

CONFIDENTIAL**DECLARATION OF MATTHEW ALEXANDER**

1. My name is Matthew Alexander. My business address is 9201 N. Central Expressway, Dallas, TX 75231. I am a Senior Product Manager in Product Marketing at XO Communications and have worked in this organization since October 30, 2006. In this capacity, I am currently responsible specifically for Ethernet Services, but previously have been responsible for Private Line, SONET, Wavelength & Ethernet. As part of my job responsibility, I must maintain personal and in-depth knowledge of all aspects of XO's Private Line, Ethernet, SONET, Wave, Local Area Network/Wide Area Network ("LAN/WAN") and related services (individually and collectively "Dedicated Transport Services").

2. The purpose of this declaration is to describe XO's Dedicated Transport Services, and in particular, explain how these services are, intrinsically, intrastate in nature when they are provisioned as closed networks with end points (A and Z locations) within the same state. XO's Dedicated Transport Services are properly treated as basic transmission services.

3. At the outset, I would like to distinguish a different category of XO services from Dedicated Transport Services. XO offers wireline broadband services, known as "Dedicated Internet Access" or "IP Transit" which are used by customers to obtain Internet access through dedicated connections. These wireline broadband connections are not basic transmission. I do not discuss them in this Declaration.

4. Dedicated Transport Services support multi-location businesses, organizations, and institutions that need to exchange data and other communications traffic between or among two or more of the customers' locations. Connections may also be established between two different organizations with a need to exchange significant communications or data. With Dedicated

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Transport Services, in general, non-switched circuits are specifically dedicated as finished products for the customer organization to use for directly connecting two or more locations across any distance. End users at each location connected by a Dedicated Transport Service may share information (voice, video, and/or data) electronically via the private line with other end users connected to the Dedicated Transport Service.

5. The most common and simple Dedicated Transport Service is a pure point-to-point circuit that connects two customer locations on, or collocated with, XO network facilities or equipment on both ends, i.e., at XO points of presence ("POPs"). These connections may be combined in series or in other configurations to connect more than two locations. The point-to-point Dedicated Transport Service has two variations: XO Intercity (Long-Haul) Service and XO Metro Private Line. XO Intercity (Long-Haul) Service refers to a circuit between two XO POPs or customer On-Net locations in different LATAs. XO Metro Private Line refers to a circuit where both ends lie within a given LATA. XO Dedicated Transport Services involving circuits where both ends terminate on XO network facilities (and then cross-connect to customer locations) are known as On-Net to On-Net configurations. While many Dedicated Transport Services provided by XO involve On-Net to On-Net configurations, XO also provides an On-Net to Off-Net configuration whereby one end is connected to the XO network through another carrier's network facility, which XO leases as a wholesale input and incorporates into its product. The Off-Net to Off-Net configuration is also possible, and a series of locations may also be connected through Dedicated Transport Service circuits in a ring formation.

6. Another common configuration for Dedicated Transport Services is the Hub application. With the Hub arrangement, customers can use Dedicated Transport Services as an aggregation point for lower level bandwidth services. XO has packaged this application into DS-

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3, SONET and Ethernet Hubs. The applicable product allows customers to purchase a single Hub circuit upfront and add individual lower level tail circuits later as needed. XO will aggregate the individual circuits and hand them off to the customer at the defined location.

7. With its Dedicated Transport Services, XO provides hardware (equipment and connection facilities; fiber optic and/or copper cables), signaling (DSx, OCx, Ethernet, etc) and management services to support the non-switched network. These elements are coordinated to support the seamless transmission of end user customer traffic to/from both ends of the Dedicated Transport Service. XO has 3000 On-Net POPs and nearly all of them support DS-1 and DS-3 services. A subset currently supports OC-3 through OC-192/10G services.

8. The various XO Dedicated Transport Services are distinguished primarily by bandwidth requirements – from 1.5 Mbps to 10 Gbps – and the signaling technologies used. The most basic is Private Line, which supports lower bandwidth needs of DS-1 (1.544 Mbps, which can be channelized into twenty-four (24) DS-0 channels) and DS-3 (44.736 Mbps, which can be channelized into 28 DS-1 level circuits and further channelized into DS-0 circuits).

9. With SONET (Synchronous Optical Network) services, bandwidths are described in terms of OCn. In the United States, SONET has roots in electrical equivalents known as Synchronous Transport Signals (STSs). The base rate is 51.84Mbps (OC-1/STS-1). The International equivalent of SONET is Synchronous Digital Hierarchy (SDH). In SDH, the fundamental building blocks are known as Synchronous Transport Modules (STMs). The STM base starts higher than its US STS counterpart; STM-1 is 155Mbps (equivalent to OC-3). XO supports both the US and International standards. Higher bandwidth SONET services XO provides are

- OC-3: 155.52 Mbps. An OC-3 is the equivalent bandwidth of 3 DS-3s.
- OC-12: 622.08 Mbps. An OC-12 is the equivalent bandwidth of 12 DS-3s.

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- OC-48: 2.5Gbps. An OC-48 is the equivalent bandwidth of 48 DS-3s.
- OC-192: 10Gbps. An OC-192 is the equivalent bandwidth of 192 DS-3s.

10. Wavelength Division Multiplexing (WDM) is another multiplexing technology used to combine signals -- much like Time Division Multiplexing (TDM), Code Division Multiplexing (CDM), and so forth. WDM transmits several clear channel data streams over a single fiber by assigning each stream its own laser light color, called a lambda or wavelength. Each lambda acts as its own virtual fiber, and the bandwidth of each individual lambda can vary. This allows for multiple distinct circuits over a single fiber. A Wavelength ("Wave") is a clear channel data stream (also known as a "lambda") that is transmitted via WDM. A Wave differs from SONET in that it has fully transparent signal framing. For this reason Waves do not use the "OCn" nomenclature. The fact that a Wave is not burdened with the SONET framing means more room for payload traffic *versus* signaling overhead. With Wave, customer throughput options range from 2.5Gbps to 10Gbps.

11. Ethernet operates at both Layer 1 and Layer 2 of the OSI model, and is typically used to connect two LANs of a single customer. These customers prefer Ethernet Dedicated Transport Services because Ethernet is the native protocol running on their LANs, so there is no need to perform a protocol conversion at the customer premises (from SONET or Wave). The Ethernet circuit arrives at the customer premises and plugs directly into their Ethernet router. In addition, Ethernet ports are less expensive than SONET or Wave equipment which presents another advantage. Ethernet is simply referred to as "Ethernet" at the 10Mbps, 100Mbps, and 1Gbps level. A distinction is made at the 10Gbps Ethernet level between 10G LAN PHY or 10G WAN PHY (reference to Physical layer (1) of OSI model). XO supports both protocols. 10G LAN PHY is much like a 10Gbps Wave product and has very little overhead such that

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customers will realize a full 10Gbps signal. 10G WAN PHY is more common, but uses more overhead, than LAN PHY. It has a payload very much like SONET signaling, so 10G WAN PHY customers will realize slightly less throughput than with LAN PHY.

12. Typically, Dedicated Transport Service connections serve specific needs of a limited class of customers and are finished, closed services, meaning that the customer does not simultaneously have access to the public Internet or other networks as a result of XO's configuration of the customer's Dedicated Transport Service. I refer to such customers in this Declaration as XO's "business customers." Thus, the classification of traffic carried over the Dedicated Transport Service as interstate or intrastate depends on the end-to-end nature of the configuration XO installs. To explain this further, in XO's experience, many medium-to-large businesses need to connect specific locations or to set up a multi-point dedicated network among their business locations. Oftentimes, these networks are closed because of the need for privacy and security of the information being transmitted. Customers of Dedicated Transport Services frequently need time-sensitive applications and high-speed data transmissions between points connected by XO's Dedicated Transport Services, which would be frustrated if the applications or data transmissions were attempted over the public switched telephone network ("PSTN") or other shared, public network. Accordingly, the closed or dedicated nature of the Dedicated Transport Service is mandatory for such customers. Common types of customers needing to connect multiple locations or multiple local area networks with finished, closed services are financial institutions with multiple locations, hospital and other healthcare systems, federal, state, and local governments and agencies, and national data processing companies.

13. As an example, in 2007, virtually all of the revenue attributed to legacy Allegiance's Ethernet-based WAN/LAN product was for one customer, Memphis City Public

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School System. That service connected a number of school facilities within Memphis in a closed network. This product depended upon both ALGX-owned facilities and facilities ALGX leased from other carriers. This customer network never interfaced with any XO POPs or points on the PSTN and was not configured to provide for Internet access. It has, since the end of 2007, been converted to a SONET-based product, but remains a closed network.

14. Critically, with the exception of Dedicated Transport Services provided to resellers, ISPs or some service providers, a particular customer's Dedicated Transport Services virtually always comprise a closed network. XO does not connect its facilities to circuits provided by other carriers, to customer premises equipment ("CPE") that bridges traffic to another location, to the PSTN, or to the Internet. XO's understanding is that such service will be used by its business customers for internal communications only between the customer's locations at the end points of the Dedicated Transport Service, or the customer's LANs/WANs connected at those end points. To the best of our knowledge and belief, virtually all traffic over Dedicated Transport Services of its business customers both originates and terminates within the customers' LAN/WAN, and the A and Z points of the facilities provisioned by XO define the limits of where traffic over the facilities is transmitted. This was true in 2007, just as it is today.

15. As such, if the end points of a Dedicated Transport Service provided to its business customers are located within the same state, then XO is confident that, in virtually all cases, the communications carried over that Dedicated Transport Service are intrastate in nature. While it is conceivable that the customer could, on its own, connect the Dedicated Transport Service, through its own equipment, to other services that cross state lines, XO does not install or configure the Dedicated Transport Service for that purpose, in contrast with, say, a circuit connecting a large enterprise user with an interexchange carrier's POP or an Internet Service

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Provider's gateway. Even if the customer makes such connections unbeknownst to XO through equipment or services obtained from other sources, it is reasonable to expect, if the endpoints of the Dedicated Transport Service are within the same state, that the traffic carried over the Dedicated Transport Service installed by XO will be overwhelmingly intrastate in nature and that the interstate traffic will not be substantial by any measure.

16. XO does not have any traffic studies for the communications carried over its Dedicated Transport Services, either from 2007 or today. XO does not, nor has reason to, monitor the use or the nature of customer traffic carried on its Dedicated Transport Services. This is the case today and has been since before 2007. XO has no operational or network management reason to conduct traffic studies with respect to the Dedicated Transport Services because Dedicated Transport Services are dedicated to a single user between pre-established points on a flat-rate monthly recurring charge basis. In order to monitor or measure traffic over the Dedicated Transport Service, XO would need to place probes onto the circuit that would interrupt our customer's service, detrimentally affecting the quality of service. Moreover, it may be necessary to deploy different types of probes to monitor the various protocols used by our customers. Notably, XO is not aware of any of its competitors measuring or monitoring traffic over comparable services to determine its jurisdiction. Indeed, we would be quite surprised if customers would permit XO or other carriers to measure or monitor the customer's traffic in order to determine its jurisdiction, since this would in no way contribute to the quality of the service, the reliability of the communications, or proper billing. Were XO to engage in such activities, assuming it were able to do so without jeopardizing the quality of service, it would simply and needlessly impose additional costs -- and increased prices -- on the provision of our Dedicated Transport Services to customers, resulting in a competitive disadvantage to XO.

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Given the closed nature of Dedicated Transport Services as a general matter when provided to end users, as opposed to carriers or other service providers, there is no reason to believe in most cases that the traffic is anything other than communications between the locations connected by the Dedicated Transport Services provisioned by XO.

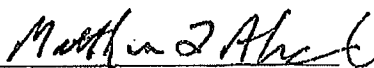
17. Dedicated Transport Services are also used as wholesale inputs by other carriers and service providers, including Internet Service Providers (ISPs). In these cases, dedicated circuits whose A and Z points are in one state may -- but do not necessarily -- interconnect with other providers' networks and carry interstate traffic, so the end points of the Dedicated Transport Service may not provide strong assurances in all cases that the traffic is predominantly intrastate in nature.

18. This concludes my declaration.

I declare under penalty of perjury under laws of the United States of America that the foregoing is true and correct.

Executed on March 1, 2010.

By:


Matthew L. Alexander