provided by 47 C.F.R. § 0.459(g).

If you have any questions or require further information regarding this request, please do not hesitate to contact us.

Sincerely,


Charles W. Logan
LAWLER, METZGER, KEENEY & LOGAN, LLC
2001 K Street NW, Suite 802
Washington, DC 20006
202-777-7700
Counsel for Comcast


Jean L. Kiddoo
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Washington, DC 20006
202-373-6000
Counsel for CIMCO

Attachment

EXHIBIT B

Asset Purchase Agreement
[CONFIDENTIAL – *Filed Under Seal*]