May 24, 2005

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

Ex Parte Presentation

RE: Docket No. 04-313

Dear Ms. Dortch:

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 Heather B. Gold, Senior Vice President and the undersigned met on Monday May 23 with Jessica Rosenworcel, Legal Advisor for Commissioner Copps. 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,

Christopher T. McKee
Executive Director

Commercial Agreement Negotiations

XO Communications, Inc.

May 11, 2005

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Commercial Negotiations: An Update

- On March 31, 2004, the Commission urged carriers to engage in commercial negotiations for access to network facilities.
- To date, no carriers have negotiated commercial agreements for non-UNE-P facilities.
  - Agreements have been for switching products, not for loop loop or transport products.
  - XO has been trying for over a year, without success, to negotiate a commercial agreement for loop and transport products.

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Impediments to Commercial Negotiations

- **Uncertainty over the applicable structure has impeded commercial negotiations of loop or transport deals:**
  - **No one is sure where agreements are to be filed, who reviews them, or what review standards apply.**
  - **The Commission's 2004 decision in *AT&T v. BellSouth* has had a chilling effect on ILECs' negotiation on any basis other than special access term and volume discounts.**

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Proposed Alternative

- **The FCC can create an alternative structure:**
  - **Contracts would be filed under section 211 at requesting carriers' (not ILEC's) option.**
  - **FCC would forbear from applying 251/252, 271 and special special access rules for such 211 contracts.**
  - **FCC would not replace the prior rules which would remain available for carriers wishing to use those structures.**
- **The FCC should clarify that parties can strike deals that set pricing on factors other than term or absolute volume commitments.**

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Benefits of Proposed Alternative

- **Parties would be free to negotiate a full range of issues relating to high capacity services, not just volume and term.**
- **The structure can lead to novel arrangements that balance ILEC and CLEC objectives.**
- **FCC would supervise and mediate if necessary.**
- **CLEC option protects against ILEC market power.**

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Benefits of Proposed Alternative

- **Service terms could be based on factors important to the competitive carrier customer, such as:**
  - **Location**
  - **Interconnection method**
  - **Balance of UNE and non-UNE services**
  - **Blended or tiered pricing**
  - **Other non-price factors**

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