

**HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO
SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

EXHIBIT G

HIGHLY CONFIDENTIAL

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Summary of XO's TDM and Ethernet Revenue (November 2014-November 2015)



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

_____)	
In the Matter of:)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	
AT&T Corporation Petition for Rulemaking to)	
Reform Regulation of Incumbent Local Exchange)	RM-10593
Carrier Rates for Interstate Special Access)	
Services)	
_____)	

DECLARATION OF MICHAEL CHAMBLESS

1. My name is Michael Chambless. I have been employed at XO Communications, LLC (“XO”) since the June, 2015. My current position is Vice President of Access Management and Planning with responsibilities predominately geared towards Telecom Expense, Carrier Relations and Access Planning and Implementation. I have been in this position since my employment with XO began. In total, I have over 38 years of experience in the telecommunications field, in one form or another. I had a career in the United States Air Force and retired in 1994. During that period, I was responsible for the maintenance and operations of complex communications infrastructures. After retirement, I spent approximately 2 years working for a consulting firm predominately supporting Fortune 500 companies in areas of network engineering and implementation. My most recent position prior to XO was as Vice President of Network Shared Services and Support at CenturyLink reporting to the Executive Vice President of Global Operations. Responsibilities at that time included the direction of process teams supporting Network Planning, Engineering/Construction and Operations; a team responsible for special projects and project management initiatives; another that performed

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budget management and analytics for the network capital expenditures; all internal corporate networks supporting the enterprise.

2. The main objective of my position at XO is to oversee our overall Telecom spend and ensure that we get the best rates for access circuits required to provide services to our dispersed customer base. When possible, our planning teams will identify cheaper alternatives which allow us to migrate customers to circuits allowing for a better margin of profit for XO. These responsibilities also include financial analysis and network optimization related to all forms of access services, including special access, unbundled network elements (“UNEs”), and Ethernet based services. This includes identifying and analyzing systems development projects for provisioning of all access services. In this capacity, I am involved in the purchase and negotiation of rates, terms, and conditions for special access services, including cost of service monthly and annual forecasting and maintenance of term plans and contracts.

3. XO has fiber metro rings in **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** Metro areas and provides local exchange, exchange access, interexchange and information services to wholesale customers and to enterprise and business customers on a retail basis. To provide service to customers, XO, a facilities-based competitive local exchange carrier (“CLEC”), most often complements its network facilities by using large volumes of Dedicated Services purchased (leased) from price cap incumbent local exchange carriers (“ILECs”) and, where possible, from competitive providers. As a provider, XO sells both “on net” and “off net” Dedicated Services, including channel terminations

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(network access to end user locations) and “transport” (transmission between customer-designated points excluding end user locations, such as between two ILEC wire centers or an ILEC wire center and an XO switching facility).

4. Because it is more efficient and permits XO to control the type and quality of its service offerings, XO prefers to provide service entirely over its network facilities. However, networks are very expensive and time-consuming to deploy, placing limits on the ability of a competitor to construct network facilities. When XO is entering a Metro area, it faces a reality that the ILEC has ubiquitous network coverage, initial control of all customers, and favorable terms of access to public rights-of-way and buildings. As a result, the economics of entry are, at best, challenging and, at worst, completely unfavorable. Thus, for XO to have a viable business in a Metro area, it must be disciplined about construction of facilities, and it must depend heavily access to on the ILECs’ facilities and services to serve its customers. This is equally true for Time Division Multiplex (“TDM”)-based circuits, such as DS1 and DS3 special access and copper loops, and for Ethernet services, although the percentage of XO’s Ethernet requirements it purchases from the various ILECs can vary considerably.

XO’s Use of Dedicated Services

5. XO uses Dedicated Services purchased from ILECs and other providers for two basic functions: channel terminations and transport between two locations on the wholesale provider’s network, with XO typically collocated at one end of the transport circuit.

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6. Depending on a customer's capacity needs and investment in equipment at a given location, XO may have several options for serving the customer. If XO does not have facilities to the location, or it finds that construction of fiber facilities is not economically feasible, XO will look for the least cost option (using its North American Pricing Tool as a starting point) to obtain the capabilities to serve the customer using wholesale inputs. XO may purchase from either ILECs or alternative providers (i) unbundled copper loops (including enhanced extended loops ("EELs")) which it uses to provide Ethernet over Copper ("EoC"), (ii) copper or fiber-based Dedicated Service at a DS_n level (DS₁ or DS₃ circuits) over which XO may provide TDM service or Ethernet service (i.e., Ethernet over Serial ("EoS")), or (iii) Ethernet Dedicated Service. XO uses these channel terminations to connect end user premises with XO network equipment collocated within an ILEC serving wire center. The XO network equipment in turn is typically connected to XO fiber facilities on a metro ring. Virtually all copper facilities available in the marketplace today are ILEC facilities, most of which are channel terminations; transport media are almost all fiber, whether provided by the ILECs or otherwise

7. XO also has fixed wireless licenses which it uses in select instances to self-provision fixed wireless (point-to-point) communications paths – Local Multipoint Distribution Service ("LMDS") in the 28 GHz band and millimeter-wave service at even higher frequencies – to offer redundancy for wireline services or, in some cases, as transitional to fiber-based Ethernet services. But XO has not found that LMDS or millimeter wave connections have the performance capabilities or network reliability to be a sufficient substitute for wireline Dedicated Services.

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8. Where the wholesale input comes from the ILEC and XO's collocation is in the serving wire center of the ILEC that serves the end user location, XO has no need for any interoffice mileage, transport or multiplexing in connection with the dedicated access input or service. But if the XO collocation is at a distant location on the ILEC network, then mileage charges for carrying the traffic from the initial serving wire center to the serving wire center where XO is collocated may apply at the same DS_n level of the channel terminations to the customer location.

9. XO also purchases transport between ILEC serving wire centers in more limited instances. For example, XO may use DS1s to connect multiple end user locations supported by a single serving wire center, but one in which XO is not collocated. To bring those DS1s from the serving wire center back to the XO collocation using mileage at a DS1 level (as I just described) would be inefficient, typically, if six or more DS1s require transport from that particular serving wire center to the XO collocation. In that situation, XO will typically purchase DS3 transport (with the price dependent on mileage) between the serving wire centers and multiplexing to allow the six DS1s to be transported over the DS3 facility more efficiently. (The exact number of DS1s that make purchase of DS3 transport cost efficient is not always six or more, but depends on the ILEC's special access pricing for DS1s and DS3s. Six DS1 circuits is, however, a common cross-over point.)

10. XO sees considerable competition for transport in the locations it requires when the two endpoints are both within central business districts ("CBDs") and the initial near-CBD ring

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of suburbs in most Metro areas where XO operates. There are many competitors for transport service in these locations because numerous CLECs frequently are collocated in the offices where XO is collocated. Further, competitive prices are typically much lower than those of the ILECs and are dropping further. However, when one or both endpoints are outside the CBD and first ring of suburbs, the availability of competitive transport falls off dramatically and XO is often forced to use the ILEC as the only choice for interoffice transport.

11. In the above example, XO purchases both channel terminations and transport from the ILECs. But it is feasible for XO to combine channel terminations obtained from the ILEC with transport from a competitive provider. Indeed, XO provisions DS1 services from the ILEC and other competitors [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of the time. These are almost always channel terminations. XO finds that, where available, transport from competitive providers is less expensive than ILEC transport. (Indeed, generally, competitive TDM pricing, whether transport or channel terminations, is much lower (generally [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]) if the competitor can provide the DS_n circuits on-net than if the competitor is reselling the ILEC's service. If reselling the ILEC's service, the competitor's prices tend to mirror those of the ILEC for obvious reasons.) A typical monthly charge from competitors for a DS1 channel termination without mileage (a "zero-mile" DS1) will be provided for [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] on-net and [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] off-net.

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12. Similarly, XO may obtain the Dedicated Services entirely from a competitive provider, although the competitive provider may be combining ILEC-provisioned end user access with transport provided by the competitive carrier or an underlying third-party unaffiliated competitive provider. In these situations, the ILEC inputs resold by the competitive provider are DS1s and DS3s, UNEs, or EELs. This may include access in Metro areas where XO has a fiber metro ring or markets where it does not. A common example of the latter is when XO has need to serve a customer with multiple locations, including locations in Metro areas where XO currently does not have a facilities presence. Thus, XO may rely on a competitive provider to obtain channel terminations in the “distant” market and then back haul the traffic to a location where XO has local network facilities and equipment. Alternatively, the competitive provider may hand the traffic off to XO at a node on XO’s long haul network that passes near the distant Metro area, and XO will provide the backhaul. For these purposes, XO will often enter into a regional agreement with the competitive provider.

13. There is one other scenario, which is far less common, in which XO uses ILEC transport but does not provide the end user channel termination. An end user, typically a large scale enterprise in these situations, may obtain the channel termination on a retail basis from the ILEC to an XO collocation at the ILEC central office. To meet the end user and customer’s requirements, XO will cross-connect with the channel termination and then, using its own network or third-party-provided transport, carry the traffic to another central office or another premise of the customer. Only in a small number of anomalous circumstances, less than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in

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Verizon North and South, for example, does XO have separate channel terminations and transport circuits at DS3 speeds cross-connected.

14. I should note that Ethernet is an end-user service only, i.e., channel termination, not a type of transport. Transport of Ethernet traffic may be, depending on the requirements, carried over DS_n special access connections, OC_n transport services, or dense wavelength division multiplexing (DWDM) wavelength services. Once fiber-based Ethernet service is in place, it is possible to increase the capacity merely by modifying or replacing the electronics on the network and customer premises ends of the fiber facility. The fiber-based transmission path itself does not have to be physically modified or replaced to achieve the higher speeds, unlike copper pairs which have inherent limits.

15. To date, XO has found that cable companies are not typically collocated in ILEC serving wire centers or central offices. As a result, cable companies, at this time, are not options for XO to consider in obtaining channel terminations or transport within metro markets. (XO does, however, purchase some measure of capacity from cable companies for long haul purposes, i.e., from Metro area to Metro area. These are services/capacity that ILECs often cannot provide because the service crosses LATA boundaries and involve TDM capabilities.)

XO's Predominant Reliance on ILEC-Provided Dedicated Access

16. XO's fiber metro networks were substantially completed by the middle 2000s. In 2014, XO launched an initiative to invest \$500 million to leverage existing facilities. Under this project, which XO calls its "On-Net Initiative," XO has completed fiber construction projects into nearly [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY
CONFIDENTIAL] However, XO is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

17. While XO prefers serving customers over its own network facilities, the reality is that XO is, and for the foreseeable future, will be able to serve only a small portion of its customer locations “on-net,” even with the full implementation of its On-Net Initiative. Thus, XO predominantly must rely on the ILECs for wholesale inputs to meet the service needs of XO customers. The reason is straightforward. In virtually all markets in which XO operates, price cap ILEC networks alone have ubiquitous coverage and neither XO nor any other provider has facilities covering more than a limited area of those markets.

18. When XO sells TDM-based transport and channel termination services “off-net,” [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of those sales consist solely of or incorporate price cap ILEC Dedicated Services, which XO obtains either directly from the price cap ILECs or from competitive providers that resell price cap ILEC Dedicated Services and UNEs, where they remain available. Additionally, virtually all dark copper loops XO obtains for EoC are provisioned by the ILEC network. Less than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of XO’s “off-net” TDM purchases are of competitive providers’ legacy TDM circuits. Within the remaining [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] price

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cap ILEC Dedicated Services predominates. In short, price cap ILECs' Dedicated Services are an essential component to XO's "off-net" transport and channel termination services.

19. Similarly, XO's non-TDM-based Ethernet services (typically 20 Mbps and above) that are sold "off-net" are predominantly supplied using Dedicated Services purchased from the price cap ILECs. Approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of the Ethernet services XO sells "off-net" today come directly from price cap ILECs, and [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] come from alternative providers. Almost [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of XO's inputs for Ethernet service come from competitive carriers reselling price cap ILEC Ethernet services.

20. The demand for Ethernet service is growing rapidly. As of January 2014, more than [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of XO's new orders for Dedicated Services were for Ethernet service, rather than TDM services (in terms of monthly revenues). The proportion of new orders that are Ethernet has continued to grow. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] Indeed, although the decline in new orders for TDM-based services has historically been gradual, there are clear indications that the market for TDM services is shrinking on an accelerated basis, most markedly with DS3 channel terminations. Indeed, when selling Dedicated Services over its legacy TDM facilities, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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[END

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21. The costs for a customer to transition to Ethernet service are much greater than the costs to upgrade to higher Ethernet speeds once it has Ethernet. When a customer of XO moves from TDM to Ethernet-based services, the primary cost is the need for the customer to change out its legacy TDM equipment. This cost can be enough for customers to postpone a transition for some period, in XO's experience. Additional transitional costs incurred by XO as the provider (which will be passed on to the customer) will vary depending on whether the Ethernet service is "on-net" or "off-net." The customer may also have to upgrade its on-site facilities to host the onsite Ethernet equipment and ports XO will or may have to deploy if XO will provide the service "on-net." The customer may also have to upgrade its power. If the Ethernet services are to be off-net, XO will need to turn up the circuit and pay the additional costs charged by the vendor.

22. In contrast, the costs to upgrade Ethernet service to higher speeds are much smaller and the processing time periods from date of customer request are much shorter. If the service is "on-net," XO must reconfigure the equipment, not replace it, and can often do this through a basic "remote hands" agreement with a contractor. Similarly, the costs to upgrade competitor-provided Ethernet service to a faster speed are marginal after the initial construction. On-net costs to switch to higher speeds are substantially lower than off-net. But in both cases, XO and alternative providers typically require only 30-45 days to implement the increased bandwidth service change. (By comparison, if XO or the competitive vendor has to build an on-net lateral

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facility, it would take a minimum of 90-120 days after the build has been approved by XO internally assuming no problems with permitting or the building owner arose).

23. Nonetheless, the volume of TDM circuits XO continues to use – as well as new orders for these circuits – remains substantial. Of XO's total "off-net" circuits in-service, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** were still TDM as of December 2015. Thus, the Commission should address the problems created by the terms and conditions of certain ILEC Commitment Plans for Dedicated DS_n services, especially DS₁s and DS₃s.

24. When XO has need for "off-net" channel terminations, XO finds that **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** of the time, it purchases inputs from providers, typically the ILEC, who already have the facilities in place to serve the end user. Approximately **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** however, XO makes its purchase from a facilities-based vendor that has facilities nearby and then builds to light up the building to meet XO's customer need. XO typically finds seeking a bid from a "near-net" provider most productive when the ILEC is the only provider in the building or if there is at most **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** in the building. When there are **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** or more competitive providers in the building, it becomes extremely unlikely that a "near-net" provider would provide a cost-effective alternative. This is because

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the nearby vendor will price the wholesale service to recoup the cost of construction over the course of the contract, making that choice likely much more expensive in most cases than what one of the in-building competitors could provide for the same service.

25. In XO's experience, ILECs do not proactively lower their prices in any material sense in response to [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] competitors being in the building.

26. What constitutes "nearby" in terms of alternative fiber vendors depends on a given Metro area. On the whole, XO finds it worthwhile where there is only the ILEC or at most [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in the building to contact competitive vendors whose fiber facilities generally run under [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] feet, but on rare occasions are as much as [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] feet of the target site in central business districts, depending upon the specific Metro area and a variety of factors including, but not limited to, distance from the competitive fiber, geology, the build event, capacity, and price.

27. XO has the information to consider nearby vendors because they normally provide XO with route maps that XO incorporates into a "near net list" or database by which it identifies near-net and on-net vendors for each building. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

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

28. More often than not, when XO has a new customer prospect in a building where it has no current customers, there are no competitive alternatives to a building, even when nearby providers are taken into account. Rather, only the ILEC has facilities into the building.

Overview of ILEC Tariffed Dedicated Service Commitment Plans

29. Typically alternative vendors' facilities-based prices for Dedicated Services are lower than those of the price cap ILECs, and these alternative providers are markedly more responsive than price cap ILECs to XO. Unfortunately, while price cap ILEC facilities are ubiquitous, alternative sources of supply are often not available. This situation is exacerbated beyond what XO would expect in a competitive environment because of the price cap ILECs' Dedicated Service Commitment Plans. These plans effectively lock in CLECs' demand for Dedicated TDM services not only in areas where the price cap ILECs provide the only facilities-based option (apart from a potential new build by XO) but extend into those areas where other providers have competitive network facilities.

30. Commitment Plan customers must commit to purchase a high percentage of their Dedicated TDM services needs from the price cap ILEC, both where there is some measure of competition as well as where there is no present facilities-based competition, or face much higher month-to-month rates that would render competitive providers' retail and wholesale service uneconomic. Even with the discounts that XO and other competitors receive from

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signing up for Commitment Plans, the rates they can obtain are much higher than alternative provider offerings where they are available. This is just a reflection of how high the ILECs' month-to-month tariffed rates are, rendering ILEC DSn special access without the discounts as wholesale inputs economically infeasible in the middle- and long-run. Only for extremely short transitional periods could XO consider paying an ILEC's tariffed month-to-month special access rates, taking into account the full circumstances of each situation.

31. XO does not have any volume plans with minimum commitments from the ILECs for Ethernet services. Instead, XO purchases Ethernet services and obtains pricing for them on a case-by-case basis. Moreover, although XO would like to see purchases of Ethernet services count toward the Dedicated Services minimum commitments to which XO is bound under in the Commitment Plans, Ethernet purchases do not count. One exception to this is [BEGIN

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

HIGHLY CONFIDENTIAL].

32. The Commitment Plans of the major price cap ILECs – including Verizon and AT&T – are offered under these carriers' access tariffs. Commitment Plan customers are able to buy dedicated DS1 and/or DS3 service, both transport and channel terminations, at rates lower than the price cap ILECs' month-to-month rates by committing to purchase a minimum volume

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of service for three, five, or more years. To get a reasonable discount and offer services on a Type II basis allowing it to compete, XO enters into longer term volume and term commitments under the ILECs' tariffs, such as Verizon's Commitment Discount Plan. Under these plans, XO can obtain discounts of approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] relative to monthly tariffed rates for DS1 or DS3 services (including channel terminations, mileage and transport) in return for maintaining active DS1 or DS3 services, respectively, for a period of five to seven years, although the resulting prices are still considerably higher – [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] -- than those of competitive providers where they have facilities.

33. The ILECs sell Dedicated TDM services with circuits of different capacities, including DS0 (or voice grade) service (which can transport one telephone call), DS1 service (which supports a throughput of 1.544 Mbps or 24 DS0s), and DS3 service (which supports a throughput of 45 Mbps or 28 DS1s or 672 DS0s).

34. In the most objectionable of the Commitment Plans – those of Verizon and AT&T – the minimum commitment for a given service type, *e.g.*, DS_n service, is based on a high percentage of the customer's historic purchases of service with the price cap ILEC, typically channel terminations. Unlike normal volume discount plans, the discount is not based on the volume of services in terms of actual circuit count or dollars spent, whereby all Commitment Plan customers that purchase a certain number of or dollars' worth of channel terminations receive a certain discount. Rather, because the commitment to obtain the better pricing is a

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commitment to purchase a high percentage of the wholesale customer's historic spend as of the date the Plan is entered into, a Commitment Plan takes a customer with few or no alternatives in many locations and captures that customer's demand for an extended period in all locations, including where there is existing or nascent competition. The customer effectively checks in to using the ILEC's wholesale services but cannot check out by building facilities or using another supplier, even after the Commitment Plans expire. For example, to qualify for Verizon's Commitment Plan discounted rates for DS1 and DS3 services, Verizon requires an initial minimum commitment of at least 90% of the total number of DS1 and DS3 channel terminations, respectively, that are in-service at the time of a customer's subscription to its Commitment Plan. But as a loyalty plan, the price cap ILECs' Commitment Plans are not based on the operations of a competitive market. Rather than resulting from competition among alternative providers, the Commitment Plans thwart competition by binding customers' demand to the dominant player in the marketplace for extended periods of time.

35. The extended commitments XO must make under the ILEC Commitment Plans at a high percentage of historic DS_n purchase volumes to get the discounted services is becoming more problematic given marketplace developments, in particular the falling demand for TDM-based services. The discounts off the ILEC month-to-month rates the Commitment Plans make possible are needed so as to make the cost of ILEC inputs responsibly low enough to permit XO to compete with the ILECs on the retail level. Any commitment based on a significant percentage of historic spend will be harder and harder for a Commitment Plan customer to meet as end users transition to Ethernet-based services. **[BEGIN HIGHLY CONFIDENTIAL]** ■

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[REDACTED]

[REDACTED]

[REDACTED]

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

36. The dominant facilities-based presence of the price cap ILECs allows them to extract the commitments in the Commitment Plans from XO and other competitive carriers to ensure they can reach end user locations. Without receiving the discounts in the Commitment Plans, XO could not provide competitive services to end users in many locations. However, as a consequence of the minimum commitments, XO is limited in its ability to offer customers lower prices or advanced service options such as Ethernet. The minimum commitments, backed by the associated shortfall penalties, make it harder for XO to compete by serving additional customers using its own facilities – either existing or newly constructed – or by purchasing competitive wholesale offerings from other competitive providers (where such resources are available). For example, even if XO were to satisfy a customer’s changing needs and purchase Ethernet service from Verizon or AT&T, rather than maintain existing DS1 or DS3 special access service, XO would face shortfall penalties if the reduced number of DSn circuits brought XO below its minimum commitment to purchase DSn circuits, substantially increasing XO’s costs of providing service. As a result, many customers are deprived of more advanced and cost effective service and of the promise of the technology transitions the Commission has worked so hard to foster.

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37. At the same time, the Commitment Plans have stifled the emergence of dedicated competition that could have met the DS1- and DS3-level transport and channel termination purchase requirements of Commitment Plan customers, as well as hampered the full emergence of alternatives to replace those TDM services with Ethernet offerings as end users' needs and expectations evolve. Considerable overall demand for TDM-based services remains. While that demand is decreasing in magnitude, it will nonetheless remain a key element to meeting customers' requirements for many years yet. Until Dedicated Services purchasers are able to obtain a significant portion of their TDM and overall requirements from competitive sources, much of overall demand will be frozen in price cap ILEC special access Commitment Plans.

38. The harmful effect of a Commitment Plan is further manifest when XO enters into a successor agreement with the price cap ILEC as XO did in the past fifteen months with both Verizon and AT&T. Because price cap ILECs have ubiquitous geographic reach and have stifled the growth of competitive alternatives, XO, for example, has had no choice but to renew its Commitment Plans when they expire. Verizon's DS1 and DS3 plans, as noted above, require a commitment to purchase 90% of in-service circuits on the renewal date. As a result, only a limited amount of the customer's demand can be freed up for deployment of its own facilities, migration to a competitive provider's facilities (if available), or transition to advanced, non-TDM services, such as Ethernet, offered by the price cap ILEC itself, and then only on a cycle of five or seven years. If a customer chooses not to renew its Commitment Plan, it would face a substantial and uneconomic increase in rates – [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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[END HIGHLY CONFIDENTIAL] -- for the significant number of circuits that remain with the price cap ILEC and transition to month-to-month rates.

39. For example, in October 2014, XO renewed its Commitment Plan with Verizon. XO faced an increase in rates for DS1 and DS3 services of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] if it did not renew its lock-up Commitment Plan. Of course, by signing up for the Verizon Commitment Plan, XO tied up 90% of the in-service volume of DS1 and DS3 circuits (at the time of entering into the successor agreement) in the Verizon North and South regions for another seven-year commitment. What makes the Verizon Commitment Plan renewal so twisted is that XO found that, as a wholesale customer, it did not have a competitive alternative to Verizon's Commitment Plan when the prior plan expired in the third quarter 2014. XO made a serious effort to see what alternative vendors might be able to do so that its commitment with Verizon upon renewal would be, in absolute numbers, smaller. Few competitive carriers offered alternative services in the right places to make looking at migration opportunities, combined with tactically timed disconnects of existing circuits, a worthwhile or realistic option. Moreover, any service offered by cable companies over their coax networks were not substitutes for XO's TDM and Ethernet services that used ILEC DS_n inputs. Cable operators are distinct in several ways. First, they may not have facilities at or near buildings since they primarily serve residential customers. Second, they tend to be focused on serving smaller business customers with reduced requirements for service quality and features, not larger businesses and enterprises, with Best Efforts service and so have not built higher performance broadband facilities to these locations even where they serve

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commercial customers. Third, their facilities in buildings are often coaxial cable, not fiber, which limits the type and performance of the Ethernet service they provide (although cable operators are beginning to expand their fiber footprint in CBDs). Thus, while cable companies may in the long run have the potential to be robust competitors in the Dedicated Services market, they should not be considered rapid entrants.

40. Similarly, with AT&T, in the former Ameritech region, XO renewed its Commitment Plan for DS1s in October 2015. In doing so, XO tied up 90% of its in-service DS1 circuits as of the expiration of the prior Plan at the time of the new agreement. However, XO's renewal with AT&T (Ameritech) represented a stark contrast with that of Verizon North and South. In both cases, purchase of ILEC Ethernet would not count toward minimum commitments, but unlike Verizon, AT&T (Ameritech) accommodated efforts by XO to lower the number of circuits in service at the time of renewal, leading to a reduced minimum commitment than the above percentage would suggest: first, AT&T allowed XO to convert some of the Dedicated Services to UNEs; second, AT&T provided extra time for the conversion for circuits XO identified to be converted, and for a short time XO is being billed month-to-month Dedicated Services rates. Further, XO, on its own, disconnected some of the Dedicated Services itself prior to renewal (and faced any applicable early termination penalties and shortfall penalties). While by no means a completely adequate solution to the problem of lock-up agreements, especially with the market rapidly moving away from TDM services to fiber based Ethernet services, XO appreciated the partial accommodations AT&T made which lessened (not eliminated) the adverse consequences of entering into a new long-term lock-up Commitment Plan. Verizon's

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Commitment Discount Plans (“CDPs”), to the contrary, do not allow XO to purchase DSn UNEs instead of Dedicated Services; rather, XO is committed to purchase all DS3s as Dedicated Services.

41. Similar situations to those XO encountered when renewing with Verizon and AT&T (Ameritech) applied with respect to XO’s Commitment Plans with other major price cap ILECs when it renewed them, albeit the renewals occurred several years ago and the agreements still have several years left before they expire.

42. Assuming that the Commitment Plans are otherwise defensible, these lock-up provisions, or the high month-to-month rack rates that apply in the absence of a Commitment Plan, cannot be explained by the need of price cap ILECs to recover investments in their TDM networks. Price cap ILECs, almost to the same extent as competitive providers, have not made any meaningful capital expenditures in recent years in TDM facilities or plant and the previous investments should be largely, if not fully, depreciated. Notably, AT&T, Verizon, and the other major price cap ILECs have highlighted their transition, in terms of new investment, away from TDM facilities and plant. XO, in fact, has seen an overall increase in the past two-plus years in the instances of Verizon special construction quotes when it places orders for DS1 and DS3 channel terminations. The quoted special construction charges, which are imposed both in copper and fiber build situations, are sufficiently large that XO loses a significant percentage of the customers that would face these added costs. In 2015, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]** of the potential XO customers facing special construction charges that to date have made a decision whether to proceed despite

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the special construction charge have opted to decline service. To win a customer facing special construction, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[END HIGHLY CONFIDENTIAL]

43. Pursuant to the applicable tariffs, XO cannot adjust its minimum commitments mid-contract so as to avoid or reduce the shortfall penalties that would apply if it fails to meet those commitments. Nor can XO move circuits from TDM to price cap LEC-provided Ethernet service and have those purchases count toward its minimum commitments **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[END HIGHLY CONFIDENTIAL]. Increasingly XO customers look to transition to Ethernet services because their capacity needs are higher than what can be provided with TDM-supported Ethernet, yet the Commitment Plans discourage XO from transitioning customers to advanced Ethernet services in an effort to satisfy its minimum commitment under the Commitment Plans or put XO in the position of facing costs well in excess of providing the service, by having to maintain the TDM circuit(s) the customer is transitioning from solely to avoid the shortfall penalty, not for service reasons.

44. Demand for “pure” Ethernet services is growing steadily, both among commercial as well as carrier customers. Consequently, where XO does not have facilities or cannot economically justify building such facilities, XO would like to increase the Dedicated Services it can obtain from alternative Ethernet providers, where available, which typically offer better