KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, DC 20007

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

EDWARD A. YORKGITIS, JR.
DIRECT LINE: (202) 342-8540
EMAIL: cyorkgitis@kelleydrye.com

November 17, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: Notice of *ex parte* presentation GN Docket No. 13-5, *Technology Transitions*, and GN Docket No. 12-353, *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*

Dear Ms. Dortch:

On November 13, 2014, Lisa Youngers of XO Communications LLC ("XO") and Edward A. Yorkgitis, Jr. of Kelley Drye & Warren LLP, counsel for XO, met with Priscilla Delgado Argeris, Legal Adviser to Commissioner Jessica Rosenworcel, to discuss issues involved in the above-referenced dockets and in view of a potential notice of proposed rulemaking addressing technology transition issues, including the use of copper transmission facilities during and after the transition.

Ms. Youngers began the meeting by explaining that copper infrastructure is still used extensively in telecommunications networks throughout the country, both by incumbent and competitive local exchange carriers (LECs), and it would serve the public interest to maximize use of this valuable asset in the transition to fiber. That is especially the case since copper facilities are being used by all LECs to provide innovative, high-speed broadband (Ethernet) services, leading the way toward an all-Internet protocol ("IP") public communications network.

The XO representatives, using the attached presentation, discussed the following:

- Even with increased deployment of fiber facilities, most business customers are in buildings still served only by copper loops.

- Copper loops provided by the incumbent LEC are often available in buildings even where the incumbent has deployed fiber.

- XO leases “dark” copper loops (unbundled network element DS0s) from incumbent LECs and combines two or more loops to a location with its own electronics to provide Ethernet over Copper (EoC) services at speeds up to 100 Mbps; incumbents offer similar EoC service using their own copper loops; XO expects with additional innovations that speed will increase further.

- XO has provisioned EoC service to thousands of customers out of more than five hundred local switching offices at a price (on a per Mbps basis) significantly below that for traditional TDM DSn services.

- XO also uses DS1 lines leased from incumbent LECs to provide Ethernet services, but because of technical limitations, the ability to innovate and offer higher speeds is generally not as great as with EoC.

- XO’s EoC product does not work if there is fiber in the transmission line, hence the need to maintain access to home run copper loops.

Ms. Youngers then noted that XO often confronts problems in gaining or maintaining access to incumbent LEC copper facilities to provide its Ethernet services. She explained that many of these problems are due to the lack of transparency in the incumbent’s processes used to maintain and retire copper. As a result, XO does not have sufficient time and information to work with the incumbent to ensure that its end user customer’s interests are best served – either by maintaining access to the copper facilities or by enabling an adequate transition to new transmission media. Accordingly, Ms. Youngers proposed that the Commission establish a collaborative process to address maximizing use of copper infrastructure during the transition to fiber and other transmission media. She noted that this process could include the development by incumbents of non-binding forecasts of copper facility retirements. To that end, she suggested possibly using a model similar to that established by the regulator, Ofcom, in the United Kingdom,[1] but she noted that XO is open to other, viable alternative processes. Ms.

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[1] In this instance, Ofcom tasked an independent organization, OTA2, to create and implement a collaborative process for industry participants to address key issues dealing with network deployments and performance. Perhaps most relevant for the Commission’s work is OTA2’s objective of enabling “migrations between broadband and narrowband products” to be “seamless, timely, and with minimal interruption to service for end users**.”** *See* OTA Website at http://www.offta.org.uk/. By facilitating an industry dialogue resulting in shared solutions, the OTA2 process minimizes major disputes, which slow service rollouts and expend large amounts of time and resources. XO suggests the Commission investigate this process as a model to be used to deal with the copper-fiber transition.

Yorkgitis further emphasized the need for a standard industry-wide format for retirement notices, so as to reduce the potential for confusion resulting from myriad, non-standard forms of notice. He also noted that the notice period for retirement – which should encompass both proposed retirements of home run copper loops and the retirement of copper feeder – should be more commensurate with the length of typical retail contracts, which are typically on the order of two or three years.

Ms. Youngers next discussed the issue of copper "destruction" as a result of natural disasters. In this circumstance, where copper facilities leased by XO are no longer usable, Ms. Youngers noted that neither the incumbent nor XO had any intention or expectation, up until the hour the disaster strikes, that the copper facilities would not continue in service for the foreseeable future. As a result, if copper becomes unavailable in the wake of such a disaster, the incumbent is not retiring the copper facilities; rather, it is replacing destroyed facilities. Ms. Youngers submitted that in such circumstance the Commission should establish a process whereby the incumbent and competitor can work together to expeditiously restore service to competitive carriers' end users by providing new facilities to wholesale carrier customers on reasonable terms. In addition, if the incumbent does not re-provision copper facilities, XO should have access to an equivalent facility at the same price for a reasonably sufficient period to meet its retail customer's expectation of continuing to have service.

The XO representatives then concluded the meeting by discussing how the Commission should address petitions by incumbent LECs submitted pursuant to Section 214 of the Communications Act, as amended, to discontinue offering TDM services. Ms. Youngers explained that XO supports the Windstream proposal that the Commission should require companies seeking Section 214 discontinuance of TDM special access services to continue to provide functionally comparable IP services at equivalent rates as a condition of the grant of the discontinuance authority. Mr. Yorkgitis explained that XO generally offers its retail services pursuant to two- and three-year contracts and that it most often obtains wholesale TDM services from incumbents pursuant to long-term contracts that include revenue commitments and penalties for failure to meet those commitments. Mr. Yorkgitis noted that, in addition to the provision of functionally comparable services, whenever an incumbent seeks to discontinue the provision of these services, competitors should receive an adequate period of notice – ideally a period commensurate with the time scale of typical end user agreements – to allow an orderly transition and to not undermine the cost assumptions underlying existing end user customer contracts. The XO representatives submitted that XO and other competitors should be freed of these commitments and penalties once a notice of proposed discontinuance occurs so that XO and other affected carriers can identify and obtain new services and/or alternative suppliers and continue to serve their end user customers.

Please contact the undersigned if there are any questions or if you require further information.

Respectfully submitted,

Edward A. Yorkgitis, Jr.
Kelley Drye & Warren LLP
3050 K Street, NW Suite 400
Washington, DC 20007
Tel. (202) 342-8400
Fax (202) 342-8451
cyorkgitis@kelleydrye.com
Counsel to XO Communications LLC

Attachment

cc: Priscilla Delgado Argeris