

**EXHIBIT to
XO Communications, LLC, Reply Comments
in GN Docket No. 13-5, WC Docket No. 05-25, PS Docket No. 14-174, RM-
11358, RM-10593
(March 9, 2015)**

APPENDIX A

Proposed Rules

For the reasons set forth above, Part 51 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 51 – INTERCONNECTION

1. Amend § 51.325 by revising paragraph (a)(4), redesignating paragraphs (c) and (d) as (d) and (e), and adding new paragraphs (c) and (f), to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * * * *

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(4) Will result in the retirement of copper, as defined in § 51.332.

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(c) In addition to providing the public notice required by subparagraph (a) of this rule, the incumbent LEC shall notify and submit a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301.

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(f) Notices of network changes involving the retirement of copper, as defined in § 51.332, are subject only to the requirements set forth in this section and §§ 51.329(c)-(d), 51.332 and 51.335.

2. Amend § 51.327 by inserting new paragraph (c) to read as follows:

§51.327 Notice of network changes: Content of notice.

* * * * *

(c) Notices of planned copper retirements must include the following additional information: each address to be affected by the retirement and for each address what sub-category of retirement applies (e.g., removal of copper feeder from affected loops). In cases where the planned retirement, in combination with any previous retirements in the wire center, does not impact the wire center as a whole, the notice should identify all addresses in the wire center where “home run” copper loops will be available following the retirement.

2. Amend § 51.329 by redesignating paragraph (c) as paragraph (d) and inserting new paragraph (c) to

read as follows:

§ 51.329 Notice of network changes: Methods for providing notice; public comment.

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(c) The public may file comments on an incumbent LEC's notice of planned network change. In the context of copper retirement, such comments must be filed with the Commission no later than the twenty-ninth day following the release of the Commission's public notice. In all other instances, such comments may be filed with the Commission until the effective date of the planned network changes.

3. Amend § 51.331 by deleting subparagraph (c).

4. Add new § 51.332 to read as follows:

§ 51.332 Notice of network changes: Copper retirement.

(a) *Definition.* For purposes of this section, copper retirement is defined as removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, or the replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, as those terms are defined in § 51.319(a)(3).

(b) *Methods for Providing Notice.*

(1) In providing the required notice to the public of network changes, an incumbent LEC must use one of the following methods:

(i) Filing a public notice with the Commission; or

(ii) Providing written public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site.

(2) An incumbent LEC must provide each information service provider and ~~telephone exchange~~ telecommunications service provider that directly interconnects with the incumbent LEC's network with a copy of the public notice.

(3) An incumbent LEC also must directly provide notice through electronic mail or postal mail to all retail customers affected by the planned copper retirement.

(i) For purpose of this section, an affected retail customer is anyone who will need new or modified customer premise equipment or who will be negatively impacted by the planned network change. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(ii) Notice to each affected retail customer shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. If an incumbent LEC uses e-mail to provide notice to retail customers, it must comply with the following requirements in addition to the requirements generally applicable to notification:

(A) an incumbent LEC must obtain express, verifiable, prior approval from retail customers to send notices via e-mail regarding their service in general, or planned network changes in particular;

(B) an incumbent LEC must allow customers to reply directly to the e-mail notice;

(C) e-mail notices that are returned to the carrier as undeliverable must be sent to the retail customer in another form before carriers may consider the retail customer to have received notice; and

(D) an incumbent LEC must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail.

(c) *Content of Notice.*

(1) *Public Notice.* Public notice must set forth the information required by § 51.327. In addition, the public notice must include a description of any changes in prices, terms, or conditions that will accompany the planned changes.

(2) *Retail Customers.* Notification to retail customers must provide sufficient information to enable the retail customer to make an informed decision as to whether to continue subscribing to the service to be affected by the planned network changes, including but not limited to the following:

(i) the information required by § 51.327;

(ii) a statement that the retail customer will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the incumbent LEC, *except that* if this statement would be inaccurate, the incumbent LEC must include a statement identifying any changes to the service(s) and the functionality and features thereof;

(iii) a statement that the retail customer has the right to comment on the planned network changes; and

(iv) The following statement: “This notice of planned network change will become effective ninety days after the Federal Communications Commission (FCC) releases a public notice of the planned change on its website. If you wish to comment on the planned network change, you should file your comments as soon as possible, but no later than thirty calendar days after the FCC releases public notice of the planned network change. You may file your comments electronically on the Commission’s website at [insert URL for ECFS], or you may file them by mail. If you wish to file by mail, address your comments to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments the statement ‘Network Change’ and a reference to [insert name of ILEC and affected geographic region]. Comments should include specific information about the impact of this planned network change upon you, including any potential loss of functionalities or interference with third-party devices or services.”

(3) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

(4) An incumbent LEC may not include in the notification or any other communication to a customer related to copper retirement any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes.

(5) The notice of retirement of an incumbent LEC meeting the other requirements of these rules will be considered complete only after the incumbent LEC has sent provider- and carrier-specific notices to all information service providers or telecommunications service carriers interconnected with it which lists (by circuit ID) the copper facilities currently being purchased by each provider or carrier that will be affected.

(6) Retirement notices must identify the alternative facilities or services the incumbent LEC will provide in the absence of the copper loop facilities and at what rates those alternatives will be made available. The rates, terms, and conditions of such alternative facilities or services must be just and reasonable and must be equivalent to the facilities to be retired in that they allow wholesale providers to provide equivalent services to what they provided previously for comparable wholesale input prices.

(d) *Certification.* An incumbent LEC must file a certification with the Commission that shall include:

- (1) A statement that identifies the proposed changes;
- (2) A statement that public notice has been given in compliance with subparagraph (b)(1);
- (3) If an incumbent LEC provides public notice by any of the methods specified in paragraph (b)(1)(ii) of this section, a statement identifying the location of the change information and describing how this information can be obtained.
- (4) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network;
- (5) The name and address of each such information service provider and telecommunications service provider upon which written notification was served;
- (6) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served the direct notice required by subparagraph (c)(3) upon all affected retail customers;
- (7) A copy of the written notice provided to affected retail customers; and
- (8) A statement that the incumbent LEC notified and submitted a copy of its public notice to the public utility commission and to the Governor of the State in which the network change is proposed, and also to the Secretary of Defense in compliance with section 51.325(c).

(e) *Timing of Notice.* An incumbent LEC must provide public notice of copper retirement at least ~~ninety days~~ twelve (12) months before implementation pursuant to the procedures provided in subparagraph (b).

(f) *Implementation Date.* The Commission will release a public notice of filings of such notices of copper retirement. The public notice will set forth the docket number and NCD number assigned by the Commission to the incumbent LEC's notice. Notices of copper retirement shall be deemed approved on the ~~90th day after the release of the Commission's public notice of the~~ three hundred sixty-fifth (365th) day after filing of the notice pursuant to § 51.332(b) and the certification required pursuant to § 51.332(d), unless an objection is filed pursuant to paragraph (h) of this section or the Commission takes action pursuant to paragraph (l) of this section.

(g) *Interconnecting LEC Objection Procedures.* An objection to an incumbent LEC's notice that it intends to retire copper may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the twenty-ninth day following the release of the Commission's public notice. All objections filed under this section must:

- (1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;
- (2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;
- (3) State the earliest possible date (not to exceed ~~six~~ eighteen (18) months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (h) of this section;
- (4) Provide any other information relevant to the objection; and
- (5) Provide the following affidavit, executed by the objector's president, chief executive officer,

or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(h) *Responses to Objections.* If an objection is filed, an incumbent LEC shall have until no later than the sixtieth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

- (1) Provide information responsive to the allegations and concerns identified by the objectors;
- (2) State whether any implementation date(s) proposed by the objector(s) are acceptable;
- (3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and
- (4) Provide any other relevant information.

(i) *Resolution of Objections to Timing.* If an objection based on timing is filed pursuant to paragraph (h) of this section, then the Chief, Wireline Competition Bureau, will issue an order determining a reasonable public notice period, provided however, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to subparagraph (b).

(j) Incumbent LEC Obligations to Maintain and Repair Copper. Incumbent LECs must perform maintenance on their copper facilities and must repair damaged copper facilities that have not been the subject of a copper retirement notice.

(k) Database of Copper Availability. Each incumbent LEC is required to establish, maintain and regularly update a publicly available and searchable database (by geographic region and street address) cataloging copper availability. The database should be updated at least once monthly.

(l) Forecasts of Copper Retirement. Each incumbent LEC, at least once every six (6) months, shall issue publicly a non-binding forecast of the copper retirements that the incumbent LEC forecasts noticing between twelve (12) and twenty-four (24) months after the date of the forecast. Such forecast shall identify geographic locations that would be affected and, where available, street or nearest-intersection locations.

(m) Collaborative Meetings. In addition to the foregoing notice and forecast requirements, incumbent LECs shall host collaborative meetings at least once each calendar quarter with information service providers and telecommunications carriers interconnected with it to review issues concerning copper retirement, any existent retirement notices, and the then current forecasts of copper retirement notices.

(n) Post Emergency or Natural Disaster Recovery. By [six months from CFR publication], incumbent LECs must submit to the Commission for review and approval a plan and process (i.e., its Emergency Plan) whereby it and information service providers and telecommunications carriers interconnected with it can meet expeditiously and regularly following any natural disaster or other emergency adversely and

unexpectedly affecting copper facilities to share information available to the incumbent LEC regarding the impact suffered by the network and the availability of copper facilities and alternative services. During such processes, incumbent LECs should provide information electronically in a timely fashion, at least once every business day, relative to the incumbent LEC's own possession of information regarding the availability, replacement, repair, or decisions not to replace or repair copper facilities. The Emergency Plan of an incumbent LEC must predefine the alternate services and pricing it will offer if copper loops and copper-based DS1s and DS3s are rendered unavailable due to a disaster to allow provider or carrier customers to continue providing service to their customers at the same levels as they were providing before the natural disaster or emergency. Such alternative services shall be made available for at least two years after the natural disaster or emergency in the area affected by the natural disaster or emergency. An incumbent LEC must file all modifications of its Emergency Plan and must receive Commission approval for any modifications the Commission designates as material by issuing a public notice. Information service providers and telecommunications services carriers may comment on the propriety and adequacy of any proposed plans prior to Commission approval within ten (10) business days after the public notice of the Emergency Plan or any modifications thereto. Where copper loops and copper-based DS1s and DS3s are rendered unavailable due to a disaster and the incumbent LEC has decided not to replace or repair copper facilities, the incumbent LEC, in addition to complying with its approved Emergency Plan, must file notices within ten (10) days of such decision regarding such copper facilities that conforms with the requirements of §§51.5332(b)-(d). In providing the information required by §51.332(c)(6), the incumbent LEC shall provide the rates, terms, and conditions of the alternative service required under its Emergency Plan under this subsection (n).

5. Amend § 51.333 by revising the heading and paragraphs (b)-(c) to read as follows and deleting paragraph (f).

§ 51.333 Notice of network changes: Short term notice, objections thereto.

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(b) Implementation date. The Commission will release a public notice of filings of such short term notices. The public notice will set forth the docket number assigned by the Commission to the incumbent LEC's notice. The effective date of the network changes referenced in those filings shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(c) Objection procedures for short term notice. An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

- (1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;
- (2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;
- (3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

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