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December 9, 2015

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

Re: Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. §160(c), WC Docket No. 14-192

Dear Ms. Dortch:

On December 7, 2015, Lisa Youngers and George Kuzmanovski (by telephone) of XO Communications, LLC ("XO") and Thomas Cohen and Edward A. Yorkgitis, Jr. (by telephone), of Kelley Drye & Warren LLP, counsel for XO, met with the following staff of the Wireline Competition Bureau: Matthew DelNero, Deena Shetler, Randy Clarke (by telephone), Alexis Johns, and Jodie May. The purpose of the meeting was to discuss the Petition of United States Telecom Association ("US Telecom") for Forbearance from a number of Title II regulations ("Petition"), specifically the request that the Commission forbear from requiring incumbent local exchange carriers ("ILECs") to share newly deployed entrance conduit at regulated rates (Category 6 of the Petition).[1] The Commission is tentatively scheduled to consider the Petition at its December 17, 2015 meeting, and XO understands the Commission is considering granting the requested relief in greenfield, but not brownfield, developments.[2] The XO representatives

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1 *See* Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192, 85-94 (filed Oct. 6, 2014) ("Petition") (Category 6: Requirement to provide access to newly deployed entrance conduit at regulated rates (47 U.S.C. §§ 224, 251(b)(4))). Entrance conduit runs from the property line of a customer premises into the premises. In its comments on the Petition, XO opposed other aspects of the Petition but did not address them in the meeting.

2 Brownfield developments are commonly understood in the industry to encompass all premises to which entrance conduit or other communications infrastructure used for transmission facilities, whether fiber or copper, is deployed today. These developments include new premises constructed on sites once occupied by another premises. In

explained that US Telecom has failed to demonstrate that its request for forbearance from access to newly deployed entrance conduit meets the requirements of Section 10 of the Communications Act, as amended, (the "Act")[3] and that, accordingly, the Commission should reject this aspect of the Petition, including for greenfield developments.

In the Petition, US Telecom claims that ILECs have no special advantages over competitive providers in deploying new conduit; the overall imbalance between the conduit infrastructure deployed by incumbent carriers and competitors has narrowed considerably; and requiring sharing of new conduit will deter incumbent carriers investing in and deploying this infrastructure.[4] However, nowhere in the Petition does US Telecom provide data, affidavits, declarations, or analysis to support these broad assertions. Moreover, US Telecom provides no market-by-market analysis – and, when it comes to network deployment, local market factors are critical. Each market presents unique challenges. For instance, is the public rights-of-way permitting process unduly burdensome or are there moratoria for building in public rights-of-way? Do certain building owners dominate the market or otherwise have practices that hinder competition? Is it easy to obtain and use construction crews? Because US Telecom fails to provide these threshold, basic facts and analyze them, it has not met its statutory burden, and relief on access to entrance conduit cannot be granted. In addition, should US Telecom survive this initial inquiry, the Petition should not be granted because XO and other competitors have submitted evidence in their comments that ILECs continue to have numerous, material advantages in deploying new conduit, in both brownfield and greenfield developments.[5] In the meeting, XO representatives elaborated on this point.

Entrance conduit, which ILECs and competitors alike use to deploy optical fibers, is a foundational element for the deployment of facilities-based termination services to end user locations. Because conduit is costly to install, requiring trenching and restoration, providers prefer to install it when a development is new and trenches for all utilities are open, and may not be amenable to later construction by additional carriers at a later date. Providers also typically install additional conduit at this time so that when demand increases, additional wires can be

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contrast, greenfield developments encompass all premises where no entrance conduit or other communications infrastructure supporting transmission facilities exists today. Should it be necessary, XO submits the Commission should use this standard industry definition.

3 47 U.S.C. §160(c).

4 *See* Petition at 85-94.

5 *See, e.g.*, Comments of XO Communications, LLC, WC Docket No. 14-192, 3-10 and Declaration of George Kuzmanovski, XO Vice President of Access Planning and Implementation (Dec. 5, 2014) ("XO Comments").

pulled easily from the network to the premises. These factors give ILECs, which have had a century to deploy ubiquitous infrastructure, tremendous advantages over new entrants, who are building their networks for the first time – and may, for example, face unduly burdensome government permitting requirements or even building moratoria. But, the ILEC advantages are even more extensive than having ubiquitous networks and access to virtually every premises, often at no cost. For instance, their pervasive and long-standing relationships with building owners and developers enable them to deploy new entrance conduit more readily. Moreover, even though it may not be at first apparent, these significant advantages extend to greenfield developments because of several key factors. First, the ILECs have large economies of scale. This means they are likely to have many more customers in a new development, giving them a favorable payback period on their investment. Second, they have much greater access to large amounts of capital than do competitors, enabling them to undertake multiple, large-scale construction projects simultaneously. Third, incumbents have virtually ubiquitous networks, which means they are likely to face no, or at best minimal, barriers, in building transport facilities to new developments. Fourth, the same developers and building owners as in existing developments within the market may be involved, making the incumbent their default choice. Because XO and other competitors do not yet have these relationships, lack the large scale and access to capital of the incumbents, and have much more limited networks, they have a far more difficult time justifying installation of entrance conduit even in a new development – and access to ILEC conduit becomes critical if they are to deploy networks and compete, thus furthering the Commission's objective of creating robust, facilities-based competition. For these reasons, the Commission should not grant the relief regarding entrance conduit requested by US Telecom in the Petition for any development, brownfield or greenfield.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact the undersigned if there are any questions or if you require further information.

Respectfully submitted,

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