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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 20, 2002

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

Re: ***Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 -- Notice of Audit to XO Communications of Nevada**

Dear Ms. Dortch:

In its *Supplemental Order* (15 FCC Rcd 9587 (2000)) issued in the above-referenced proceeding, the Commission found that an incumbent local exchange carrier (ILEC) should have the right to limited audits of the records of any carrier that has converted its special access circuits. Such audits are to enable the ILEC to determine whether the requesting carrier is complying with the Commission's requirement that it is using such unbundled network elements ("UNEs") to provide a substantial amount of local exchange service. The ILEC seeking such audit is required to send an audit notice to the affected carrier with a copy to the Commission. 15 FCC Rcd 9604 (¶31).

On March 18, 2002, Sprint sent a notice of audit to XO Communications of Nevada (XO). Moreover, as required by the *Supplemental Order*, on March 20, 2002, Sprint furnished a copy of the notice to the Commission. Unfortunately, Sprint has been unable to exercise its right to audit XO because XO has refused to meet with Sprint prior to the audit to work out the details for the audit. Sprint is, therefore, sending XO another letter demanding certain documents from XO regarding its self-certification that it met the Commission requirements to convert its special access facilities to UNEs. In the letter Sprint informs XO that if XO fails to comply with Sprint's request, Sprint will convert the network elements being provided to special access.

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Sprint is supplying a copy of this follow-up letter pursuant to the procedures set forth in the *Supplemental Order*. If you have any questions or need more information, please contact me.

Sincerely,

Enclosure

c: Dorothy Attwood, Chief, Wireline Competition Bureau

Sprint

William E. Cheek
President
Wholesale Markets

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May 17, 2002

Regulatory Manager
XO Nevada, L.L.C.
2240 Corporate Circle
Henderson, NV 89104

Dear Regulatory Manager:

In reply to XO's response to Sprint's audit request dated March 18, 2002, Sprint provides the following.

The FCC requires ILECs to provision EELs based on the requesting carriers self-certification identifying under what local usage option the CLEC qualifies and without requiring that the requesting carrier submit to an audit prior to provisioning. The FCC's *Supplemental Clarification Order* clearly supports Sprint's right to audit whether XO is providing significant local exchange service over EELs ordered by XO after they are provisioned. Indeed, the FCC stated that it expected CLECs to maintain appropriate records to demonstrate compliance with the local usage requirement.

The FCC's *Supplemental Clarification Order* requires a thirty-day notice prior to commencing an audit of compliance with the local usage requirements. Consistent with this requirement section 6 of the Interconnection Agreement between Sprint and XO, provides that Sprint may perform an audit upon thirty days notice. Sprint provided XO the required thirty-day notice; however, XO refused to meet with Sprint during the thirty-day period to work out the mechanics and other details of the audit. Thus, despite the fact that Sprint provided XO with the requisite notice, Sprint has not been able to exercise its right to conduct an audit of the traffic XO is transporting over the EELs that Sprint has provisioned. .

Section 14.3.3.1.3 of the Interconnection and Resale Agreement specifies that XO must comply with the FCC's significant local exchange service requirements. The FCC defined three thresholds for "significant local exchange service" in its *Supplemental Clarification Order*, in Docket 96-98. In order to ensure compliance with the FCC's requirements, Sprint requests that XO provide self-certification identifying the local usage option for its EEL circuits by June 7, 2002. Without such certification Sprint has no assurance that XO is meeting the FCC's local exchange service requirements and will proceed with the audit. If

XO can provide Sprint with sufficient proof for each EEL circuit that it meets one of the three FCC local exchange service options within the timeline requested above, Sprint may be able to reduce the extent of or eliminate the need for an audit for those circuits.

If XO continues to be uncooperative here by failing to provide Sprint with the requested documents by June 7, 2002 or refusing to take all necessary steps to enable Sprint to conduct an audit by June 30, 2002, Sprint will consider XO in non-compliance and that XO EELs do not meet any of the three local exchange service options. XO's EEL circuits will then be converted to special access and XO will be required to pay Sprint all of the applicable non-recurring charges associated with such conversion Moreover, Sprint reserves the right to bill XO the rate difference between the price XO should have paid for special access and the price XO paid for the EELs between the conversion date to the present.

Sincerely,

For William E. Cheek

William E. Cheek

WEC/lr

pc: Karen Potkul
Debra Jacques
Teresa Harper
Al Lubeck
Jocelyn Fallon
Janette Luehring
Michael Fingerhut