



**HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO  
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In sum, the effect of the Verizon lock-up plan (and, where applicable, other ILECs plans) is to lock in XO's use of Verizon's special access services such that XO is limited in building new facilities for its customers or using the services of other CLECs. This deters the development of facilities-based competition. In contrast, XO does not offer these anticompetitive lock-up agreements nor does it find that they are offered by any other CLECs, which is a testament to the lack of market power of the competitors.<sup>163</sup>

Significantly, XO cannot exit the Verizon lock-up agreement when the term ends because XO cannot readily migrate customers to other services. This is due to the fact that it is limited in its ability to build facilities or find replacement services from other suppliers that can be effectuated in a timely fashion.<sup>164</sup> In addition, XO's agreements with its customers have widely differing durations and thus do not sync with the termination date of XO's agreement with Verizon.<sup>165</sup> In the end, this means XO has no choice but renew its plan with Verizon, continuing its "Faustian" bargain – the heart of which stems from Verizon's supra-competitive month-to-month special access rates. As a result, not only should the Commission adopt just and reasonable special access rates where competition is not present, but it needs to act in the *Tariff Investigation* to end the ILEC's lock-up provisions. If not, the relief in this proceeding will ring hollow.

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<sup>163</sup> See discussions in Anderson Declaration ¶36; Chambless Declaration ¶¶ 52-24.

<sup>164</sup> Chambless Declaration ¶ 45.

<sup>165</sup> Anderson Declaration ¶ 39.

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2. ILEC Price Squeeze

Further evidence of the ILECs' market power is their ability to set wholesale prices at or above their corresponding retail prices. Specifically, where XO purchases Ethernet on a wholesale basis, ILEC wholesale Ethernet prices are often priced so that XO's resulting retail services must be priced as much as 30% higher than the ILEC retail services, making it almost impossible for XO to compete effectively except where XO has on-net facilities or alternative facilities-based providers are present.<sup>166</sup> As explained in the Declaration of James Anderson, in the St. Louis market, for example, AT&T's wholesale Ethernet prices are so high as to prevent XO from providing retail services in buildings where it must rely on the ILEC services as wholesale inputs for lack of options at less than approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] on average higher than AT&T's prices.<sup>167</sup> XO is facing this in other AT&T markets as well, such as Memphis.<sup>168</sup> In the past, XO could distinguish itself based on service quality and customer service to "overcome" a price differential of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] above ILEC prices.<sup>169</sup> But, as Mr. Anderson relates, larger customers are increasingly focused on price, making it even harder for XO to compete where its prices are not at or below ILEC prices.<sup>170</sup>

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<sup>166</sup> *Id.* ¶ 20.

<sup>167</sup> *Id.* ¶ 22.

<sup>168</sup> *Id.* ¶ 23.

<sup>169</sup> *Id.* ¶ 22.

<sup>170</sup> *Id.* ¶ 22 and Exhibit D.

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**III. PROPOSED NEW TRIGGERS FOR DEREGULATION**

While the Commission observed in the FNPRM that there is a lack of sufficient knowledge “where, and to what extent, actual and potential competition for special access is likely to constrain prices as well as the factors that drive investment and competition,”<sup>171</sup> the Commission had already concluded in the *Suspension Order* that the prior pricing flexibility triggers did not function reliably as a predictor of where competition existed. The analysis of the record in the data collection set forth in the Economists Report, and XO’s own experience, confirms that competition frequently is not present where ILECs enjoy “price flex” privileges. Accordingly, the Commission should establish new triggers for deregulation to replace the flawed triggers adopted in 1999 and suspended in 2012. It also should adopt triggers for deregulation of the ILEC’s Ethernet service.

These new triggers should be applied to areas where pricing flexibility has already been granted, as well as going forward. Specifically, the Commission should adopt a rebuttable presumption that where the new pricing flexibility triggers are not satisfied in areas where ILECs enjoyed “price flex” deregulation, the ability to price flexibility should be withdrawn absent compelling evidence by the ILEC, supported by the prices charged for wholesale and resale Dedicated Services that are responsive to competition, that sufficient competition is present to obviate the need for price reregulation.

XO submits that the data collection and the marketplace evidence provided by XO as both purchaser and seller of Dedicated Services, provide a sufficient basis to develop reliable new proxies for special access competition, which can be implemented “going forward to

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evaluate petitions for pricing flexibility in a consistent, streamlined manner.”<sup>172</sup> In addition, even where the new triggers are met and pricing flexibility is granted, the Commission should establish a mechanism to evaluate whether the new criteria are working as intended. If pricing flexibility is granted, and the triggers continue to be satisfied, but ILEC prices do not materially reflect the presence or continued presence of competition, the Commission should remove pricing flexibility in those specific affected areas or, if there is more of a pattern of failure of the triggers, it should revise the pricing flexibility triggers.<sup>173</sup> As the FNPRM recognized, competition may decline in an area.<sup>174</sup> The rules should be flexible enough to account for that happening, and pricing flexibility should never be a one-way ratchet of deregulation.

A. New Trigger for Channel Terminations

1. Factors that Determine Competition for Channel Terminations

The findings in the Economists Report make clear that there is a constraining pressure on ILEC Dedicated Services pricing [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]<sup>175</sup> Further, as discussed above, the data submitted to the Commission demonstrate that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] that these buildings tend to be in the densest parts of

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<sup>171</sup> FNPRM, ¶ 69.

<sup>172</sup> FNPRM, ¶ 78.

<sup>173</sup> The Commission might also, in limited circumstances, consider location specific petitions for pricing flexibility where the triggers are not satisfied based upon compelling demonstrations by the ILECs that sufficient competition is present to justify pricing flexibility.

<sup>174</sup> FNPRM, ¶ 84.

<sup>175</sup> See Economists Report ¶¶ 53-67.

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metropolitan areas, and [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]  
[REDACTED] [END HIGHLY CONFIDENTIAL]<sup>176</sup> In other words, facilities-  
based competition is limited overall and, where it exists, it is limited to select areas. This, of  
course, is to be expected given the substantial barriers to entry.<sup>177</sup>

As for the factors that would drive rapid entry, in his Declaration, Mr. Kuzmanovski  
describes XO’s network and criteria for undertaking builds, including whether XO will recover  
its capital expenditures within [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END  
HIGHLY CONFIDENTIAL]<sup>178</sup> A key conclusion Mr. Kuzmanovski reaches is that, as a rule  
of thumb, XO typically does not build laterals in most Tier 1 cities at distances greater than  
[BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] aerial feet  
and rarely more than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY  
CONFIDENTIAL] aerial feet.<sup>179</sup>

XO’s experience as a purchaser of wholesale inputs corroborates these principles. When  
looking to connect to a new customer in a building, and XO does not have facilities nearby or in  
the building already, XO will consider seeking bids from facilities-based providers not only in  
the building but with nearby fiber facilities.<sup>180</sup> From access to building lists made available by  
other CLECs, XO knows their connections are limited. This is evidenced by the data supplied to  
the Commission, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

<sup>176</sup> See *id.* ¶¶ 44-46.

<sup>177</sup> See pp. 37-40 *supra*.

<sup>178</sup> See discussion *supra*, pp. 11-16; see also Kuzmanovski Declaration ¶¶ 14-15, 22-24.

<sup>179</sup> Kuzmanovski Declaration ¶ 24. See also note 57, *supra* (“aerial” is used to mean as the  
bird flies and not to suggest above ground deployment).

<sup>180</sup> Chambless Declaration ¶ 24.



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connections into buildings<sup>186</sup> and, to a lesser extent, in close proximity to buildings such that a build would be economically justified and accomplished within a commercially reasonable amount of time.<sup>187</sup> This raises several issues: What is the geographic area in which the test should be conducted (single building, group of buildings, or some other area)? How should “in close proximity” be defined? How many competitive fiber providers are sufficient for competition to exist?

Competition should be determined at the individual building level, although subsequent aggregation may be appropriate

The FNPRM asks “[w]hat geographic area would be the most appropriate for us to employ in new or modified special access rules?”<sup>188</sup> Because the analysis of the data collected by the Commission in the Economists Report demonstrated that **[BEGIN HIGHLY**

**CONFIDENTIAL]** [REDACTED] **[END HIGHLY**

**CONFIDENTIAL]**<sup>189</sup> the triggers can be developed at that level of granularity as well. This understanding of market power is consistent with prior analyses by the Commission in the AT&T/BellSouth and MCI/Verizon merger proceedings, and the Commission’s decision to require, as a merger condition, divestiture of fiber in individual buildings where the major CLEC

<sup>186</sup> Again, competitors using Type II channel termination facilities as inputs should not be treated as facilities-based competitors.

<sup>187</sup> As noted above, building or property owners may refuse access to new providers, such that the presence of nearby competitors will have no particular downward pressure of ILEC pricing, since these nearby competitors, for all practical purposes, are barred from entering the in-building market as facilities-based competitors. As a result, this means that the triggers XO proposes, at least to the extent based on nearby competitors, may produce false positives.

<sup>188</sup> FNPRM, ¶ 90.

<sup>189</sup> Economists Report ¶¶ 53, 57.

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being acquired in each transaction was the only actual or potential competitor.<sup>190</sup> Thus, the Commission, as it recognized in the FNPRM already has existing tools that can serve as guide.<sup>191</sup>

Based on XO's market experience, it supports this approach of focusing on individual buildings. As discussed in the Declaration of George Kuzmanovski, XO builds to individual locations where a customer has committed a sufficient spend and where the cost of construction enables a payback with [BEGIN HIGHLY CONFIDENTIAL] ██████████ [END HIGHLY CONFIDENTIAL]<sup>192</sup> When it does build to a location, it often passes other locations where potential customers are present, which might reduce the cost of a future build to those customers. However, even though customers post-build in those additional buildings may have become more attractive targets as a result, XO will not seek to enter that building until it has a committed customer.<sup>193</sup> Thus, XO's filter for determining its geographic reach is primarily individual buildings and, to a lesser extent, buildings near its fiber route where demand may prove sufficient.

XO is mindful that the reformed Dedicated Services regulatory regime must be administrable.<sup>194</sup> Although individual buildings may define separate geographic markets, from an administrative perspective, it would be practical for the Commission to determine whether

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<sup>190</sup> See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5687 (2007) (“AT&T/BellSouth Merger Order”); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18448 (2005) (“Verizon/MCI Merger Order”).

<sup>191</sup> FNPRM ¶ 78, n. 173.

<sup>192</sup> Kuzmanovski Declaration ¶ 20.

<sup>193</sup> *Id.* ¶ 14.

<sup>194</sup> In the FNPRM, the Commission identified the objective “to balance the need for analytic rigor with the requirement that our analysis be administratively feasible.” FNPRM ¶ 77.

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pricing flexibility should be granted by review of the degree of competition within areas of concentrated commercial activity, *e.g.*, central business districts (“CBDs”). Therefore, while in the initial instance the pricing flexibility triggers should be applied on a building-by-building basis and expressed in terms of alternative facilities-based providers in buildings and within a certain distance of the buildings, where a sufficient number of buildings within a CBD have satisfied the trigger, it should be possible for an entire CBD to be considered sufficiently competitive for pricing flexibility to apply.

“In Close Proximity” should be defined as having fiber within 1000 aerial feet of a building

In analyzing the SBC/AT&T and Verizon/MCI mergers, the Department of Justice established the following “screens” based on bandwidth demanded and distance to determine whether a competitive provider was likely to build a lateral:

2 DS3s	0.1 mile
1 OC-12	0.25 mile
Over OC-48	1 mile. <sup>195</sup>

<sup>195</sup> *Id.* n. 173. The Commission asks in the FNPRM whether “business establishment density [could] be an appropriate proxy for special access competition.” FNPRM, ¶ 83. XO submits that building density is not an appropriate proxy because it does not take into account whether there is, in fact, any alternative fiber available. One might presume that building density would attract alternative providers, but if that is not yet occurred, the Commission should respect the evidence that building density, which is unlikely to be a very recent phenomenon in most instances, for one reason or another, did not provoke competitive builds. Going forward, of course, if competitive fiber is introduced, conditions may reach the point where the triggers XO proposes are satisfied. In short, the Commission should not use a predictor of areas that might eventually develop competition as a replacement for examining where competition, in the form of fiber in or near buildings, has actually been satisfied.

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XO has a similar tool, but it focuses primarily on customer spend, not bandwidth. XO also considers cost of the build a key criterion, but it is willing to be flexible for a customer with a higher spend.<sup>196</sup> That said, as discussed herein, XO generally does not build in most Tier 1 cities at distances greater than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] from a fiber splice point.<sup>197</sup> Indeed more than 96% of its over [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] lateral builds in the past two years have been [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] or less, and the substantial majority of those are less than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] feet.<sup>198</sup> Accordingly, on average, XO has found it economical to build at distances far less than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] feet from a splice point.

For competition to exist, at least Four facilities-based CLECs need to be present in the geographic market

As discussed herein, prices for Dedicated Services offered by ILECs are supra-competitive when it is the only provider in a building. The Economists Report suggests:

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>196</sup> Kuzmanovski Declaration ¶ 19.

<sup>197</sup> *Id.* ¶ 24.

<sup>198</sup> *Id.*

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[REDACTED] **[END HIGHLY  
CONFIDENTIAL]**<sup>199</sup>

XO submits this provides support for basing the new trigger on having four facilities-based providers in the relevant geographic area. Based on these criteria, XO discusses below the different triggers that could apply for DSn channel terminations and for Ethernet channel terminations.

2. New Trigger for DSn Channel Terminations

For its DSn channel terminations, XO provisions DS1 services from the ILEC and other competitors **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY  
CONFIDENTIAL]** of the time.<sup>200</sup> It is rare for XO to provision a **[BEGIN HIGHLY  
CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END  
HIGHLY CONFIDENTIAL]** Further, where it provides DS1 service, XO predominantly resells ILEC services and, on occasion, on-net service where XO has legacy facilities available or, alternatively, the Type II service of another CLEC's service.<sup>202</sup> But, in no instance today would XO build to a customer to provide DS1 or multiple DS1s service.<sup>203</sup> As discussed above, the Department of Justice accepted this reality some time ago when the prospect of a CLEC building new TDM facilities was still current. The Commission recognized that CLECs do not

<sup>199</sup> Economists Report ¶ 58.

<sup>200</sup> Chambless Declaration ¶ 11.

<sup>201</sup> Chambless Declaration ¶ 20. ("**[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]  
[REDACTED] **[END HIGHLY  
CONFIDENTIAL]**").

<sup>202</sup> Anderson Declaration ¶ 5.

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build facilities where a location does not have at least two DS3s worth of demand, i.e., where there is not sufficient spend.

In contrast with those earlier proceedings, competitors today are not building TDM network facilities. Accordingly, near-net facilities-based providers are not likely to assert any competitive pressure on ILEC DS<sub>n</sub> pricing. Therefore, the Commission should find that the trigger for relief for DS<sub>n</sub> channel terminations requires four competitors to have already built to a location and not just be in close proximity. Specifically, XO proposes that pricing flexibility for DS<sub>n</sub> channel terminations be granted within a CBD (or other contiguous, compact service area) when buildings that in the aggregate comprise more than 66% of the square footage in the relevant area and have four or more competitors with facilities in buildings over which TDM services are offered.

3. New Trigger for Ethernet Channel Terminations

In contrast to the lack of a business case to justify a DS<sub>n</sub> build, XO will build a lateral from a proximate fiber to provide Ethernet service if there is sufficient spend, and it has found that other CLECs have somewhat similar practices. As a result, in determining whether sufficient competition may be present for the provision of Ethernet channel terminations, XO considers it appropriate to include competitive fiber facilities that are in close proximity to a building, although in-building competitors appear to exert greater pressure on pricing. Specifically, XO proposes that pricing flexibility for Ethernet channels terminations be granted within a CBD (or other contiguous, compact service area) when buildings that in aggregate comprise more than 66% of the square footage in the relevant area, have at least two CLECs in

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each building and at least two additional CLECs with fiber either in the same buildings or in close proximity to that location.

The deregulatory triggers XO proposes here are appropriate without sunset because the market power presently enjoyed by the ILECs is likely to erode slowly over time. In the FNPRM, the Commission asked the likely extent to which ILEC market power “is sustainable over time.”<sup>204</sup> XO’s ability to build fiber facilities is limited. Even with its On-Net Initiative, XO expects to increase the number of buildings it reaches with its facilities principally by building laterals from existing metro networks, by approximately 100% once the Initiative is complete. As discussed herein, the total number of buildings XO served prior to the On-Net Initiative was only a small number in the densest parts of major metropolitan areas. Doubling that number means that XO’s reach will have grown measurably but not appreciably relative to the ILECs.

With regard to TDM or CBDS, no material additional competitive-provider facilities can be expected to be constructed going forward. Therefore, the level of ILEC dominance is likely to persist. While demand for TDM services by commercial customers is declining, the volume of TDM services is substantial and still, for example, represents a significant portion of XO’s Dedicated Services revenues, and TDM should remain a significant part of XO’s business for a number of years as the technology transition proceeds.

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<sup>204</sup> In the FNPRM, the Commission asked about the likely extent to which ILEC market power “is sustainable over time.” FNPRM, ¶ 67.

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As XO's own experience shows, therefore, the market power the ILECs currently enjoy can be expected to persist into the foreseeable future.<sup>205</sup>

**B. New Trigger for Transport**

XO finds that more robust facilities-based competition has developed for transport services in the core of major metropolitan areas. It, therefore, does not take issue with the current transport test except in one critical aspect – there is no justification to provide relief on an MSA-wide basis since, as noted in the *Suspension Order*, competition develops in more dense areas and not necessarily throughout an MSA. XO thus proposes the Commission create density zones in an MSA and award relief when triggers are met within each zone. In particular, XO finds that competition is predominantly present in an effective manner in Tier 1 cities within much of the CBD and the first ring of suburbs. These should comprise two separate areas for purposes of the transport trigger, and then outer rings around the CBD and first ring of suburbs should be defined.

**IV. PROPOSED REMEDIES WHERE THE TRIGGERS ARE NOT SATISFIED**

Where sufficient facilities-based competition is not present under the new triggers the Commission adopts in this proceeding, including in areas where special access prices were previously deregulated under Phase I and Phase II pricing flexibility and for Ethernet service, Dedicated Service pricing should be regulated. Should the Commission not act immediately to reimpose price caps or some other regulatory framework, it should at least adopt pricing for

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<sup>205</sup> If an ILEC believes it no longer has market power in a relevant geographic area, it can obtain relief by petitioning for forbearance from relevant price regulations.

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the provision of Dedicated Services at wholesale on a temporary basis pursuant to the following principles.

As an initial matter, wholesale pricing should always be below retail for the same or substantially the same services so as to ensure there is no price squeeze. Second, month-to-month wholesale prices for an ILEC's DSn special access, i.e., CBDS, should be no greater than the lowest per circuit rate available under any of the ILEC's commitment discount plans, regardless of term length, that is available or under any other ILEC volume and term discount arrangement for those services that the ILEC has in the same operating territory.<sup>206</sup> The applicability of this test, while it may lead to wholesale prices less than, for example, the Section 251(c)(4) wholesale discount price,<sup>207</sup> would lead to fair and reasonable results. The per circuit discount price under any of the foregoing arrangements represents a marginal price which still provides the ILEC with a reasonable allocation of its common costs, given that the ILEC has market power, and an ILEC would not normally establish a marginal price below cost when it is not facing effective competition. Further, channel terminations to end use locations are not, given their nature, subject to economies of scale, such that the discount pricing in any such arrangement reflects a true cost saving dependent on volume. Indeed, because volume commitment plans are based on a commitment to match a high percentage of historic spend without reference to absolute spend, i.e., not the volume of services the wholesale customer buys, the discount under such plans cannot be defended as reflecting economies of scale. Rather, it is reasonable to assume that the rate allows the ILEC to fully recover its costs.

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<sup>206</sup> CLECs with existing volume and term commitment plans under the ILEC's tariff should have the option of exiting the agreements without penalty and move to these new interim month-to-month rates.

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Wholesale Ethernet pricing should be subject to the same principles since ILECs enjoy the same market power with respect to DS<sub>n</sub> as to Ethernet services. Discounts between wholesale Ethernet and DS<sub>n</sub> access (relative to top of rate card retail rates) should be similar in the same operating territory, unless the ILEC offers even greater discounts to any of its wholesale customers, for example on a volume discount plan. For instance, if the DS<sub>n</sub> wholesale rates are 35% percent below top of rate card retail rates, wholesale Ethernet rates should reflect a similar discount on a temporary basis. In sum, until the Commission can perform a more thorough examination of the ILECs' Ethernet rates, a proportionate reduction in rates is an appropriate proxy to help offset the ILECs' market power.

Respectfully submitted,



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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
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
	)	

**DECLARATION OF JAMES A. ANDERSON**

1. My name is James A. Anderson. I am the Director of Product Analytics at XO Communications, LLC (“XO”). I submit this Declaration in support of XO’s Comments in the above-captioned proceedings of the Federal Communications Commission (“FCC” or “Commission”).

2. As XO’s Director of Product Analytics, I have responsibility for the evaluation of pricing for all of XO’s product portfolio, including the development of cost models. XO sells both Time Division Multiplex- (“TDM”) and Ethernet-based data, voice, and private line (dedicated) services to commercial and carrier customers utilizing XO’s metropolitan and inter-city (long haul) networks. The development of pricing for XO’s services includes the evaluation of XO’s cost to support last mile network access. XO’s network access pricing includes facilities that utilize XO’s network (“on-net”) and that are purchased from the incumbent local exchange carrier (“ILEC”) and other vendors (“Type II facilities”).

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3. I have worked in the telecommunications industry for 20 years. I started working for XO in 2003. My specific jobs at XO have varied but have always been in support of price and cost models for XO's services. I have been XO's Director, supporting Standard Pricing and Analysis, for the last four years. As such, I know the products with which XO competes and the challenges it faces in the marketplace.

4. Prior to working at XO, I was with IDT/Winstar from 1999-2003, where my last role was Director of Business Analysis. I also worked for MCI/WorldCom from 1995-1999 supporting Joint Venture Activity. My last role with MCI was Manager of Joint Venture Financial Management.

5. XO provides a variety of services to retail business and enterprise customers, *i.e.*, commercial customers, and to other carriers. XO has installed metropolitan area networks ("Metro" networks) and a nationwide backhaul network. Today, XO operates its own networks in approximately [BEGIN HIGHLY CONFIDENTIAL] ■ [END HIGHLY CONFIDENTIAL] Metro areas. Almost all of these are what I would call "legacy" builds in which XO's Metro networks were installed in the 1990s and 2000s. In these cities, XO targeted medium to large business and enterprise customers with TDM phone and TDM DS<sub>n</sub> services, which relied heavily on wholesale inputs from ILECs through the market opening provisions of the 1996 Telecommunications Act. In the past ten years, XO introduced Ethernet services, using both fiber and copper-based facilities (most often unbundled network elements ("UNEs") to provide Ethernet over Copper ("EoC") and DS<sub>n</sub> special access purchased from ILECs). Rather than look to expand into new Metro areas, XO's primary focus in the past few years has been to leverage its existing network assets to reach additional customers with "on-net" Ethernet services. (XO still sells new "on-net" TDM services, but almost exclusively only where existing

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legacy facilities remain available, which is in approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of XO's on-net buildings, although that number is falling.) Nonetheless, the volume of new DSn orders XO meets through "on-net" purchases is quite small, and the vast majority of new DSn orders, predominantly DS1s, are using Type II facilities. In no instance today would XO build to a customer to provide DS1 or multiple DS1s service. XO's installed base of "on-net" DSn services is a more significant portion of its total services. As of end of 2015, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [END

HIGHLY CONFIDENTIAL)). XO has not expanded its TDM network capabilities or reach for some time – although on very rare occasions may still enter into a multi-year or capitalized lease for such facilities – given the overall and ongoing technology transition in commercial markets to managed IP-based communications, predominantly Ethernet and even higher speed dense wavelength division multiplexing ("DWDM")-based services. Despite this, XO still overwhelmingly relies on ILEC wholesale inputs to serve its customers when XO cannot do so with its own facilities.

6. Generally speaking, XO does not distinguish, when offering its services to customers, between "on-net" and "off-net" (or hybrid services consisting of both Type II inputs and XO's own network capabilities), although if XO can provide the service "on-net," pricing is

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often much lower than when using wholesale inputs. However, for some of XO's largest customers, in those markets where XO has fiber network facilities, it has become an important selling point for XO to offer "on net" service and diverse routing relative to that which exists from its competitors, both ILECs and CLECs. Government, institutional, and large enterprise customers [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] are focusing increasingly on their ability to respond to disaster recovery, whether natural or man-made, and are looking for diverse routes to reach, for example, data centers.

7. XO segments the retail market in terms of customer size, rather than by type of service offering or industry sector. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]  
[REDACTED] [END HIGHLY  
CONFIDENTIAL]

8. XO prefers to sell dedicated transmission services bundled with layered managed services to commercial customers. When selling managed services along with a dedicated service, XO offers two different solutions to customers when negotiating the price, which are largely driven by market leaders. Bundled pricing, which includes non-transmission services such as voice/VoIP, Internet access, and interoffice networking, to name several examples, is preferable to most of XO's small and mid-size customers. (XO's retail bundles always include voice/VoIP service.) As one specific example, XO has an introductory pricing program for bundled VoIP-based voice services and Ethernet services up to 10 Mbps (this is informally known as the "Try Us" program). As a general matter, XO has found that most of its customers for "unified communications" now prefer an IP-based telephone solution because advances in

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equipment, such as the session border controller, allow their networks to manage substantially more phone traffic, and reduce costs. The second option, preferred by most of XO's larger, more sophisticated, enterprise customers, is break out or "a la carte" pricing, which allows the customer to purchase Ethernet services above 10 Mbps from XO without necessarily including a corresponding voice service.

9. In practice, most TDM and Ethernet special access services XO sells to commercial customers (approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]) are bundled with other service. The remaining [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] are standalone dedicated transmission services. A few very large retail enterprises (i.e., [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]) will buy channel terminations – without an accompanying service offering – in order to build their own private networks, and in many ways they act like carrier customers.

10. Conversely, most of XO's wholesale revenues – approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] – are from the sales of dedicated services standing alone. The remaining [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] include add-on services such as Internet Access.

11. Wherever possible, XO seeks to offer services over its own network facilities because it can control its product offerings and obtain better margins. To achieve this objective when "lighting" new buildings, XO aims to recover its costs of construction in approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] For its on-net customers, XO can typically increase Ethernet bandwidth with little or no additional cost because the equipment is already in place. As a result, XO can increase a customer's

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Ethernet speeds significantly with a much-less-than-proportionate increase in retail prices. For example, XO is currently offering Ethernet service at **[BEGIN HIGHLY CONFIDENTIAL]**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] **[END HIGHLY CONFIDENTIAL]**

12. XO's price differential between 100 Mbps and 500 Mbps is likewise slight in comparison to the increase in service speeds. As previously stated, under the promotional rates currently being offered by XO as part of its On-Net Initiative, a customer can receive service speeds of **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] **[END HIGHLY CONFIDENTIAL]**

13. XO's wholesale Ethernet customers experience similar size bandwidth increases for similar price increases, proportionately speaking. XO's wholesale services are typically at a discounted rate relative to retail, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** for off-net customers and **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** for on-net customers.

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14. Despite constructing Metro networks in the late 1990s and early 2000s, the vast majority of XO's sales to wholesale and retail customers rely on Type II facilities purchased from ILECs and in limited instances other providers. That is because XO's networks still largely reach only core areas of a select number of major markets, yet customers often need to connect multiple locations in that market or in different markets. For example, XO has lit fiber to [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL]. The buildings where XO has lit fiber in these cities represent less than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] commercially available buildings in each city. In contrast, ILEC networks, which were constructed and upgraded over a century, are characterized by virtually ubiquitous access to end user locations.

15. Because ILECs have network facilities to virtually all commercial buildings and other providers have facilities to much more limited numbers of buildings, ILECs control the market for Type II circuits. As a result, ILEC wholesale prices are high – resulting in low margins for XO, especially in the case of fiber-based services – and the terms are unduly restrictive. In purchasing Type II circuits from ILECs, XO's main objective is to maintain a market presence while it or other competitors expand their market presence, however slowly given the costs of and obstacles to construction.

16. XO's services continue to rely largely on inputs from other carriers, including use of special access, TDM- and Ethernet-based, and special access-like channel terminations and transport (although Ethernet is essentially an end user-location-only, or channel termination-only, offering). XO's primary suppliers of such inputs are the price cap ILECs (*e.g.* AT&T,

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Verizon, and CenturyLink). For instance, approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of the last-mile Ethernet circuits XO purchased in calendar year 2015 were obtained from the ILECs. *See* Highly Confidential Exhibit C.

17. XO uses a variety of wholesale inputs from ILECs, typically “UNEs” or special access, the latter of which are finished services, *e.g.*, DS1s, DS3s, and Ethernet. Using UNEs, specifically copper-based DS0 loops, XO can support Ethernet over Copper (“EoC”), at speeds up to 100 Mbps, depending upon the number of loops available, the length of the copper loops, and the quality of the copper pairs. EoC is distance sensitive – the end user location needs to be less than two miles from the closest Serving Wire Center, the copper pairs have to be clean end to end (*i.e.*, no bridge taps), and multiple copper pairs must be available (*e.g.*, five to eight copper pairs are required to support speeds of 20 Mbps, for example, depending upon length). Higher EoC speeds are achieved by banding together more loops of even shorter length, but availability of copper loops to support EoC to any given location is not within XO’s control. Consequently, XO often cannot access sufficient numbers of copper DS0 loops that are short enough and of sufficient quality to provide EoC speeds necessary to meet a customer’s Ethernet requirements. In such cases, XO’s choice is typically to look for wholesale Ethernet service which it can resell.

18. XO also uses bonded DS1s to provide Ethernet over Serial (“EoS”) service up to 10 Mbps, although the typical customer for EoS takes services at speeds of 3-4.5 Mbps (which requires 2-3 DS1s). DS3 special access supports XO Ethernet service up to 44 Mbps (1 DS3) or 88 Mbps (2 DS3s), and ILEC-provisioned Ethernet services allow for even higher speeds. Unlike EoC, where XO provides the electronics over dark copper, EoS uses finished services