XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 5, 2003

Ms. Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Ex Parte Presentation

RE: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98; *and Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147

Dear Ms. Salas:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's rules, you are hereby notified on behalf of XO Communications, Inc. that Gerry Salemme, Senior Vice President – External Affairs and the undersigned met yesterday with Lisa Zaina, Senior Legal Advisor to Commissioner Jonathan Adelstein. The attached presentation formed the basis for the discussion.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Cathleen A. Massey
Vice President, External Affairs

Enc.

cc: Lisa Zaina

XO Communications, Inc.

Ex Parte : CC Docket Nos. 01-338, 96-98, 98-147

Not just talk.™

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Bright Line EEL Test Needed

- UNE Triennial Review NPRM sought comment on "commingling" and "significant local usage" restrictions
- The record demonstrates that current rules are limiting the ability of CLECs to obtain EELs for local service
- If EEL restrictions are necessary to limit availability where no impairment exists (i.e., IXC services), the EEL eligibility test needs to be reworked

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Several Proposals From CLEC Industry

- ALTS proposed removal of all EEL usage restrictions on November 14, 2002
- CBeyond suggested 3 part eligibility test (Service, Infrastructure, Interconnection) on January 6, 2003
- NuVox and others developed 5 checklist items (CLEC must meet 2 of 5) to demonstrate eligibility

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XO Proposes Hybrid EEL Eligibility Test Combining Industry Proposals

RULE: CLEC must meet 4 of 5 possible criteria:

1. CLEC has active local interconnection trunks with the ILEC in the LATA;
2. CLEC has a widely available public retail offering of local voice or local data services in the LATA;
3. CLEC assigns a local telephone number to the circuit being provisioned as an EEL;
4. CLEC has local facilities-based CPCN in place;
5. The circuit is connected to a collocation in an ILEC end or tandem office.

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Pre-Certification by CLEC requires ILEC to offer EEL

- ILEC must convert to or provision EEL within one billing cycle of CLEC pre-certification. If conversion/provisioning not completed before next billing cycle, EEL pricing made retroactive to that date
- ILEC may file enforcement action at FCC or PSC if ILEC believes certification was false

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"No Facilities" Problem

- In May 2001, Verizon began to decline to fill UNE orders due to "no facilities" in a wide variety of circumstances, including minor issues such as adding a line card. SBC briefly instituted a copycat policy in its region.
- XO has experienced a UNE ordering rejection rate as high as 50% (New York) and been forced to order special access lines for customer local loops.
- "No Facilities" issue needs to be fixed before FCC can make a reasonable determination about CLEC use of special access services or the demand for high-cap transport and loops.

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"Commingling" Issue

- ILECs contend that CLECs are barred from:
  - Having any (even one DS0) circuit that is not EEL eligible share loop-transport space with properly certified traffic
  - Connecting any EEL to a tariffed service or a competitor's facility (i.e., UNE loop connected to WorldCom DS-3 transport)
- Result is that CLECs are forced to build costly redundant networks, avoid using competitive alternatives for transport and/or use special access lines for predominantly local service
- Commingling ban needs to be lifted
  - CLECs should be allowed to connect EELs to tarrifed/competitor services
  - 50%+ of EEL eligible circuits on transport circuit should qualify entire loop-transport combination for EEL pricing

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