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February 19, 2016

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reply Comments of XO Communications, LLC on the Further Notice of Proposed Rulemaking – WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

XO Communications, LLC ("XO"), through its attorneys, hereby submits reply comments on the Further Notice of Proposed Rulemaking in the above-referenced proceedings. The submission contains Highly Confidential Information. In accordance with the Second Protective Order (DA 10-2419) and the Order and Data Collection Protective Order (DA 14-1424) in this proceeding, this filing consists of a redacted copy of XO's submission to the Commission.

Copies of the Highly Confidential version of the filing are being submitted to the Secretary's Office and Commission staff via hand delivery under separate cover.

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Should you have any questions, please contact the undersigned.

Sincerely,

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

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

REPLY COMMENTS OF XO COMMUNICATIONS, LLC ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

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AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF XO COMMUNICATIONS, LLC ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

XO Communications, LLC ("XO") hereby submits its reply comments on the Further Notice of Proposed Rulemaking ("Special Access FNPRM") in the above-referenced proceedings.[1] In the *Special Access FNPRM*, the Commission is evaluating competition in the marketplace for Dedicated Services[2] and seeking to determine where relief from regulation of those services is appropriate and whether earlier deregulatory measures should be reconsidered and undone. In these reply comments, XO responds to certain key arguments raised by the incumbent local exchange carriers ("ILECs") in their comments. As explained herein and in XO's comments, the Commission should reset the deregulation triggers for both channel

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1 *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, FCC 12-153, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 16318 (rel. Dec. 18, 2012).

2 Capitalized terms not defined herein will use the definitions in the FCC's Glossary from the special access data collection: *See https://www.fcc.gov/general/special-access-data-collection-glossary-terms* ("Glossary").

terminations and transport so that they accurately reflect the existence of competition, and then apply these triggers to determine where ILECs retain market power in the offering of Dedicated Services.

INTRODUCTION AND SUMMARY

Almost 20 years ago, the Commission used its predictive judgment and adopted triggers as a proxy by which it would determine when sufficient competition exists for the provision of Dedicated Services. Based on satisfying these triggers, ILECs were eligible for different degrees of deregulation (pricing flexibility). Those triggers proved fallible, and the Commission suspended their use nearly four years ago.

At its heart, this proceeding is meant to address three issues: (1) whether the suspended triggers are in fact accurate reflections of competition, particularly for channel terminations and transport; (2) if they are not, what triggers should be adopted in their place; and (3) in areas where competition does not exist, how to impose regulation. XO and other competitive local exchange carriers ("CLECs"), supported by declarations from experts within their companies and, for Level 3, Windstream, and XO, an Economists Report, demonstrated that the suspended triggers are not accurate reflections of competition. Further, by employing XO's proposed triggers based on market data in the record, it is evident that competition does not exist in most Dedicated Services markets, including markets where ILECs had qualified for pricing flexibility under the suspended triggers. XO called for reregulation where competition does not exist, including the adoption of interim pricing measures.[3]

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[3] Comments of XO Communications, LLC on the Further Notice of Proposed Rulemaking, WC Docket No. 05-25, RM-10593 (Jan. 27, 2016) (hereafter, "XO's *Special Access FNPRM* Comments").

The ILECs want the Commission to believe that the 1999 pricing flexibility triggers, particularly for channel terminations, are accurate, if not overly strict. They support their claim by arguing that a competitive facility has been deployed in the vast majority of census blocks or zip codes in the U.S., and this sunk investment demonstrates entry has occurred and will continue. Yet, just because there is a competitive transport facility in an area does not indicate that all necessary sunk investments have occurred for a sufficient number of providers, and thus whether competition, particularly for channel terminations, exists in the relevant markets.

The flaws in the ILECs' case, as presented in their comments, are many.

- First, they attack the reliability of the data submitted in the Data Collection proceeding, specifically asserting that, being two years old, it is outdated and too limited in scope. However, XO and other competitors relied primarily on their in-house experts' current experiences in the relevant markets to demonstrate that the suspended triggers are inaccurate and that competition is essentially non-existent for special access services. They then used analysis of the data submitted to the Commission to buttress and otherwise support current market information provided by their experts.
- Second, the ILECs believe one competitive facility within part of an area is sufficient to prove the existence of competition in the entire area, proffering no evidence that such a presence alters ILEC behavior in relevant market pricing.
- Third, they base their claim of robust competition on the existence of competitor facilities in Metropolitan Statistical Areas ("MSAs") – seeming to replicate the errors of the former suspended triggers – rather than evaluating competition at the

more relevant geographic level (*e.g.* building or aggregation of nearby buildings, such as in a Central Business District ("CBD")).

- Fourth, the ILECs incorrectly assume that a competitor's presence in a particular building or buildings in a CBD will result in rapid expansion to other CBDs or throughout an entire MSA.
- Fifth, the ILECs mistakenly posit that Best Efforts broadband and services offered over fixed wireless facilities are close substitutes for Dedicated Services.
- Finally, they imply that Commission oversight of special access pricing is no longer necessary for TDM-based services in light of declining demand for such services, ignoring the substantial role that TDM Dedicated Services continue to play.

Significantly, for all of the talk of increased competitor "presence" in extended areas, which the ILECs tout as proof that there is sufficient competition in the relevant marketplace, they provide little, if any, analysis of pricing effects from having competitive facilities in the areas, let alone at the more granular level of in-building or near building. This means that the ILECs make no connection – other than a generic assertion about sunk costs – between their claim that one competitive facility in an area is sufficient for competition and any evidence backing such an assertion.

In contrast, XO used a traditional market power structural analysis to develop new pricing flexibility triggers.[4] It examined market concentration in relevant product and geographic markets, including from existing and potential competitors. XO noted the import of

4 XO's *Special Access FNPRM* Comments at 19-55.

distinguishing between in-building and nearby competitors since there are substantial barriers, including economic and governmental, in constructing even short laterals off of Metro fiber rings into specific properties.[5] XO then evaluated the pricing effects of having different degrees of competitive presence in-building and from nearby facilities.[6] This evaluation was based primarily on declarations from senior XO personnel who can provide expert information by virtue of constructing facilities (especially laterals to buildings) as well as procuring and selling Dedicated Services. These declarations were supplemented by economic analysis of data collected pursuant to the Mandatory Data Request. From this information, XO was able to demonstrate the proposition that prices were meaningfully lower only with at least **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** competitors in-building and merely somewhat lower with multiple competitors nearby.

XO then used this analysis to develop the following proposed triggers for pricing flexibility in the provision of TDM and Ethernet channel terminations.[7] XO submits its analysis and triggers reflect the actual competitive dynamic, and it urges their adoption.

<u>DSn Channel Terminations.</u>

XO proposed that pricing flexibility for DSn channel terminations be granted within a CBD (or other contiguous, compact service area) when, in the aggregate, commercial buildings comprising more than 66% of the square footage of those buildings in the relevant area in which TDM services are offered have four or more competitors with in-building TDM facilities.

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[5] *See id.* at 28-30.

[6] *See id.* at 33-36.

[7] *See id.* at 44-55.

Ethernet Channel Terminations.

XO proposed that pricing flexibility for Ethernet channel terminations be granted within a CBD (or other contiguous, compact service area) when, in the aggregate, commercial buildings comprising more than 66% of the square footage of those buildings in the relevant area in which fiber-based Ethernet services are offered have at least two or more competitors with in-building fiber facilities and at least two additional CLECs with fiber either in the same buildings or in close proximity to that location.

Dedicated Services Transport.

XO proposed the Commission create density zones in an MSA and award relief when triggers are met within each zone. In particular, XO found that effective competition is predominantly present 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 for purposes of pricing flexibility.

Finally, XO proposed the Commission adopt the following interim pricing regulations where the triggers are not met:[8] First, 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, wholesale prices for an ILEC's DSn special access, i.e., CBDS, should be no greater than the lowest per circuit rate, regardless of term length, that is currently available or under any other ILEC volume and term discount arrangement for those services that the ILEC has in the same operating territory.

8 *See id.* at 55-57.

Wholesale Ethernet pricing should be subject to the same principles since ILECs enjoy the same market power with respect to DSn as to Ethernet services. Discounts between wholesale Ethernet and DSn 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 DSn 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.

I. XO'S PROPOSED TRIGGERS ARE PRIMARILY BASED ON DECLARATIONS RATHER THAN THE DATA WHICH THE ILECS CRITICIZE

In its comments, Verizon asserts that the data collected by the Commission are not reliable. In particular, Verizon states "the Commission did not achieve its objective of having 'the most-up-to-the-date data available.'"[9] Verizon identifies a number of reasons why it believes the special access data is lacking;[10] however, these perceived deficiencies in the data set do not undercut the triggers urged by XO in its comments, which are based on XO's firsthand experience in the market.

XO's proposed pricing flexibility triggers are premised on data and information set forth in declarations from senior XO personnel involved in building networks, procuring facilities and Dedicated Services at wholesale, and selling Dedicated Services to retail and wholesale

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9 Comments of Verizon, WC Docket No. 05-25, *et al.*, 13 (filed Jan. 27, 2016) ("Verizon Comments").

10 Verizon Comments at 15-19.

customers.[11] While XO supported its proposed triggers with the work of economists that have analyzed the data submitted pursuant to the Mandatory Data Collection, it used the data only to confirm (directionally) the statements of XO's declarants.

Therefore, even if the Commission were to be persuaded by Verizon's claims of unreliability, such a finding does not affect the conclusions made in XO's comments,[12] nor does it undercut XO's proposed triggers.

II. UNLESS THERE ARE MULTIPLE COMPETITORS IN-BUILDING OR BOTH IN-BUILDING AND NEARBY, THE MARKET FOR DEDICATED SERVICES IS NOT COMPETITIVE

The ILECs argue that the mere presence of one provider with fiber in a limited geographic area or census block results in a competitive market because sufficient sunk investments have been made. For example, AT&T concludes that the Commission's pricing flexibility triggers were overly conservative, and that competitors have deployed facilities to serve the vast majority of the nation's Special Access demand.[13] In reaching this conclusion, AT&T makes the broad claim that "competitors have deployed their own competitive facilities in virtually every census block with potential special access demand nationwide" and that

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11 XO's *Special Access FNPRM* Comments, Declaration of James Anderson ("Anderson SA Declaration"); Declaration of Michael Chambless ("Chambless SA Declaration"); and Declaration of George Kuzmanovski ("Kuzmanovski SA Declaration").

12 Other CLECs similarly relied on firsthand experience to demonstrate the lack of competition for special access services. *See, e.g.*, Comments of Birch, BT Americas, EarthLink and Level 3, WC Docket No. 05-25, *et al.*, Declaration of Chris McReynolds on behalf of Level 3 Communications, LLC, Declaration of Gary Black, Jr. on behalf of Level 3 Communications, LLC (filed Jan. 27, 2016) ("Joint CLEC Comments"); Comments of Windstream Services, LLC, WC Docket No. 05-25, *et al.*, Declaration of Dan Deem, Douglas Derstine, Mike Kozlowski, Arthur Nichols, Joe Scattareggia, and Drew Smith (filed Jan. 27, 2016) ("Windstream Comments").

13 Comments of AT&T, Inc., WC Docket No. 05-25, *et al.*, 11-17 (filed Jan. 27, 2016) ("AT&T Comments").

"competitive special access deployment today is essentially ubiquitous."[14] AT&T argues that as a result of these sunk facilities, the existing Phase II triggers are not over-inclusive.[15] CenturyLink presents a similar census block analysis.[16]

However, the ILECs fail to substantiate their findings with any more detailed information to show the level of competition that exists within those census blocks or that the presence of one competitor (let alone two or three or four competitors) in a census block has affected the ILECs' behavior in offering Dedicated Services. Just because there is a competitor in a census block does not mean that there is a significant level of competition that would allow prices to drop to a competitive level.[17] The Reply Declaration of Jonathan Baker, submitted in this docket, supports this conclusion by explaining:

- "[A] CLEC that has built a fiber ring near a building has not made all the sunk expenditures required to serve that building with its facilities. The additional

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14 AT&T Comments at 12. AT&T contends "competitors have deployed their own competitive facilities in nearly all census blocks **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** nationwide that contain special access demand, and those census blocks, in turn, account for virtually every special access connection **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** and business establishment **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**." *Id.*

15 *Id.* at 3-4.

16 Comments of CenturyLink, WC Docket No. 05-25, *et al.*, 2 (filed Jan. 27, 2016) ("CenturyLink Comments"). Verizon bases its arguments in part on analysis of competitor presence by zip code. *See* Verizon Comments at 25-28.

17 AT&T also misses the point when it asserts that "[i]t is no answer to say that the existence of competitive facilities in a census block does not establish that the competitor could actually serve the entire census block," as the correct measure of competition must be at a building level. AT&T Comments at 16.

sunk expenditures include the cost of the lateral, the cost of the electronics, and expenditures required to obtain building access."[18]

- Because there are many multi-location customers, "even if potential competition from nearby CLECs were sufficient to prevent ILECs from exercising market power in providing dedicated services within a census block or area of concentrated demand, as the ILECs (erroneously) assume, such competition would still not be sufficient to prevent the ILECs from exercising market power in providing dedicated services to multi-location customers that have some locations within those areas and some locations outside of them."[19]
- "Empirical analyses set forth in my initial declaration **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[20]

Further, as explained in the declarations submitted by XO, multiple competitors need to be in-building or, in combination with in-building competitors, nearby[21] – within 1,000 feet or

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18 Reply Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services, WC Docket No. 05-25, *et al.*, ¶ 7 (filed Feb. 19, 2016) ("Economists Reply Declaration").

19 *Id.* ¶ 9.

20 *Id.* ¶ 10.

21 The Commission should adopt a narrow view of what can be considered "nearby" because, as explained in XO's initial comments, the cost of constructing a lateral, even if a competitor has facilities close to a building, is still very expensive, and is frequently the determining factor for a CLEC when deciding whether to undertake a requested build. Unlike ILECs, which have nearly ubiquitous access to buildings and potential customers, CLECs must be cautious in choosing whether to move forward with a build because they have very limited resources. *See, e.g.*, XO's *Special Access FNPRM* Comments at 14-15, Kuzmanovski SA Declaration ¶ 24 (explaining that XO is "extremely unlikely to build if the building is more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END**

less – to have competition for Ethernet channel terminations.[22] The appropriate measure of the number of competitors thus cannot be based on a single provider with facilities somewhere in a census block but rather must account for multiple competitors on a building-by-building basis. When viewed on an in-building basis, the great majority of the channel termination markets are monopolies or duopolies, both of which raise competitive concerns because the presence of only one or two providers in a building (even if one of those providers happens to be a competitor) does not result in competitive pricing.[23] As set forth in XO's comments, ILEC prices for Dedicated Services are supra-competitive when it is the only provider in a building. ILEC prices tend to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** if there are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in-building facilities-based providers. It is only when there are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in-building providers that the reduction in ILEC prices begins to suggest that meaningful competition in a given building exists.[24]

HIGHLY CONFIDENTIAL] linear feet from a splice point on XO fiber" and that nearly all of the builds XO undertook in 2014 and 2015 as part of its On-Net Initiative were less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** aerial feet).

22 XO's *Special Access FNPRM* Comments at 51-54.

23 *See* Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services, WC Docket No. 05-25, RM 10593, ¶ 6 (filed Jan. 27, 2016) ("Economists Report"). Accounting for near-building presence changes the competitive landscape somewhat. Again ILECs' networks are ubiquitous. As for CLECs, XO has found that in major metropolitan areas where it operates, there often are competitive fiber facilities close (within 0.5 miles) to multiple large multi-tenant environments in close proximity. *See* XO's *Special Access FNPRM* Comments at 33; Chambless SA Declaration ¶ 10. However, outside these relatively compact and dense sectors of MTEs, the presence of competitive fiber is limited.

24 *See* XO's *Special Access FNPRM* Comments at 51-52; Economists Report ¶ 58.

The data suggest that ILEC prices are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** as the number of nearby (CLEC) providers increases.[25] These results provide support for XO's proposed new pricing flexibility trigger based on four in-building facilities-based providers. While CenturyLink alone among the ILECs discusses its presence on a building level as a result of its wholesale purchases, the information provided in its comments does not demonstrate the presence of sufficient competition. In the declaration of Carla Stewart submitted with CenturyLink's comments, the ILEC provides data on its access to commercial buildings.[26] However, CenturyLink does not explain how many competitors are located in those commercial buildings, whether the connections are on-net versus off-net, or whether those connections are for service or technology that is not seen as a close substitute. More importantly, CenturyLink offers no evidence to demonstrate that as a purchaser,

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25 The economists' empirical (regression) analysis conducted in connection with XO's *Special Access FNPRM* Comments relating the price charged for a dedicated connection to the number of in-building and nearby facilities-based providers "shows that ILEC prices to end users **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Economists Report ¶ 53. This supports the findings of XO personnel as set forth in their declarations that ILEC prices remain supra-competitive even where some competitors are present in or near buildings. *See, e.g.*, Chambless SA Declaration ¶ 25.

26 *See* CenturyLink Comments, Declaration of Carla Stewart ¶ 3 ("Stewart CenturyLink Declaration"). ("[I]n January 2014, CenturyLink had access to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** commercial buildings or addresses through non-ILEC providers. By January 2015, that number had increased to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **END HIGHLY CONFIDENTIAL]**. And, as of November 2015, CenturyLink had access to over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** commercial buildings or addresses through non-ILEC providers, an increase of more than

it has benefited from lower pricing as a result of the increased presence of alternative access providers.[27] CenturyLink further fails to produce evidence that, as a seller of Dedicated Services, increased competitor presence has forced it to reduce its own prices as a means of remaining competitive. Therefore, it is not possible to conclude that there is significant competition in those locations where CenturyLink is present.

III. TYPICALLY, CLECS ENTER IN SELECT GEOGRAPHIC AREAS, MOST LIKELY CENTRAL BUSINESS DISTRICTS, AND THEREFORE MEASURING COMPETITION ACROSS REGIONS OR MSAS IS INAPPROPRIATE

Both Verizon and AT&T assert that competition is widespread when viewed on an MSA level. For example, Verizon asserts that "competitors have deployed networks capable of providing high-capacity services in all metropolitan areas throughout the country that contain concentrated demand for these services."[28] While Verizon asserts that "the record demonstrates that facilities-based competitors typically enter markets at the level of a metropolitan area and not in small geographic areas like an individual office building or city block,"[29] it offers little, if any, support for this statement, which runs contrary to the evidence XO set forth in its comments.[30] AT&T's argument that "the data collection shows that there are a number of Phase I and price cap MSAs in which competitors have deployed extensive facilities-based networks on

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[BEGIN HIGHLY CONFIDENTIAL] [redacted] **[END HIGHLY CONFIDENTIAL]** percent since January 2014.")

27 Ms. Stewart admits that the "tremendous growth since 2013 in the availability of wholesale alternatives to the ILECs is attributable primarily to dramatically increased activity by cable companies." Stewart CenturyLink Declaration ¶ 4. As explained below, the prevalent services offered by cable companies today are not substitutes for ILEC- and CLEC-based Dedicated Services, and therefore consideration of them in the analysis of the state of competition for Dedicated Services would be inappropriate.

28 Verizon Comments at 24.

29 Verizon Comments at 20.

30 *See* XO's *Special Access FNPRM* Comments at 29-30.

par with the extensive deployment observed in Phase II MSAs" and that therefore "[i]t makes no sense to continue saddling incumbent LECs (but not their competitors) with price cap regulation in these areas,"[31] is likewise contradicted by XO's comments.[32]

A. An MSA-Based Approach Is Not Consistent with Competitive Entry.

Viewing competition at an MSA level as urged by the ILECS is flawed, especially given the way competitive entry into markets typically occurs. XO's comments provide detailed examples of both its historic[33] and ongoing network deployment efforts,[34] both of which are illustrative of the typical CLEC practice of building transport facilities in concentrated, more dense areas, not throughout an MSA. XO makes entry decisions at the individual office building level, and it will only move forward with a proposed entry when it has a customer request that will justify the build, as set forth in XO's opening comments.[35] The data supplied to the Commission provide further evidence of these practices, showing that **[BEGIN HIGHLY**

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31 AT&T Comments at 4.

32 *See* XO's *Special Access FNPRM* Comments at 31-33.

33 XO entered initially by building metro rings in dense areas of major cities, since these could aggregate traffic from more users and hence were more economical. Lateral facilities, in contrast, most often carried traffic – and were dependent on the spend – from a single location, limiting scale economies. Kuzmanovski SA Declaration ¶ 4.

34 Currently, XO is focusing its "On-Net Initiative" in metro areas where it already has fiber networks in place, such that the vast bulk of these capital expenditures will be used to add fiber count on existing routes and to install fiber to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings or developments it does not currently reach, and has limited almost all of these builds to less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** aerial feet. Kuzmanovski SA Declaration ¶¶ 7, 24. Mr. Kuzmanovski, XO's Vice President of Access Planning and Implementation, explains in his Declaration that in general, "XO is extremely unlikely to build if the building is more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** linear feet from a splice point on XO fiber, and the overwhelming number of builds XO undertakes have been within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** linear feet" of a splice point. *Id.* ¶ 24.

CONFIDENTIAL] [redacted] **[END HIGHLY CONFIDENTIAL]** most of which are concentrated in select, dense areas of MSAs.[36] For instance, XO has lit fiber in less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** commercially available buildings in five major MSAs.[37]

XO's own experience of constructing in CBDs also is supported by the findings of the Commission in the *Suspension Order*,[38] where the Commission explained that "MSAs were developed not for the purposes of competition policy" and that "MSAs can be geographically extensive and, in many cases, may encompass areas with vastly different business density within their borders."[39] The Commission then found that "the record in this proceeding suggests that…MSAs have generally failed to reflect the scope of competitive entry… [which] in many instances…has apparently been far smaller than predicted."[40] Rather, the Commission concluded, based on available data, that competitive entry occurs in areas of "high demand" relative to the cost of providing service, and that "demand varies significantly within an MSA" –

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35 XO's *Special Access FNPRM* Comments at 29; Kuzmanovski SA Declaration ¶ 14.

36 *See* Economists Report ¶ 44-45.

37 XO has lit fiber to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Anderson SA Declaration ¶ 14.

38 *See Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Report and Order, 27 FCC Rcd. 10557, FCC 12-92 (rel. Aug 22, 2012) ("Suspension Order").

39 *See Suspension Order*, ¶¶ 26, 28.

40 *See id.*, ¶ 35.

accordingly competitive entry is unlikely to occur MSA-wide.[41] As set forth in its comments, XO confirms the Commission's recognition that competitive entry more often occurs in buildings within dense areas where demand is high and facility deployment is more economic.[42] But even in those areas, CLEC in-building presence continues to be quite limited.

In light of XO's own experience, CLECs' general practices, and the *Suspension Order*, it is clear that entry – let alone rapid entry – by competitors occurs at best in buildings within limited areas of MSAs where demand is greatest. Thus, the Commission should not expect that facilities-based competition will take hold throughout an MSA just because a competitor has a network in a CBD, or for that matter, throughout such CBDs.

Further, the Commission should not base its definition of the relevant geographic market on the ILEC claims that entry occurs MSA-wide. As the Commission properly concluded in the *SBC/AT&T Merger Order*, the test for determining the relevant geographic market for wholesale Dedicated Services is a much different inquiry: whether "it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a 'small but significant

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41 *See id.*, ¶ 36.

42 Verizon attempts to justify its position with the following rationale: "[a]though the Commission has observed that demand varies significantly within an MSA and that areas with higher demand tend to attract greater competition, it does not necessarily follow than an MSA or metropolitan area is an improper unit of geographic analysis. Rather, it is precisely because most demand within an MSA or metropolitan area may be heavily concentrated within a subset of the geographic area, that it makes sense – for economic and administrative reasons – to use this as the starting unit of geographic analysis." Verizon Comments at 20-21. However, an MSA is an artificial geographic construct that does not reflect how retail commercial customers purchase service or how competitors deploy networks. XO sets forth the market realities in Section II, *supra*, which indicates that any market analysis needs to occur at the building or "adjacent" building level, *e.g.* a CBD.

nontransitory' increase in the price for special access service."[43] Of course, the relevant geographic market is a particular customer's location (i.e. an individual building), and it is on this basis that the Commission should craft its triggers to determine whether competition exists.[44]

B. The Presence of Cable Companies Does Not Support an MSA-Based Analysis.

The ILECs point to the practices of various cable companies in support of their positon that an MSA is an appropriate measure of the market, but this does not undercut XO's position that a MSA-based analysis is inappropriate. Verizon argues that "[c]able companies do not define the scope of their competitive presence in narrow geographic terms such as route miles of fiber or on-net buildings. Instead, they market their enterprise services as widely available throughout their incumbent cable territories, and they target wide swaths of customers within these broad footprints."[45]

As discussed above, even if cable companies establish a presence by installing facilities throughout an MSA, the relevant geographic market for purposes of analyzing competition for Dedicated Services remains the individual building. Under XO's proposed triggers, which are based on that geographic market definition, the presence of a cable company would count if it

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43 *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd. 18290, 18305-06, ¶ 28 (2005).

44 Despite the fact that individual buildings define the relevant geographic markets, XO recognizes that, from an administrative perspective, it would be practical for the Commission to determine whether pricing flexibility should be granted by review of the degree of competition – as evidenced by sufficiently low prices for special access services – within areas of concentrated commercial activity, e.g., CBDs. Therefore, initially 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 short distance of the buildings. But where a sufficiently large percentage 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.

45 Verizon Comments at 33-34.

were in-building (for TDM channel terminations) and in-building or nearby (for Ethernet channel terminations).[46] But, as XO has demonstrated in the declarations of its experts and in the Economists Report, the presence of a cable company alone would not indicate there is sufficient competition to cause prices to be reduced to their competitive levels.[47]

In addition, the Commission should not view the presence of a cable company in a metro area as an indicator that future entry could occur expeditiously to create robust competition, even if the cable company was, hypothetically speaking, providing Dedicated Services to all customers in all buildings in an MSA. Cable companies are unique, since in virtually all instances, they built their networks as video service monopolists with mandated build-out requirements by the local franchising authority. All other competitive entrants did (and do) not have the advantage of being the sole service provider in a product market. CLECs also have not been mandated to build everywhere, and economically, as new entrants in markets long dominated by a single provider, it has been impossible to do so. In fact, the Commission in 1997 found that such build-out requirements for CLECs were anticompetitive.[48] Thus, at best, there will be a single competitor offering Dedicated Services throughout an MSA – assuming cable companies even offer services acceptable to mid-size, large and enterprise commercial customers – which would not be sufficient competition to drive prices to competitive levels. As XO discussed in its comments, cable companies today largely serve the lower reaches of the

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46 *See* XO's *Special Access FNPRM* Comments at 44-55.

47 *See id.* at 39-40; Anderson SA Declaration ¶¶ 33-35; *see also* Economists Report, ¶¶ 46-48.

48 *See In the Matter of The Public Utility Commission of Texas et al.*, CCBPol 96-13 *et al.*, Memorandum and Opinion Order, 13 FCC Rcd. 3460 (1997).

commercial market, not mid-sized and larger enterprise customers.[49] As such, the cable companies do not fit the bill as an MSA-wide Dedicated Services competitor.

IV. COMPETITION IN BUILDINGS IN CENTRAL BUSINESS DISTRICTS DOES NOT INDICATE MSA-WIDE COMPETITION

Verizon argues that "once the Commission identifies areas of concentrated demand within each metropolitan area, it should determine whether there are competitors serving that area of concentrated demand, and if so, conclude that competition is possible throughout the concentrated area."[50] However, it is not accurate to conclude that once competition at some buildings in a CBD is present, ILEC Dedicated Services in an entire metropolitan area should be deregulated on a presumption that competitors can expand rapidly. To the contrary, rapid expansion that will result in competitive pricing cannot be assumed and historically has not occurred.

As discussed in Section III, XO and other CLECs primarily built Metro rings in CBDs in the 1990s and 2000s, but laterals only to a very small number of buildings. However, larger customers normally have multiple sites, many of which are in areas outside of a CBD where competitors have network facilities.[51] As a result, even if a CLEC has a network in one building or part of a metro area, it may not be able to compete for a customer in the entire metro area if that customer wants service in other areas where that CLEC (or other CLECs) does not have facilities of its own unless it can obtain just and reasonable Type II service from the ILEC. XO explained in its comments that it still relies heavily on facilities (including UNEs) or services

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49 XO's *Special Access FNPRM* Comments at 39.

50 Verizon Comments at 22.

51 *See* Anderson SA Declaration ¶ 14.

(including TDM or Ethernet services) purchased from ILECs and in limited instances from other providers to fulfill service requests for customers that have multiple locations outside the CBD.[52] Deploying competitive networks and laterals to commercial customers, particularly those requiring service in multiple locations, is a very costly and time-consuming process, and therefore, rapid entry is a potential prospect only in select instances in buildings within **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** feet of existing fiber rings.[53] Moreover, as discussed above, cable companies are unique providers in the market, and while their presence may be a factor in some circumstances, this does not alter the overall fact that for robust competition to exist, multiple competitors must be present.[54]

Therefore, because it cannot be automatically assumed that competition existing in some commercial buildings within a portion of a CBD will rapidly spread throughout the CBD, let alone an entire MSA, deregulation of the entire MSA is not appropriate in many, if not all, instances where there is some competition in a CBD area, even if XO's proposed pricing flexibility triggers are satisfied. The Commission should not adopt triggers that will deregulate large MSAs on the assumption that a CLEC will build there.

V. BEST EFFORTS SERVICE AND SERVICES OFFERED OVER FIXED WIRELESS FACILITIES DO NOT COMPETE WITH DEDICATED SERVICES

In claiming that the Commission should maintain or even extend the current pricing flexibility triggers because there is sufficient competition in the marketplace for special access

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52 XO's *Special Access FNPRM* Comments at 16.

53 Even then, as explained in XO's comments and declarations, it must be judicious in using scarce resources when deciding what laterals to build. *See* Kuzmanovski SA Declaration ¶ 24. Unlike ILECs, CLECs cannot build to all buildings or even a substantial fraction thereof.

54 *See* Section III.B.

services, the ILEC commenters rely in part on the notion that providers of Best Efforts Internet and fixed wireless services create substantial competition for ILECs and CLECs for special access customers.[55] But the ILECs offer little to no empirical evidence to support these claims, particularly as to the commercial customers that XO serves. As XO demonstrated in its comments, inclusion of Best Efforts Internet service in the special access competitive analysis is only appropriate, at most, for small business customers.[56] Services offered over fixed wireless facilities have proven to be a poor substitute for wireline technology and should not weigh meaningfully, if included at all, in the analysis of competition in the provision of special access services.

For all the discussion in the ILEC comments about cable companies' Best Efforts service and its supposed impact in the market, none of them provide empirical data showing that these expansions have resulted in the ILECs being forced to lower their own prices for Dedicated Services to remain competitive. This is to be expected, since Best Efforts Internet access services lack the quality and performance capabilities of Dedicated Services. In its comments, Verizon acknowledges that "best-efforts broadband differs in some respects from traditional

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55 Verizon asserts that when analyzing competition for special access services, "[t]he Commission must also take into account 'best efforts' business class broadband services that cable operators provide, which for many customers offer a viable substitute to traditional special access and other high-capacity services." Verizon Comments at 38. AT&T similarly claims that "cable companies have been aggressively targeting small and mid-sized special access customers for years" and CenturyLink states "ILEC services face aggressive competition from CLECs, fixed wireless, and cable providers in the provision of high-capacity transmission." AT&T Comments at 13; CenturyLink Comments at 11. Additionally, the White Paper submitted in conjunction with AT&T's comments defines special access as "business data services that include conventional TDM and Ethernet dedicated lines as well as best efforts internet access." Mark Israel, Daniel Rubinfeld, Glenn Woroch, White Paper, WC Docket No. 05-25 *et al.*, at 3, n. 3 (Jan. 26, 2016).

56 *See* XO's *Special Access FNPRM* Comments at 18-19.

special access."[57] XO submits that this generalization understates the reality that Best Efforts Internet access is not substitutable for Dedicated Services, except for small commercial customers. XO summarized in its comments the key differences between Dedicated Services and Best Efforts Internet access.[58] Further, the declarative evidence in support of XO's comments refutes the claims by AT&T and CenturyLink that cable companies' Best Efforts and other service offerings are creating substantial competition in the special access services market.[59] As XO noted, while cable is making some inroads among smaller account customers, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** because their departure from the Dedicated Services marketplace demonstrates that they have reduced service quality and feature needs.[60] That evidence and experience is bolstered by the conclusions in the Economists Report.[61]

With respect to services offered over fixed wireless facilities, Verizon claims that "[p]roviders today use fixed wireless extensively, so the Commission should have no doubt about its potential to be used even more broadly, both to fill in any coverage gaps left by wireline high-capacity facilities, and to provide a lower-cost alternative to customers for whom that is a

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57 Verizon Comments at 39.

58 *See* XO's *Special Access FNPRM* Comments at 26.

59 *See, e.g.*, Anderson SA Declaration ¶¶ 33, 35. ("XO's Small Account and some of the smaller Mid-Size Account customers are increasingly getting more service options at lower prices and that offer higher bandwidths (from cable companies), such as Best Efforts Internet service. This type of small customer has less need than medium and large businesses and enterprise-level customers for managed IP-based communications with quality of service ("QoS") assurances. ... Cable companies have yet to offer dedicated services which could attract XO's Large and most Mid-Market customers who do not find Best Efforts product acceptable. Best Efforts service is also not a competitive offering for wholesale customers.")

60 *Id.*, ¶ 33.

61 *See* Economists Report ¶¶ 31-33.

priority."[62] However, based on XO's experience, fixed wireless facilities, which it has in most Metro areas where it has wireline facilities, have proven to be an inadequate alternative technology over which to provide Dedicated Services because they lack the performance capability and reliability of fiber, and even copper, which commercial customers demand.[63] As explained in the Declaration of Michael Chambless, although XO holds wireless licenses and provides fixed wireless services, it generally does not find wireless media to have the performance capabilities or sufficient reliability for the provision of its Dedicated Services.[64] Rather, XO uses its wireless media only in the not-common instance that it cannot reach a customer with wireline Type I or II facilities or to give a customer backup or redundant

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[62] Verizon Comments at 38.

[63] XO's *Special Access FNPRM* Comments at 25. XO's experience aligns with that of other providers in the industry. *See* Economists Report ¶ 34. ("[F]ixed wireless is not generally viewed as a substitute … because of reliability issues arising from congestion, interference and rain fade; the necessity of locating equipment with a clear line of sight; and building access problems.") *See also* Joint CLEC Comments at 17-18 (noting that for Level 3, "fixed wireless services 'generally do not offer the level of speed and reliability that Level 3's customers demand.'"); Windstream Comments, Declaration of Dan Deem, Douglas Derstine, Mike Kozlowski, Arthur Nichols, Joe Scattareggia, and Drew Smith, ¶¶ 34-35 (filed Jan. 27, 2016) ("Windstream offers fixed wireless in addition to providing wireline telecommunications services to select customers in a subset of its competitive markets. In some instances, this limited fixed wireless offering can substitute for a standalone wired connection. *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL***** … Fixed wireless may face various limitations, including congestion, interference, rain fade, and need for line-of-sight, depending on the technology and frequencies used—such that it cannot be assumed to work at every location within an area covered by specific spectrum. *****BEGIN HIGHLY CONFIDENTIAL***** [redacted] *****END HIGHLY CONFIDENTIAL*****.").

[64] *See* Chambless SA Declaration ¶ 7.

transmission capabilities.[65] More importantly, the ILECs are silent in their comments on how, if at all, the presence of fixed wireless service offerings cause them or other providers to reduce their own prices to remain competitive. Thus, there is no basis to find that fixed wireless services are creating a meaningful competitive impact in the Dedicated Services marketplace.

As such, when analyzing the state of competition in the provision of Dedicated Services, the Commission should exclude Best Efforts Internet Services (except possibly when considering competition for small business customers) and services offered over fixed wireless facilities from that analysis in light of the evidence in the record that these types of services, in reality, are not actual or meaningful, respectively, competitive alternatives in the special access marketplace.

VI. XO'S COMMERCIAL CUSTOMERS CONTINUE TO DEMAND SUBSTANTIAL VOLUMES OF TDM SERVICES

A recurring theme in the ILEC comments is that the demand for Ethernet-based special access services is growing rapidly and the Commission can ignore the dwindling TDM marketplace. Verizon suggests in its comments "[b]usinesses today require high-bandwidth applications like datacenter interconnection, disaster recovery, video services, and access to cloud services. And they are replacing traditional TDM-based special access services with Ethernet services that offer greater flexibility, ease of implementation, ability to transport multiple types of traffic, higher bandwidth, and cost effectiveness."[66] AT&T claims that "[t]he growth of Ethernet services has accelerated substantially over the last two years … [and] from the end of 2013 (the period covered by the data collection through November 2015, AT&T's

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65 At best, fixed wireless services are present only on the fringe of the Dedicated Services marketplace, and have not matured such that they would have a consequential impact on competition in the provision of Dedicated Services.

66 Verizon Comments at 10-11.

non-affiliate-billed revenues for TDM-based DS1 services declined very sharply."[67] CenturyLink similarly states "customers continue to migrate rapidly from ILEC legacy services to Ethernet and other broadband offerings provisioned by competitive providers over fiber and hybrid coaxial facilities," and "in an era characterized by demand for speeds of 100 Mbps to 1 Gbps, it should be no surprise that DSl and DS3 links, which top out at 1.544 Mbps and 44.736 Mbps, respectively, are being displaced by faster Ethernet services."[68] The ILECs contend that the Commission no longer should concern itself with the state of competition for TDM-based special access services because they are quickly becoming obsolete and will soon be replaced entirely by more technologically advanced services. XO's experience in serving mid-size, large and enterprise commercial customers reveals that this assertion is false.

As an initial matter, XO agrees that the demand for Ethernet-based services is growing. However, that does not mean that TDM-based services have become irrelevant. XO built its business on providing DS1 and DS3 TDM services, and many of its TDM customers continue to value the service.[69] In fact, XO's new TDM orders exceeded new orders for off-net Ethernet services until **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**,[70] and they still represent a significant share of new orders and installed

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67 AT&T Comments at 16.

68 CenturyLink Comments at 14.

69 This is especially true for TDM special access services customers with investment in legacy equipment who seek to add new locations. For these customers, the cost of upgrading network equipment and shifting to a more technical/complex solution is the driving consideration for remaining with the legacy service. Some of XO's other TDM customers simply have more basic service needs. Anderson SA Declaration ¶ 32.

70 *See id.*, ¶ 30.

services.[71] The trends of XO's installed base of DS1 and DS3 services, as well as new orders, make clear that claims by the ILECs that DSn special access is no longer an important wholesale input are greatly exaggerated.[72] XO's experience with regard to the decline in demand for TDM-based special access services is best illustrated in its comments and supporting declaration in response to the ILECs' Direct Cases in the Wireline Competition Bureau's tariff investigation into certain term and volume discount plans of Verizon, AT&T, Frontier, and CenturyLink for DS1 and DS3 special access.[73] The change in demand outlined in these comments indicates only that the retail market is moving away from DS1s – not that the levels of demand for DS1s have become insubstantial or will evaporate in the short run.[74] Further, based on XO's internal

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71 *See* Anderson SA Declaration ¶¶ 30-32; *see also* Comments of XO Communications, LLC on ILECs' Direct Cases, WC Docket No. 15-247, 13-15 (filed Feb. 5, 2016) ("XO ILEC Tariff Investigation Comments").

72 Admittedly, XO now receives **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**. However, although there has been a decline over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in the absolute numbers of special access DS1s and DS3s channel terminations, the decline is **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** to suggest that DS1s and DS3s will not be used in substantial numbers for many years yet. XO ILEC Tariff Investigation Comments at 14.

73 For example, XO's DS1s purchased under its CDP with Verizon North declined from **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** a decline of only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Similarly, the decline of DS1s in place in Verizon South is only **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Declines in the Bellsouth region are **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** In the PacBell region, where XO had **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** DS1s installed as of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** the decrease was **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** XO ILEC Tariff Investigation Comments at 14-15.

74 In fact, as of year-end 2015, XO had almost **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** ILEC-provided special access DS1 channel

projections, it anticipates approximately only a net **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in its requirements for new and installed DS1 circuits nationwide in 2016.[75]

Moreover, even though demand for TDM-based special access services is eroding, ILECs are highly likely to maintain power over pricing for that remaining demand. As XO explained in its comments, ILECs have essentially ubiquitous presence in buildings and access to customers because of their long-standing monopoly and opportunity to build networks with no competition prior to the 1996 Act. Competitors such as XO, in contrast, have limited resources to build out their own networks,[76] and **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**[77] Thus, they will have little to no power to affect market prices for special access services.

In light of the continued importance of TDM-based special access services and the likelihood that ILECs will remain dominant in the marketplace, the appropriate course of action for the Commission at this time is to adopt the new pricing flexibility triggers proposed by XO that accurately reflect competitive realities in the provision of these services.

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terminations in place pursuant to the tariffs are under investigation. XO has over **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** DS3 ILEC-provided channel terminations as well. XO ILEC Tariff Investigation Comments at 14. Windstream also highlighted the continued importance of DS1s and DS3s in its comments. *See* Windstream Comments, n. 78.

75 XO ILEC Tariff Investigation Comments at 15.

76 *See, e.g.*, Kuzmanovski SA Declaration ¶ 11.

77 *See, e.g.*, Economists Report ¶¶ 44-45.

CONCLUSION

The Commission's fundamental tasks in this proceeding are to determine the factors that indicate whether competition for Dedicated Services exists, then, using these triggers, determine where competition for these services is present, and finally, regulate an ILEC's provision of Dedicated Services where competition is not present. The ILECs posit that having a single facilities-based competitive provider in an area is sufficient to indicate that competition exists throughout an MSA. However, they provide no evidence that prices for Dedicated Services are driven to their competitive levels under such a condition. In contrast, XO and other competitors have filed comments demonstrating that prices are driven to competitive levels for channel terminations in those geographic markets where there are multiple competitive providers – at least four – in-building or, for Ethernet channel terminations, both in-building and nearby. Accordingly, XO urges the Commission to act expeditiously to adopt its proposed triggers and use them to determine where competition exists and where regulation of ILEC Dedicated Services is required.

Respectfully submitted,

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