Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Petition of XO Communications, Inc., Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNip LiNK LLC, and Xspedius Communications, Inc. for Forbearance	)	WC Docket No. 05-170

COMMENTS OF COVAD COMMUNICATIONS COMPANY

Covad Communications Company ("Covad"), by its counsel, hereby files comments in response to the Commission's July 13, 2005 Public Notice seeking comment on the Petition for Forbearance filed by XO Communications, Inc., Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNip LiNK LLC, and Xspedius Communications, Inc. ("Joint Petitioners").[1] Covad fully supports Joint Petitioners' request for forbearance and urges the Commission to grant the relief requested.

Joint Petitioners seek forbearance from:

(1) Section 51.319(a)(4) of the Commission's rules, which use a wire center-based test for determining impairment for DS1-capacity loops used to serve "predominantly residential" and "small office" buildings;

[1] *Pleading Cycle Established for Comments on Petition for Forbearance of XO Communications, Inc. Et Al. Pursuant to 47 U.S.C. § 160(c)*, Public Notice, WC Docket No. 05-170, DA 05-2003 (July 13, 2005).

(2) the Section 51.319(e)(2)(ii)(B) cap on access to DS1-capacity transport circuits used as components of DS1-capacity enhanced extended links ("EELs"); and

(3) Section 51.318 UNE eligibility criteria as applied to EELs.[2]

Enforcement of these provisions of the Commission's rules is not necessary to protect consumers or ensure that charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory. Indeed, forbearance from each of these provisions is in the public interest, as forbearance will promote competition between competitive local exchange carriers ("CLECs") and incumbent local exchange carriers ("ILECs").[3]

I. FORBEARANCE FROM THE WIRE CENTER TEST FOR DS1 LOOP IMPAIRMENT FOR PREDOMINANTLY RESIDENTIAL AND SMALL OFFICE BUILDINGS WILL ADVANCE COMPETITION AND CONSUMER WELFARE WITHOUT COMPROMISING REGULATORY GOALS

Covad agrees with Joint Petitioners that continued application of the wire center test to DS1 loops used to serve "predominantly residential" and "small office" buildings will deter facilities-based competition and harm consumers.[4] The record in the *TRRO* proceeding clearly shows that CLECs cannot economically deploy loops to buildings with fewer than approximately two DS3's worth of traffic.[5] Indeed,

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[2] *See Petition for Forbearance of XO Communications, Inc., Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNip LiNK LLC, and Xspedius Communications, Inc.,* WC Docket No. 05-170 at 1 (filed Mar. 28, 2005) ("*Petition*").

[3] *See* 47 U.S.C. § 160.

[4] *See Petition* at 9-10, 12-15.

[5] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 ¶ 177 (2005) ("*TRRO*").

Covad relies exclusively on ILEC-leased DS1 loops for its business T1 and VoIP offerings because it is economically prohibitive to build DS1 loops and a competitive wholesale market does not exist. As it stands, the current wire center test essentially forecloses CLECs' ability to serve all predominantly residential and small office buildings in a given wire center simply by virtue of the aggregate number of business lines and fiber-based collocators in that wire center.[6] The wire center test has the unfortunate and broad effect of essentially precluding any CLEC from providing high-speed services to predominantly residential and small office buildings because those buildings do not generate sufficient revenue to warrant self-deployment of multiple DS3 loops.

The scope of "primarily residential" and "small office buildings" as framed by Joint Petitioners is sufficiently narrow to ensure that forbearance from Section 51.319(a)(4) in such circumstances will not lead to unjust or unreasonable practices.[7] Continued application of the wire center test to predominantly residential and small office buildings, therefore, discriminates unreasonably against CLECs seeking to provide service to small business and residential locations. Market consolidation exacerbates this situation by eliminating the very sources of competitive wholesale high-speed capacity that the Commission relied upon in

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[6] *See id.* ¶ 155.

[7] *See Petition* at 18.

developing the wire center test.[8] The wire center test as applied to predominantly residential and small office buildings also has the negative effect of harming small businesses that traditionally rely on CLEC-provided services due to a reduction or potentially complete lack in choice of services and service providers.

II. FORBEARANCE FROM THE DS1 DEDICATED TRANSPORT CAP FOR DS1/DS1 EELS WILL ENCOURAGE INNOVATION AND COMPETITION

Covad agrees with Joint Petitioners that continued application of the 10 circuit cap for DS1 dedicated transport used in connection with DS1 EELs is not necessary to prevent regulatory gaming or otherwise foster facilities-based competition.[9] This is particularly true since EEL impairment will always exist wherever DS1 loop impairment exists regardless of the number of DS1 transport circuits obtained.[10] Accordingly, the cap harms competition by artificially and arbitrarily limiting access to efficient network arrangements and unreasonably decreasing the scope of services that CLECs would otherwise provide. And contrary to protecting consumers, the DS1 transport cap actually harms consumers by reducing the availability of EELs used to provide advanced products and services to consumers at retail and preempting the availability of competitive services to

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[8] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶¶ 321, 324 (2003) ("*TRO*").

[9] *See Petition* at 19-21.

[10] *Id.* at 19.

consumers who would otherwise have access to such products and services. This harm is particularly apparent in the small and medium-sized business markets.

III. FORBEARANCE FROM EEL ELIGIBILITY CRITERIA WILL PROVIDE RELIEF FROM UNNECESSARY REGULATION AND ENABLE EXPANDED USES OF UNES

As Joint Petitioners demonstrate, enforcement of the EEL eligibility criteria is not needed to protect consumers or ensure just, reasonable, and non-discriminatory charges or practices, and forbearance from continued imposition of EEL eligibility criteria is in the public interest. As Joint Petitioners correctly argue, the *TRRO's* prohibition on the use of UNEs to provide exclusively long-distance services removed the overriding regulatory justification for continued imposition of EEL eligibility criteria and the remaining limitations are essentially regulatory surplusage.[11] Accordingly, the EEL eligibility criteria are no longer needed to protect against unjust or unreasonable conversion of tariffed special access circuits to UNE-based EELs.

Additionally, failure to forbear from the EEL eligibility criteria will have the negative effect of harming competition and consumers. More specifically, the existing eligibility criteria limit the use of UNEs to provide competitive and data and advanced services such as Internet telephony and other IP-enabled services to the detriment of competition and the consumers who would otherwise benefit from such services. Further, continued imposition of the EEL eligibility criteria where

[11] *See id.* at 24.

there is no corresponding need or benefit will only saddle impaired competitive carriers with unduly burdensome regulation.

CONCLUSION

For the foregoing reasons and the reasons detailed in the petition, forbearance from these provisions of the *TRRO* is appropriate because application of the rules are not necessary to protect consumers or ensure that charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory. Indeed, forbearance from each of these provisions is in the public interest, as forbearance will promote intramodal competition, particularly in the residential and small business markets, to the clear benefit of consumers.

Respectfully submitted,

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