



**Petition for Rulemaking
to Amend Rules Applicable to the Retirement
of Copper Loops, Copper Feeder and Copper
Subloops**

XO Communications, LLC

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Current Rules Have Led to Unintended Consequences



- **Current FCC rules governing retirement of copper loop facilities must be reformed because they have had the unintended consequences of:**
 - Eliminating network competition;
 - Erecting barriers to broadband availability and video competition; and
 - Eliminating redundant network facilities that could prove critical to ensuring communications in homeland security crisis and natural disaster situations.
- **Current FCC rules governing retirement of copper loop facilities have failed to protect the public interest.**

Copper Retirement Does Not Serve the Public Interest



- **Current copper retirement rules do not safeguard the public interest.**
 - No requirement for public interest consideration
 - Current objection procedures:
 - available only for copper loop and copper subloop.
 - available only to current users of the ILEC facilities at issue.
 - do not provide adequate time to object.
 - allow only for objections based on technical impediments to migration from the ILEC's network.
- **Copper retirement undermines public interest goals established by Congress and the Commission.**
 - **Broadband Availability.** Copper retirement denies CLECs an opportunity to provide broadband services – including video – over legacy networks using new technologies such as Ethernet over copper.
 - **Public Safety.** Copper retirement eliminates redundant networks that could be essential to the efforts of emergency first responders and others in the event of a homeland security crisis or natural disaster.
 - **Network Competition.** Copper retirement eliminates a viable network alternative otherwise available through section 251(c)(3) unbundling.

Copper Retirement Is Neither Efficient nor Necessary



- **Copper retirement is not economically efficient.**
 - Absent an unbundling request, ILECs incur no costs to maintain existing copper facilities under the Part 51 rules.
- **Copper retirement raises significant antitrust issues.**
 - ILECs incur significant costs and forego significant revenues to undertake copper loop, feeder and subloop retirements.
- **Copper retirement is not necessary to deploy FTTH/FTTC loops to customers served by existing copper facilities.**
 - ILECs never have asserted that existing copper loops physically preclude construction of new fiber loop overbuilds.
 - Retirement of copper is not a precondition to ILEC investment in and construction of FTTH/FTTC loops.

The Rule Changes Proposed



- **The rule changes proposed ensure that copper retirements will serve the public interest, and will not result in public interest harms.**
 - The proposed rules establish a formal process for approval by the Commission, on a case-by-case basis, of any proposed copper loop, feeder or subloop retirement, subject to a presumption that such retirement *does not* serve the public interest.
 - The ILEC may rebut such presumption through a showing that its proposed retirement:
 - serves the public interest, convenience and necessity; and
 - is necessary to deploy FTTH and FTTC loops to the customer premises currently served by existing copper facilities such that deployment of fiber facilities to that customer premises would not be possible if the subject copper facilities were maintained.

The Rule Changes Proposed (cont.)



- The proposed rules permit *all* interested parties to participate and object on public interest grounds.
- The proposed rules permit retirement *only* subject to an affirmative order by the Commission that such retirement serves the public interest.

Broad Based Support for Action



- **CLECs joining the Petition include:**
 - XO (nationwide serving area),
 - Covad (nationwide serving area),
 - NuVox (“new” AT&T serving area), and
 - Eschelon (Qwest serving area).
- **Additional support from:**
 - CLECs,
 - SBA,
 - Consumers Union,
 - Consumer Federation of America, and
 - State Commissions.