

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers	)	RM-11358
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593
	)	

**COMMENTS OF XO COMMUNICATIONS, LLC IN SUPPORT OF  
U.S. TELEPACIFIC CORP. PETITION FOR CLARIFICATION**

XO Communications, LLC (“XO”), by its attorneys, hereby submits comments in support of the Petition for Clarification of U.S. TelePacific Corp. (“U.S. TelePacific”) in the above-referenced proceeding.<sup>1</sup> XO agrees with the clarification requested by U.S. TelePacific except that XO submits that petitions for discontinuance predicated on copper retirements filed 40 days prior to a noticed retirement should be automatically granted on the day of retirement.

The Federal Communications Commission (“Commission”), in its August 7, 2015 *Tech Transitions Order*, adopted a requirement that incumbent local exchange carriers (“ILECs”) must

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<sup>1</sup> *Technology Transitions, et al.*, GN Docket No. 13-5 *et al.*, Petition for Clarification of U.S. TelePacific Corp. (filed Nov. 18, 2015) (“Petition”).

provide at least 180 days-notice of a copper retirement to all interested parties.<sup>2</sup> XO generally supported this measure as a means of ensuring that end users do not experience any disruption in service when an ILEC decides to move away from copper and rely primarily on IP-based services.<sup>3</sup> The U.S. TelePacific Petition highlights the potential for an ILEC to move forward with a copper retirement that would force a CLEC to discontinue services to end user customers in a particular area, and posits the specific circumstance where the CLEC's Section 214 application remains pending before the Commission at the time of the ILEC's intended retirement.<sup>4</sup> Thus, U.S. TelePacific has asked the Commission to "clarify that where the loss of access to retired copper leads to a discontinuance of retail service, the two processes must be harmonized."<sup>5</sup> XO supports this request for clarification.

As a competitive carrier, XO relies in many of its service areas on ILEC copper to provide Ethernet over Copper ("EoC") and Ethernet over SONET ("EoS") services (both up to 10 Mbps on DS1s and 45 Mbps on DS3s).<sup>6</sup> XO also is a major customer of the ILECs for TDM-based DS1 and DS3 special access services.<sup>7</sup> Much of XO's business depends on the continued availability of copper in the short-to-intermediate run, if not longer, as networks transition to all-fiber IP-based communications. Thus, a decision by an ILEC to eliminate copper in an area where XO is providing services has the potential to put XO in a difficult position with the continuation of service to its customers.

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<sup>2</sup> *Technology Transitions, et al.*, GN Docket No. 13-5 *et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97, ¶ 29 (rel. Aug. 7, 2015) ("Tech Transitions Order").

<sup>3</sup> *See* Comments of XO Communications, LLC, WC Docket No. 05-25, *et al.*, 16-17 (filed Feb. 5, 2015) ("XO Comments").

<sup>4</sup> *See* Petition at 5.

<sup>5</sup> *Id.* at 9.

<sup>6</sup> *See* XO Comments at 8-9.

<sup>7</sup> *See id.*

When XO learns that an ILEC intends to retire its copper in a particular building or service area, it must undertake an extensive evaluation of its options for continuing to provide or upgrading its services to customers. This process includes meeting with the customer to review the customer's service needs and requirements, exploring wholesale service alternatives from the ILEC that may allow XO to provide acceptable alternate offerings to customers, making plans to expand its own network, or arranging to obtain the services or wholesale inputs from third-party competitive carriers, where available, and negotiating wholesale rates, terms, and conditions.<sup>8</sup> In some instances, at the end of this process, which may begin to approach the date for the copper retirement, XO may determine that it is infeasible to continue providing services to customers in the area that will be impacted by the copper retirement. In such a case, XO would need to file a Section 214 application for approval of a discontinuance.<sup>9</sup>

XO agrees with U.S. TelePacific that the Commission should take steps to prevent a CLEC from losing its ability to provide service before it is authorized to do so. For instance, the Petition proposes that the Commission could “automatically grant[] a Section 214 application based on copper retirement on the date of retirement.”<sup>10</sup> XO submits that this would be an appropriate clarification.

Of course, the CLEC's petition should be timely filed. However, in determining whether an application is timely, the Commission should recognize that the CLEC will receive the ILEC's 180-day retirement notice without specific advance warning and will require time to

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<sup>8</sup> See XO Comments at 16-17 (explaining that each of these steps “takes time in the ordinary course of business and cannot be ‘expedited.’”).

<sup>9</sup> When a carrier files a Section 214 application, it must provide the service until the application is approved. See 47 C.F.R. § 63.71. However, where the filing results from a notice of a planned copper retirement, at the time the copper is retired, a CLEC may not have alternatives and may have no practical choice but to discontinue service. The clarification sought by U.S. TelePacific would resolve any potential tension between the copper retirement and Section 214 discontinuance processes.

<sup>10</sup> Petition at 9.

digest the direct implications of the intended retirement and to evaluate its and its clients' options in response, as outlined above. XO, for example, has demonstrated that it would need several months to complete its evaluation of options and to chart a course of action to minimize customer disruption.<sup>11</sup> As such, it would be unreasonable to expect a CLEC to file a Section 214 application immediately upon receipt of a notice of planned copper retirement from an ILEC. Indeed, the Commission should maximize the time that a competitor has to explore options to minimize customer disruption due to a retirement, thereby increasing the chances that a Section 214 discontinuance will not be required. As XO explained above, a significant portion of the six months leading up to the retirement may be spent in a reasonable manner determining whether a discontinuance application will be required at all.<sup>12</sup> Based on the length of the streamlined discontinuance process for non-dominant carriers, XO proposes that a Section 214 discontinuance filing, when certified by the applicant to be predicated on the copper retirement eliminating a key wholesale input to the service as the primary reason for its submission, need only be filed 40 days prior to the copper retirement to be subject to automatic grant on the date of the copper retirement.<sup>13</sup> A 40-day timeline is preferable to the sixty days suggested by U.S. TelePacific in its Petition because it maximizes the opportunity for the competitor to find

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<sup>11</sup> *See supra*, n. 8.

<sup>12</sup> U.S. TelePacific correctly points out that the current regulatory regime creates a “Hobson’s choice” for many CLECs to file a discontinuance application and notify customers as soon as they learn of an ILEC’s planned copper retirement. *See* Petition at 8. XO agrees that without the requested clarification from the Commission, CLECs will not have a meaningful opportunity to evaluate potential alternatives for continuing to provide service, which ultimately could lead to reduced competition and higher end user costs. *See* Petition at 9.

<sup>13</sup> The Commission should make clear in its public notices announcing discontinuance applications that any such applications predicated on the loss of a key wholesale input due to a copper retirement, as certified by the petitioner, will be automatically granted on the date of the retirement.

alternative wholesale inputs, or provision its own, and potentially reduces the need to file for a discontinuance and maximizes the potential for preserving the level of competition.<sup>14</sup>

Alternatively, the Commission could, as U.S. TelePacific has suggested, “consider in the Section 214 process whether it should require a delay in the copper retirement until the CLEC’s discontinuance no longer creates ‘an unreasonable degree of customer hardship.’”<sup>15</sup> This would only be necessary only if a CLEC’s Section 214 application is removed from the streamlined approval process, and should be available only when the Petition is filed at least 40 days before the planned retirement, i.e., early enough that streamlined approval is not forthcoming. Either or both of these proposed procedural remedies would effectively balance an ILEC’s interest in modernizing its network with an affected CLEC’s duty to comply with the Commission’s discontinuance rules.

For the reasons stated herein, the Commission should grant U.S. TelePacific’s Petition for Clarification with the modification described herein.

Respectfully submitted,



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<sup>14</sup> In no event should the timeliness requirement for filing a Section 214 application as a result of a copper retirement exceed 60 days, as proposed by U.S. TelePacific.

<sup>15</sup> Petition at 9.