

XO Communications, Inc.



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USA

June 7, 2005

VIA EXPRESS MAIL

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

Re: Ex parte communication - BellSouth's Petition for Forbearance, WC
Docket No. 04-313 (filed May 27, 2004)

Dear Ms. Dortch:

XO Communications, Inc. ("XO") submits this *ex parte* communication in response to a request by Michele Carey of Chairman Martin's office that XO identify which parts of BellSouth's Petition for Forbearance (the "Petition") that it supports and opposes.

XO is on record in support of the position that all agreements between ILECs and CLECs that provide for local interconnection or some other input necessary to local competition are, by the plain language of the relevant statutory provisions, Section 251 agreements.¹ Accordingly, XO opposes BellSouth's Petition to the extent that it seeks a Commission ruling that commercially negotiated agreements for the provision of services not required under Section 251² (the so-called "Non-251 Agreements") are automatically not subject to the obligations set forth in Section 252.³ XO does, however, support a voluntary election by both the CLEC and the ILEC to "opt out" of the 251/252 rules and establish a mutual agreement pursuant to Section 211.⁴

¹ See, e.g., Loop and Transport Coalition Comments at 156-166, WC Docket No. 04-313, CC Docket No. 01-338 (filed Oct. 4, 2004).

² 47 U.S.C. § 251.

³ 47 U.S.C. § 252.

⁴ 47 U.S.C. § 211.



The “opt out” that XO has proposed is supported by the Commission’s forbearance authority under Section 10(a) and 10(e). The Commission can forbear from applying Section 252 obligations to these Section 211 contracts, and prohibit states from imposing their own requirements on these agreements, if the proposed forbearance will “promote competitive market conditions”. Truly commercial negotiations under XO’s proposed Section 211 construct will promote competitive market conditions as XO and the ILEC will have the flexibility to negotiate deals that combine price concessions and *non-price terms* reflecting the carrier’s individualized needs

XO supports a partial grant of the Petition to the extent that the Commission would use its forbearance power to establish a voluntary alternative to allow requesting carriers to negotiate carrier-specific commercial arrangements for high capacity services on a basis other than volume and term commitments. The Commission should forbear from applying Section 252’s standards and the price cap rules if the requesting CLEC elects to utilize Section 211 contracts instead. Under the XO proposed option, carriers would voluntarily give up rights to certain Section 251 elements in return for a more unified price structure arrangement with ILECs covering all network access services. These arrangements would include services that the ILEC provides regardless of traditional local/long distance separations. Under this procedure, upon receipt of a Section 211 request, an ILEC and a CLEC would be free to negotiate the full range of issues relating to access to high capacity services, free of the procedures and obligations of Section 252 or the price cap rules. For example, such negotiations could be based on the location and type of services ordered, on a carrier-customer’s willingness to forego the use of UNE arrangements in order to obtain consistent pricing for all network access needs, or on other non-price factors.



It is important to note that XO's proposal in no way replaces or undermines the existing Section 251 and Section 252 rules. Those rules will still govern the majority of agreements established between CLECs and ILECs. XO has only proposed the creation of an additional option for situations where the ILEC and CLEC have mutually established a commercial agreement, both parties are willing to forgo rights and obligations under Section 251 and Section 252, and the parties to the agreement wish to file that agreement at the Commission under Section 211 authority.

Sincerely,

A handwritten signature in black ink that reads "Christopher McKee". The signature is written in a cursive, flowing style.

Christopher McKee
Executive Director, Legal and Regulatory
XO Communications, Inc.

cc: Dan Gonzalez
Michele Carey
Lauren Belvin
Jessica Rosenworcel
Scott Bergmann
Thomas Navin
Jeremy Miller
Jonathan Banks, Bell South