

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

EDWARD A. YORKGITIS, JR.

DIRECT LINE: (202) 342-8540

EMAIL: cyorkgitis@kelleydrye.com

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

BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

July 22, 2015

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

**Re: *Technology Transitions, GN Docket No. 13-5, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, RM-11358***

Dear Ms. Dortch:

On July 20, 2015, Lisa Youngers of XO Communications LLC (“XO”) and the undersigned, Edward A. Yorkgitis, Jr., of Kelley Drye & Warren LLP, counsel for XO, met with Daniel Alvarez, Legal Advisor, Wireline, Public Safety and Homeland Security, to Chairman Wheeler, and Daniel Kahn, Deputy Chief of the Competition Policy Division, Wireline Competition Bureau, in regard to the above-referenced proceedings.<sup>1</sup> The XO representatives expressed appreciation that the Commission is addressing pro-competitive issues in the *Technology Transitions* proceeding. They discussed the aspects of interest to XO of the draft order on circulation, as set forth in the Commission’s Fact Sheet containing the Chairman’s proposals and the Chairman’s July 10, 2015, blog post regarding the item.

Copper Retirement Notices – The XO representatives reiterated that competitive providers, like XO, and the incumbent local exchange carriers (“incumbents” or “ILECs”) make abundant use of Ethernet over Copper (“EoC”) and integrated voice/data services that are based on maximizing the use of the copper in the network. In many locations, fiber is not yet available, and so EoC is the only way that many retail customers can obtain Ethernet service today. XO is not seeking and has never sought to stand in the way of ILEC retirement of copper facilities (or require prior Commission approval), but, because XO uses ILEC copper loops to provide EoC, XO requires adequate notice and information that improves business certainty, similar to arrangements found in normal commercial relationships between vendors and

<sup>1</sup> *Technology Transitions, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-184 (rel. Nov. 25, 2014) (“*NPRM*”).

Ms. Marlene H. Dortch  
July 22, 2015  
Page 2

customers. XO has sought notice of one year before copper retirements take effect and non-binding forecasting by ILECs of retirements to facilitate planning, including potential facilities build-out to areas where retirements are expected, and enable XO to identify and implement suitable alternatives for their end user customers. XO also needs to ensure that ILEC information remains up to date so as to reduce the potential that customers could have service provisioned over copper already set to retire. XO noted that it had experienced this situation in the past where an incumbent incorrectly provisioned service over copper set to retire resulting in a last minute campaign to keep the customer – a group of nursing homes – from losing service.

The XO representatives expressed their appreciation that a minimum of six months' notice for non-residential copper-based retirements has been proposed by the Chairman. XO also supports the Chairman's proposals to require notice of retirements when any element of the copper portion of the network is retired, not just home run loops, and to clarify that networks cannot be retired through neglect, only following actual notice.

Section 214 Approval – The XO representatives discussed their understanding and views of the Chairman's proposal to require that ILECs, before discontinuing a service that only has wholesale carrier customers, engage in a "meaningful evaluation" to determine whether the action would negatively impact retail users served by the wholesale customers. XO supports the clarification set forth in the Fact Sheet that where there is such adverse impact, the carrier must follow the statutory application and approval process for discontinuance. XO supports any efforts by the Commission to give ILECs further guidance as to how to conduct a meaningful evaluation. XO explained that in evaluating the impact to retail customers from discontinuing a wholesale service, the ILEC should contact its wholesale customers. Further, XO submitted that if ILECs were to give advance notice that they have conducted an evaluation of a planned discontinuance and concluded no Section 214 application need be filed, this would minimize the potential for undue harm in qualifying circumstances to retail customers that Section 214 was designed to prevent.

The Fact Sheet also explains that the Chairman's proposals would provide that, on an interim basis, where a service is discontinued pursuant to Section 214 approval, ILECs will have to offer replacement services on "reasonably comparable" rates terms and conditions to the discontinued services. The XO representatives expressed support that the proposals incorporate the Windstream principles for evaluating whether a replacement service satisfies the "reasonably comparable" standard.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch  
July 22, 2015  
Page 3

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](mailto:cyorkgitis@kelleydrye.com)  
Counsel to XO Communications LLC

cc: Daniel Alvarez  
Daniel Kahn