XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 5, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 01-338; 96-98; 98-147

Dear Ms. Dortch:

In an *ex parte* letter filed on February 3, 2003 in the above-referenced proceeding, Allegiance Telecom Inc. ("Allegiance") shows that if its impairment test for interoffice lit and dark fiber transport is adopted, there is no need for the Commission to only allow a defined number of DS3 equivalents along a particular point-to-point route. XO agrees with Allegiance that imposition of an impairment test based on available competitive alternatives to ILEC transport obviates any need for a capacity cap. In fact, it would be counterintuitive to find impairment and yet still deny access to DS3 UNE transport facilities because of an arbitrary capacity cap.

XO also is in accord with Allegiance's data showing that if a capacity cap is put in place, it must be set at 10 DS3 equivalents or higher. In fact, as explained in the attached Declaration of Wilfredo Tirado, Director – Technology, Planning and Design, XO's internal cost analysis shows that the rational cross-over point justifying the purchase and installation of electronics on leased dark fiber is actually at 12 DS3 equivalents. Any suggestion that a capacity cap should be set at the level of three DS3 equivalents is arbitrary, not supported by the record and potentially disastrous for facilities-based CLECs.

Similar to Allegiance, XO Communications, Inc. ("XO") is one of the nation's largest facilities-based CLECs and is among the largest purchasers of UNE loop and transport facilities. Like Allegiance, XO is also among the small collection of facilities-based providers that is pursuing a business plan that aligns precisely with the Commission's oft-stated goal in this proceeding of promoting local, facilities-based competition. XO's primary aim when constructing and maintaining its networks is to move as much of its traffic and customers onto its own "on-net" fiber facilities as possible. The rationale for this is obvious. XO has complete control over provisioning, maintenance and cost when traffic rides its own network rather than facilities leased from the ILECs. XO's decision to replace DS3 UNE transport with its own facilities is driven

by a cost model that matches up in all important respects with the model that Allegiance has placed into the record. A capacity constraint that is set too low because it is not grounded in financial reality will inflict grave harm on the very industry segment that the Commission is hoping to promote.

In his declaration Mr. Tirado explains that when XO builds metro fiber rings, it designs the rings to place as many ILEC local switching offices ("LSOs") on its network as possible. It is, of course, impossible to connect all LSOs to the XO ring. To reach "off-net" LSOs, XO establishes collocation facilities at the distant LSO and then leases DS3 UNEs for transport to the closest "on-net" LSO. As Mr. Tirado explains, a decision to replace the DS3 UNEs with dark fiber is not typically justified until traffic volumes reach the equivalent of 12 DS3s. It is the leased connections between "off-net" LSOs and "on-net" LSOs that are imperiled by a capacity cap that is arbitrarily set too low. It is also precisely these connections that permit XO to expand its network footprint and offer competitive local service to customers that would otherwise not likely have an alternative choice of carriers.

XO urges the Commission to refrain altogether from adopting a capacity cap since the establishment of an appropriate impairment test will solve the problem the Commission is trying to address. If a capacity cap is nonetheless deemed necessary, even where impairment has been demonstrated, it must be set at a minimum of 10 DS3 equivalents or, as shown by XO's experience, more appropriately at 12 DS3s or higher. Please do not hesitate to contact me should you have any questions or comments regarding this filing.

Sincerely,

Cathleen A. Massey
Vice President – External Affairs

cc: Matthew Brill (by e-mail)
Jordan Goldstein (by e-mail)
Dan Gonzalez (by e-mail)
Christopher Libertelli (by e-mail)
Lisa Zaina (by e-mail)

Declaration of Wilfredo Tirado

1. I am employed by XO Communications, Inc. at its headquarters located at 11111 Sunset Hills Drive, Reston, VA as Director – Technology, Planning & Design. During my three years with XO, my primary responsibility has been to analyze XO's transport network, including the cost justification for "rolling over" from DS3 UNEs to dark fiber lit with our own electronics.

2. I have reviewed the February 3, 2003 *ex parte* letter submitted by Allegiance Telecom, Inc. ("Allegiance") and examined the cost analysis attached to the letter. XO's own internal cost studies are consistent in most material respects with the data submitted by Allegiance. In fact, I think that Allegiance's conclusion that a fiber build is justified when capacity demands reach the point of 10 DS3 equivalents sets a capacity ceiling that is too low. For reasons that I explain below, XO's analysis shows that a 12 DS3 equivalent or higher would be a more appropriate cap.

3. As a facilities-based CLEC, XO always prefers to use its own facilities rather than the ILECs facilities because XO can then control the provisioning, maintenance and cost of those facilities. Whenever it can justify the cost, XO will build its own network. That being said, XO continues to be dependent for the foreseeable future on ILEC leased facilities because completely overbuilding the ILECs network will never be feasible.

4. XO has constructed metro fiber rings in 31 major cities constituting more than 6,600 route miles of fiber. When it designs its rings, XO attempts to run its own fiber to as many ILEC local switching offices ("LSOs") as it can. These LSOs are considered to be "on-net." To reach customers that are serviced by LSOs that are off-net, XO establishes a collocate at the distant LSO and leases DS3 UNE transport back to the nearest "on-net" LSO. It is this arrangement that would be most endangered by a cap on UNE transport capacity that is set too low.

5. Allegiance's *ex parte* indicates that its build decision is based on a return on investment in less than 18 months. My experience is that 18 months is the outside edge for investor's expectations for return on investment. In today's economic environment, 12 months is the standard. Indeed, projects where the return on investment is 24 months or higher are not considered.

6. In addition, Allegiance's cost study is based on the availability of UNE dark fiber at a cost of $1,280 monthly recurring charges. In markets where XO does business, the MRC for a UNE dark fiber is approximately $2,000.

7. If a 12 month payback and a higher UNE MRC are taken into account, it is clear that Allegiance's proposed cap of 10 DS3 equivalents may be set too low. A more appropriate cap would be 12 DS3 equivalents or higher.

I so declare this fifth day of February, 2003,

Wilfredo Tirado
Director- Technology, Planning & Design
XO Communications, Inc.
(703) 547-2000