

**Declaration of Ajay Govil  
on behalf of XO Communications, LLC**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

**DECLARATION OF AJAY GOVIL  
ON BEHALF OF XO COMMUNICATIONS, LLC**

I, Ajay Govil, hereby declare under penalty of perjury, that the following is true and correct:

1. I am employed by XO Communications, LLC (“XO”) as Director of Transport Architecture & Technology. My business address is 11111 Sunset Hills Road, Reston, Virginia 20190. My primary job responsibilities include providing overall direction for the evolution of XO’s network from both a technical and financial perspective. I specify what technology is deployed and how we allocate our capital funds to expand the XO network. Previously I was employed by Qwest Communications.

2. Based in Reston, Virginia, XO owns and operates fiber optic rings with associated switching and fiber optic equipment that serve 75 metro area markets in 26 states. XO now has almost **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** Class 5 circuit switches (Nortel DMS500 and Lucent 5ESS) and VoIP softswitches (Sonus). XO also has deployed **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** route miles of its own fiber optic facilities composed of **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** fiber miles

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of metro fiber transport facilities. The company offers a complete suite of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking, Ethernet, Wavelength, Web Hosting and integrated voice and data services. Services are provided to more than **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** business customers by means of a combination of the company's own facilities, Incumbent Local Exchange Carrier ("ILEC") unbundled network elements ("UNEs"), facilities and services purchased from other competitive telecommunications carriers, and through XO's Tier One Internet peering relationships. We also purchase Special Access services from ILECs where we have no other alternatives.

**I. PURPOSE AND SUMMARY**

3. The purpose of this Declaration is to explain the critical importance to XO of DS-1 and DS-3 high-capacity loop and interoffice transport facilities obtained from the ILECs. I describe how XO utilizes ILEC DS-1 and DS-3 loops to provide last mile connectivity to buildings passed by our SONET metro fiber optic rings. In Part II hereof, I discuss how critical the availability of economic DS-1 and DS-3 loop facilities is to XO's ability to provide competitive telecommunications services. Then, in Part III, I will explain how XO decides to build its own loop facilities into buildings, and show how it normally is not feasible for XO or other CLECs to construct their own wireline DS-1 and DS-3 facilities. In Parts IV and V, I demonstrate that wireless loop technology and cable television systems are not adequate substitutes for the ILECs' wireline DS-1 and DS-3 loops. In Part VI, I explain why it is necessary for XO to purchase DS-1 and DS-3 transport from the ILECs on most interoffice routes. Finally, in Part VII, I explain why resale of ILEC Special Access services at current non-cost-based price levels cannot sustain competitive entry.

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4. In this Declaration, I also make clear that XO is a facilities-based CLEC that is committed to deploying its own facilities wherever such construction can be economically justified. We believe that the key to long-term success lies in the installation and use of our own facilities wherever reasonably possible. Let there be no doubt, we prefer *not* to rely upon using the facilities of our principal competitors – the ILECs – to fill out our networks. But as was made clear by the bankruptcies experienced by most facilities-based CLECs over the past several years, constructing facilities based “on spec,” where customer demand is not assured, is an unsustainable business proposition. This is especially true now, as the capital markets are simply “closed” to supporting facilities construction where efficient near-term use is not clearly demonstrated. Thus, we simply must have access to just and reasonably priced high-capacity ILEC facilities while we expand our networks and build our customer base.

**II. HIGH-CAPACITY LOOPS ARE ESSENTIAL TO XO**

5. XO’s base of more than **BEGIN CONFIDENTIAL** **END** **CONFIDENTIAL** customers is primarily comprised of small and medium-sized businesses. These businesses normally aggregate loops on their premises with a PBX or Key System. The vast majority of such customers **BEGIN CONFIDENTIAL** **END** **CONFIDENTIAL** subscribe to services which require that they connect to our backbone network over T-1 or Integrated Access PRI facilities. As a general matter, small and medium sized business customers are connected to the XO network with DS-1 loops, while we use higher capacity DS-3 and OCn facilities to serve large corporate users and other carriers. XO offers a suite of services (Business Trunks, ISDN PRI, Integrated Access, etc.) that are ideally suited for any small or growing company or office location with moderate bandwidth (128 Kbps to 1.544 Mbps) requirements. Such customers often elect an integrated access product, in which the customer’s local, long distance and Internet access are delivered over the same loop facilities.

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Whenever the customer requires at least 6 lines/trunks with a minimum of 14 channels, XO provides the service via DS-1 access. Since these are by far our most popular products with customers, we estimate that approximately **BEGIN CONFIDENTIAL** **END** **CONFIDENTIAL** of the loops used by XO to connect to our customers are at the DS-1 level.

6. From the foregoing, it is apparent that DS-1 and DS-3 level loop connectivity to customers is absolutely essential to XO's ability to deliver services to our business customers. We currently obtain these high-capacity loop facilities in a number of ways. Sometimes we build our own fiber optic facilities into a building and create a DS-1 or DS-3 channel connecting to our backbone network. Note that we do not build stand-alone DS1 or DS3 Channels. We also occasionally purchase loop facilities from other competitive carriers. However, as I will explain later in this Declaration, the availability of these preferred options is extremely limited. Thus, in the vast majority of instances we must rely upon the use of ILEC loop facilities to connect to customers at the DS-1 or DS-3 level.

7. The business services market is extremely competitive. We compete for customers based in large part upon our ability to provide superior service levels, new service options, route redundancy and attention to customer service. However, these service differentiating features are not sufficient to make sales unless we also are competitive on price. The bottom line is that XO is normally unable to convince customers to subscribe to its services unless it offers a lower price than the ILEC for comparable services. The need to be the low-cost alternative is a simple fact of life when you are competing against an incumbent monopoly with established brand name recognition.

8. Our business services typically are offered on very tight operating margins. Unlike the ILECs, we have no monopoly services that can be used to cross subsidize unprofitable

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operations elsewhere in our business. Thus, we are unable to price below cost on any of our significant service offerings and remain in business. Thus, it is imperative that we control costs, and that critical inputs to our cost of service not exceed similar costs incurred by our primary competitors — the ILECs.

9. As I explain in Part III hereafter, it simply is not economic for XO to build its own DS-1 loop facilities. Similarly, it is not economically feasible for XO to consider construction of DS-3 facilities unless it has at least 3 DS-3s of capacity under contract. Thus, in the vast majority of cases, we must purchase DS-1 or DS-3 loop facilities from the ILECs to serve our large base of business customers. Where wire centers remain impaired, XO typically has been able to economically purchase ILEC UNEs. But where wire centers have been deemed non-impaired, XO cannot obtain UNEs and is forced to order such services out of the ILEC Special Access tariffs. But as I shall explain later in Part VII hereof, use of ILEC Special Access to provide local telecommunications services generally is not a sensible economic proposition. Because ILEC Special Access rates are not set based on any cost-based pricing principles, and ILECs commonly build enormous profit margins into their Special Access rates, it is extremely difficult for XO to price retail services competitively when it must use ILEC Special Access services to connect to customers. Thus, in the majority of cases, and whenever UNEs are still available to XO, we rely upon the availability of ILEC DS-1 and DS-3 loop UNEs priced based on total element long-run incremental cost (TELRIC) costing principles to serve our customers economically. It is only when we have cost-based ILEC DS-1 and DS-3 loop facilities available that we can compete for customers based on a level economic playing field.

10. Notably, the DS-1 and DS-3 loops that we lease from ILECs are of two types. We use both UNE Loops and Enhanced Extended Links/Loops (“EELs”). In both cases, XO is required to establish collocation arrangements in ILEC central offices to obtain access to these

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loop facilities. XO currently operates approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** such collocation arrangements in 75 markets across the country. Such collocation arrangements are very costly. We estimate that XO incurs approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** over the first three years at each collocation site. These costs include building the collocation space, recurring charges for rent and power, plus the costs of purchasing and installing equipment to outfit the collocation space.

**III. THUS, XO RELIES ON THE AVAILABILITY OF COST-BASED DS-1 AND DS-3 LOOP UNES TO SERVE MOST OF OUR CUSTOMER BASE. [XO CANNOT BUILD ITS OWN WIRELINE HIGH-CAPACITY LOOP FACILITIES**

11. XO is a facilities-based CLEC. We build our own fiber optic transmission networks and install our own switching equipment wherever it is economically feasible for us to do so. We have invested very heavily in constructing such network facilities. Indeed, we have spent approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** to establish metro rings to serve 75 metropolitan areas in 37 U.S. cities, and currently operate **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** switches and have deployed metro area networks consisting of more than **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** route miles of fiber optic lines composed of **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** fiber miles of metro fiber transport facilities .

12. Whether the service provided to customers is switched or dedicated, the loop facility is the most basic component of the network required to serve a particular customer. However, the economics of building loop facilities is fundamentally different than the economics of deploying switching and transport facilities. When XO installs switches and transport facilities, those network components are used in common (and paid for) by many customers. By contrast, a loop facility is dedicated to the use of one customer or in limited instances a very small group of

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customers. Given the very high cost of facilities construction, it can be financially feasible to build transport and switching facilities in areas where there is adequate aggregate potential demand in place, whereas for it to make financial sense to build loop facilities you must have the assurance that a particular customer, or group of customers will contract with you to provide very high-capacity services over an extended period of time.

13. By way of background, when XO constructs a Metro Fiber “MF” Ring, it first identifies geographically proximate commercial buildings that house as many potential customers as possible; if such customers are located in buildings that are reasonably close together, we attempt to design and build the MF Ring to pass directly by as many of those buildings as possible. Buildings that are directly on XO’s MF Ring can be served with our own loop facilities. In some markets, as a result of growth or capacity issues, XO may build a smaller second MF Ring. In such cases, XO not only evaluates the building location of potential customers, but it also evaluates the buildings that house its principal existing customers in an attempt to place as many buildings on the MF Ring as possible. XO’s MF Ring consists of interoffice fiber optic facilities deployed between XO’s switch locations and the ILEC central offices, and collocation equipment installed in the ILEC central offices. Other than customers in the limited numbers of buildings on the XO MF Ring, XO serves its customers by ordering loops (UNE loops whenever available) from the XO collocation space at the ILEC central office to the end user. While XO has constructed MF Rings in most of the market areas in which we provide local exchange services, deploying MF Rings is extraordinarily expensive and thus does not occur on a consistent basis. Consequently, connection to customers via an MF Ring is the exception, not the rule, and simply is not an economic alternative for the vast majority of potential customers.

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14. The final component is the building lateral. The vast majority of commercial buildings are NOT located on our MF Rings. Thus, if XO wishes to serve customers located in those buildings with our own loop facilities, we must construct a building “lateral,” connecting the building to our MF Ring. Specifically, we must trench, install conduit, and pull fiber between the MF Ring and the building to be served; and then we must obtain and outfit equipment space in the building itself.

15. As noted, merely passing nearby a customer facility does not enable us to actually provide service to the customer. We estimate that there are **BEGIN CONFIDENTIAL**  
**END CONFIDENTIAL** commercial office buildings in the United States, and that around **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of those buildings are located in the cities where XO operates fiber ring. However, those **BEGIN CONFIDENTIAL**  
**END CONFIDENTIAL** buildings are unreachable, regardless of how close they are to the MF ring, unless they are physically connected to it. Today, our MF Rings connect to only **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**, or approximately **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of the potential market.

16. The construction of laterals to connect office buildings to the XO network is extremely difficult, time consuming and costly, even when adding buildings to our MF Rings that are located in close proximity to our MF Rings. The average XO building lateral is 500 feet long and on average costs **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in outside plant construction and building access plus **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** for the associated electronics, totaling **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** per building assuming no significant space conditioning or internal end user wiring problems. It is important to realize that CLECs have no absolute right to build into the

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complexes at which customers reside. We must negotiate private right-of-way (“ROW”) licenses and building access agreements, which may or may not be available at economic prices and depending on the location of the building. Additionally municipal franchises may need to be negotiated. Often, permits are required for trenching, and sometimes resoning is necessary, both of which are uncertain prospects. Unless these hurdles are crossed — and many times they cannot be — we simply are unable to construct that lateral regardless of customer demand or desires. For example, XO has faced recurring seasonal construction moratoriums imposed by municipalities during the winter months, construction bans in historic districts, multi-year construction bans in recently renovated city streets, building owner opposition and requirements to use city owned/operated conduit systems with limited access. By contrast, with rare exception, ILEC facilities are already in the ground connecting the building to the ILEC serving wire center. In such instances, the ILEC loop facilities are the only route into the building and constitute an absolute bottleneck facility.

17. In addition to the capital cost of construction, the building of laterals is very time consuming. The time required to obtain all of the necessary building access agreements, ROW arrangements etc. and then actually construct the lateral is a minimum of 4 to 6 months, but can take much longer than that. Customers with moderate telecommunications requirements, such as the small- and medium-sized businesses that typically utilize DS-1 level access, normally are unable and/or unwilling to wait such a long time for the delivery of services.

18. The concerns and issues that XO has experienced in deploying its own loops are consistent with the Federal Communications Commission’s “Commission’s” findings in the *TRO* and *TRRO* that competitive LECs “[i]n addition to the substantial fixed and sunk costs involved in deploying competitive fiber, competitive LECs also face substantial operational

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barriers to constructing their own facilities”” in deploying high capacity loops. *Triennial Review Remand Order* ¶ 151. The Commission also correctly recognized that DS-1 level customers pose significantly different economic characteristics from that of large enterprise customers and their general resistance to long term contracts. Taken together, the Commission determined that “competitive deployment of stand-alone DS1-capacity loops is rarely, if ever economic.” *Id.* ¶ 166.

19. Due to the extraordinary cost of constructing laterals, XO’s current policy is not to consider the addition of a building to its network unless customer demand at that location exceeds at least 3 DS-3s of capacity.

The following Table 1 highlights the high cost of building laterals and that such builds are not financially justified until at least 3 DS-3 of capacity are under contract with a customer. **BEGIN CONFIDENTIAL**

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**END CONFIDENTIAL** XO utilizes a careful screening process to decide whether the investment in lateral construction is warranted. A high-level estimate of construction and electronics costs is developed and used to perform an Internal Rate of Return analysis against the revenue commitment the customer is willing to make. The customer revenue commitment is defined as the Non-Recurring Charge (NRC), if any, plus the Monthly Recurring Charge (MRC) times the number of months the customer is willing to commit to by signing a term contract. Regardless of potential future revenue, no decision to build is made unless a signed customer contract is presented by the XO Sales team. In our experience, relatively few buildings survive such scrutiny, and “building adds” are the exception, not the rule.

20. As I explained above, it almost never is economic for XO to construct its own wireline DS-1 loop facilities. It is also worth noting that the same holds true for other CLECs as well. Numerous CLECs such as the pre-merger AT&T and WorldCom, NuVox/NewSouth and then KMC have said so under oath in prior filings with the commission. XO’s experience is consistent with these declarations. Because of limited building presence from other CLECs, we rarely have been able to purchase DS-1 and DS-3 loop facilities from other CLECs. This is true of all of our markets across the nation. Indeed, we found that CLECs offer DS-1 and DS-3 loops on a wholesale basis to fewer than 5 percent of the buildings that XO seeks to serve.

#### **IV. WIRELESS TECHNOLOGY IS NOT WIDELY AVAILABLE AS A LOOP SUBSTITUTE**

21. ILECs have suggested that CLECs such as XO could use fixed wireless technology to connect to their customers. XO’s affiliate, Nextlink, is deploying its network to support a fixed wireless access product. While a fixed wireless access alternative offers real value to customers, it has not been easy to deploy. An industry-wide deployment of a fixed wireless access alternative has not happened as quickly as Nextlink would prefer. Consequently, the

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potential future deployment of wireless loop technology generally does not reduce the essential need for cost-based wireline DS-1 and DS-3 loop facilities from the ILECs at this time.

### **V. CABLE TELEVISION FACILITIES CANNOT REPLACE DS-1 AND DS-3 UNE LOOPS**

22. Some ILECs have suggested that CLECs could opt to use cable television systems for alternative DS-1 and DS-3 loop facilities to serve their small to medium-sized business customers. In our experience, that is just ILEC rhetoric. To my knowledge, no cable television company has ever offered to provide DS-1 and DS-3 level loops to XO over its cable television plant. That should not be surprising, since cable television systems simply were not designed to provide this type of service.

23. Also, there is a substantial geographic incongruity between the build-out plans of most cable television companies and the needs of facilities-based CLECs such as XO. Our target customers are businesses, and our fiber optic backbones are primarily routed in and around business districts. By contrast, most cable television systems were designed and built first and foremost to serve residential customers in suburban areas. Thus, the cable television systems do not reach and are not connected to the customers to which XO needs to connect.

24. Even where cable television networks reach our business customers, the cable television network facilities typically lack the capacity to serve large numbers of business customers that require telecommunications and Internet services at DS-1 and higher speeds. While it is true that cable television systems often have been upgraded to support the provision of cable modem services, the design of the network commonly is such to support infrequent high-speed bursts of data to and from subscribers. This is much different than a system required to support the

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“always on” bandwidth demands of businesses. Our assessment is that cable systems normally could not provide the service availability guarantees required by our business customers.

**VI. XO DEPENDS UPON ILEC INTEROFFICE TRANSPORT TO COMPLETE OUR NETWORK**

25. Building backbone fiber optic transport facilities is an incredibly expensive undertaking. The costs of self-deploying transport facilities include collocation costs, the cost of fiber, the cost of physically deploying the fiber, the cost of electronics necessary to light the fiber, and the cost of obtaining right-of-way for the fiber deployment. The electronics that must be placed in a collocation arrangement to provide interoffice transport include fiber distribution (to terminate and cross connect the fiber facility), digital signal cross-connect panels (to cross-connect DS-1 and DS-3 signals), optical multiplexers, and power distribution equipment (*e.g.*, power filtering and fuses). The aggregate cost of deploying fiber for use as interoffice transport can vary substantially based upon density and topography (*i.e.*, urban construction typically is more costly than rural deployment), XO has found that placing fiber underground can cost **BEGIN**

**END CONFIDENTIAL**, while placing fiber on poles can cost **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** per mile. The cost to build these fiber routes is a sunk cost, since the facility cannot be moved to another location should we decide to exit a market.

26. Constructing interoffice transport fiber facilities also is very time-consuming. While fiber can be built in rural areas at rates up to several miles per day, in the urban and suburban areas where XO usually provides service, we normally can build at a daily rate of **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**, and **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** within the city’s business district. We estimate that it normally takes approximately 6 months to obtain the rights-of-way, apply for

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collocation and equipment; and it takes an additional 3 months to actually build the fiber, and install/test the equipment. Building a collocation usually takes more than 12 months and only then can XO build fiber into the central office. This aggregate delay of more than a year provides the ILEC with significant “first mover” advantages over us.

27. Given that extraordinary cost of constructing interoffice transport facilities, it simply is not economic to build unless we have accumulated a very large volume of traffic on a particular route. Specifically, XO has found that construction does not make economic sense until we accumulate a minimum of 9 to 12 DS-3s of traffic on that route depending on distance. Given that we have found that self deployment is not economically rational until we have a minimum of 9 to 12 DS-3s of traffic on a route, obviously it would *never* be economic for XO to self-deploy interoffice transport facilities simply to provide DS-1 level transport. XO has never constructed interoffice facilities simply to self provision transport at the DS-1 level, and I cannot imagine a situation in which we could do so economically.

28. Where we lack the traffic volumes required to construct our own interoffice facilities, XO must purchase interoffice transport facilities from other carriers. We are constantly looking for opportunities to purchase interoffice transport services from other CLECs. Of course, more than a decade into the development of local competition, no CLEC has constructed facilities on most interoffice routes in the country. Those competitors with the most extensive interoffice networks - - “old” AT&T and MCI – have been absorbed by the regional bells. Given the enormous time, effort and capital required, it will be many years before competitive carriers – even in the aggregate – replicate the coverage of ILEC networks. But even where CLECs have in fact self-deployed interoffice transmission facilities, it does not mean that they offer access to their networks to competing CLECs. Often where CLECs self deploy, they size their networks for their

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own anticipated needs and simply do not have bandwidth to sell to others. Other times they may have extra capacity, but do not invest in the equipment or back office required to support a wholesale offering. When CLECs construct their backbone fiber networks, they initially deploy and operate an optical interface at a range of capacities. An OC-3 capacity circuit has the identical capacity as three DS-3 circuits, but the OC-3 and DS-3 circuits utilize differing technological interfaces to terminate. Thus, to offer a wholesale DS-3 service to other CLECs, a carrier must purchase, install and operate the additional electronic equipment (*i.e.*, multiplexers and de-multiplexers) required to channelize a DS-3 circuit within a larger OCn circuit, and deliver it on the DS-3 interface

29. Even when another CLEC has a wholesale DS-3 transport offering available on a route, it must be recognized that we incur significant additional costs when we elect to use it. Since such a third-party carrier rarely (if ever) can provide all of the routes we need in a metro area, electing to utilize a third-party carrier requires us to incur the cost of making and managing service arrangements with multiple suppliers. For example, since most CLECs have locations different from each other within a city, XO would have to build into the third-party carrier's location in order to bring traffic to the XO switch site. In addition, with multiple suppliers, service quality becomes more difficult to maintain; maintenance and repair in particular becomes more problematic. Moreover, we must establish and maintain a cross-connect between the collocation arrangements to access the service, which costs XO on average a couple of hundred dollars per month, per fiber pair. Finally, even if another CLEC is able and willing to sell interoffice transport services to another CLEC, it may not be willing to do so at affordable rates.

30. As I have explained, our decision to self-deploy interoffice facilities is driven by the demand for our services on a particular route. XO must expect that we will have at least 9 to

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12 DS-3s in traffic on that route in the near term to make construction economic. In my experience, other CLECs face the same hurdle. Thus, it should not be surprising that we see the construction of interoffice facilities by multiple CLECs only on the very densest traffic routes. A prime example of where multiple CLECs have self-deployed interoffice facilities along the same route is the route between two ILEC access tandems. A second example would be a route in a Top 50 MSA market between two ILEC central offices, where both such offices serve very large concentrations of business lines (more than approximately 50,000 VGE business lines on each end). By contrast, where the ILEC central office on either end of the route serves relatively few business lines (approximately 25,000 VGE), competitive supply of interoffice transport facilities is rare.

31. I cannot emphasize strongly enough that the decision whether to self provision interoffice transport facilities – and the availability of competitive supply of such interoffice facilities – is inherently and exclusively a route-specific determination. The decision of whether to construct interoffice facilities is *route-specific* and is driven by the *density of business traffic on a particular route*. Whether there is or will be a competitive supplier of interoffice facilities is not a function of a metro area, an MSA or even a density zone – or the number of collocations in a market.

32. XO is a facilities-based CLEC, and we strongly prefer to use our own facilities. But due to the economic realities discussed above, very often that just is not possible requiring us to purchase interoffice transport from the ILECs. Simply put, our ability to deliver competitive telecommunications services depends upon our ability to continue obtaining ILEC transport facilities on those routes at economic, cost-based rates.

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**VII. AS CURRENTLY PRICED, ILEC SPECIAL ACCESS SERVICES ARE NOT AN ECONOMIC SUBSTITUTE FOR HIGH-CAPACITY UNE LOOPS AND TRANSPORT**

33. CLECs are entitled to purchase DS-1 and DS-3 level Special Access services out of current ILEC tariffs that offer various pricing plans, with differing terms and conditions and length of term discounts. However, such DS-1 and DS-3 Special Access services, even under the steepest discount available, almost always are priced much higher than cost and comparable UNEs. Most Special Access services in the MSA in which we operate are subject to pricing flexibility and as a practical matter can be priced however high the ILECs wish to price them. By contrast, UNE prices are established by the state commissions in accordance with FCC-prescribed TELRIC costing principles. Accordingly, UNE prices are set at something approaching the cost incurred by ILECs in providing the facilities, while it is reported that the ILECs' profit margin on their Special Access service has increased on average from 8.25% in 1996 to over 78% at present as a result of price increases.

34. The differential in the pricing of Special Access services as compared to UNEs is a very significant factor for XO and other CLECs. I have attached a chart, Attachment A which shows a variety of ILEC pricing plans currently available to XO for DS-1 and DS-3 level Special Access channel terminations in representative states. The chart also states the amount that we currently pay for DS-1 and DS-3 UNE loops in the corresponding states. As the attachment shows, even under term and volume commitment plans, XO commonly must pay **BEGIN**  
**CONFIDENTIAL**                      **END CONFIDENTIAL** more to purchase connections to buildings as DS-1 and DS-3 Special Access versus DS-1 and DS-3 UNEs respectively. Further, term and volume commitment plans require XO to continue to purchase circuits for the **entire** period of the plan or face steep early termination penalties, thus greatly restricting XO's ability to take advantage of the best term and volume discounts offered by many ILECs. For example, if XO

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signs a customer up to a two year term contract for DS-1 services, but is required to purchase the underlying DS-1 circuit from the ILEC for a period of 5 years in order to get the best monthly price possible, it does not make economic sense for XO to commit to the 5-year term plan when its revenue stream to cover the cost of the circuit is only guaranteed for two years. In order to have the unrestricted ability to disconnect DS-1 and DS-3 loops and mirror its underlying end user customer commitments comparable to that enjoyed in the purchase of UNEs, XO must pay up to **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** more for such Special Access circuits than for UNEs, as evidenced in Attachment A.

35. The exorbitant pricing of Special Access services has tremendous adverse and anticompetitive consequences. As I described above, XO simply must purchase ILEC facilities to connect to the vast majority of our business customers. The cost of these facilities is by far the largest direct cost we incur in serving such customers. Indeed, the cost of leasing a local loop for XO's various DS-1 products ranges from **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** of our direct cost to serve our DS-1 service customers. Given the prevalent use of ILEC loop facilities to supplement our network, all such loop costs must be recovered from our customers through XO's charges. Since, as a practical matter, we must undercut ILEC retail prices to succeed, we operate on extremely thin margins. Our analysis shows that if we were required to utilize DS-1 and DS-3 Special Access Loop services across the board, our margin on our DS-1 and DS-3 based services would be completely wiped out. Indeed, the price increase required to yield a profit would cause us either to raise our retail prices above ILEC rate levels, a competitively unsustainable position, or more likely to abandon service where costs would not permit us to compete on price. This would make new sales difficult, if not impossible, and our existing customer base would quickly be lost to attrition. The business model for serving businesses with ILEC facilities would simply be unsustainable. Replacing all of our existing UNE

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transport services with Special Access Transport would have similarly severe adverse consequences. This too would usurp our ability to price our services competitively as compared to ILEC service offerings.

36. ILECs contend that CLECs already rely primarily on Special Access to deliver their services. I cannot speak for other CLECs, but I can report without reservation that this ILEC suggestion is untrue with respect to XO, the nation's largest CLEC. To the extent that XO purchases DS-1 and DS-3 circuits from ILECs to serve our local service end user customers, we do so through the use of UNEs whenever they are available, not Special Access.

37. Nonetheless, it is worth explaining why XO would order DS-1 or DS-3 Special Access from ILECs for use as local loops. There are several reasons. First, the TRRO has limited the availability of DS1 and DS3 loop and transport UNEs from non-impaired wire centers. Often in these wire centers, XO has no alternative other than to order Special Access from the ILEC. Second, XO often has been forced to order Special Access because ILECs refused to "construct" facilities, including the installation of line cards or other minor electronic components. Third, historically ILECs were not required to combine UNEs, and consequently CLECs that wished to use ILEC facilities to serve end users out of an ILEC central office where they were not collocated were forced to order such facilities as Special Access. Even upon reinstatement of the FCC's UNE combinations rules, the ILECs were intransigent in their refusal to permit CLECs to order such combinations, known as EELs. . Fourth, we are required to order Special Access for certain circuits that are not eligible for UNE treatment (*e.g.* to order loop/transport combinations (EELs)),the circuits must meet certain eligibility requirements) . Fifth, the ILECs historically prohibited commingling of access services and UNEs on the same facilities to serve an end user

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customer, thus posing yet another barrier to CLECs ordering UNEs. And although commingling is now available, ILECs have continued to make the ordering process difficult.

38. Just to provide one example among many, XO's attempt over a 12-month period beginning in 2002 to convert more than 1000 DS-1 Special Access circuits (consisting solely of a channel termination) to UNE loops was thwarted due to BellSouth's insistence that the circuits be disconnected and reconnected, and that XO pay per-circuit conversion charges that were 30 times higher than BellSouth's allegedly "cost-based" rates for conversion of Special Access circuits consisting of a channel termination and interoffice transport to EELs.

39. I must observe that, absent commission interaction, there is no reason to believe that ILECs will reduce Special Access rates in the foreseeable future to be more closely aligned with cost-based UNE prices. In addition, XO has observed reluctance by the major ILECs to negotiate meaningful commercial contracts as directed by the FCC. Thus, what we are observing in the real world is a steady increase in Special Access pricing, despite the fact that ILECs already are realizing incredible profit margins averaging 78% or more on the service.

40. The ILEC determination to drive Special Access prices to ever higher supra-competitive should not be surprising. The ILECs know what I discussed earlier in my Declaration, *i.e.*, that XO and other CLECs rely upon the availability of ILEC transport and high-capacity loop facilities to connect to customers, and that we must be able to recover all ILEC loop charges in our pricing to our customers. Thus, if our only option is to purchase Special Access services, the ILECs can inflate our cost of service substantially — and create a classic "cost/price squeeze." Whereas the availability of cost-based UNEs as an alternative previously provided CLECs an option to avoid being caught in the squeeze, the elimination of UNEs (or even the prospect of it) provides an incentive and an opportunity for ILECs to raise Special Access prices to uneconomic

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levels. One must recognize that the ILECs profit more by CLECs exiting the market than they do by CLECs purchasing their Special Access services.

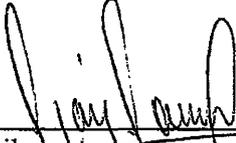
41. Finally, I understand that ILECs have suggested that pervasive use of Special Access by CMRS carriers is powerful evidence that wireline CLECs such as XO do not require the use of UNEs. The differences between the business of CMRS carriers and wireline CLECs are fundamental and too numerous to go through here. But one key distinction is worth mentioning at this point. CMRS carriers do *not* use ILEC Special Access services as loop facilities to connect to end user customers. Their use of Special Access service is limited to interoffice transport, backhaul and entrance facilities. CMRS carriers use their own wireless technology to provide a mobile loop connection to the end user. Thus, the experience of CMRS providers is fundamentally different, and largely irrelevant, to the question of whether XO's ability to provide service is impaired without access to cost-based ILEC loops.

42. Thus, while XO utilizes DS-1 and DS-3 Special Access facilities, it does not do so by choice but rather only when forced. The economics are that problematic. To continue to deploy our network and extend our reach, we require DS-1 and DS-3 UNEs and have consistently tried to order loop facilities as UNEs, and convert them to UNEs where we have been forced by ILEC imposed impediment to order them first as Special Access. Indeed, the evidence is clear. If XO were compelled to order all of its DS-1 and DS-3 loop facilities at current Special Access pricing, our existing integrated voice and data services offered to small and medium-sized customers would be rendered uneconomic, and our ability to offer service to small and medium sized off-net customers would end.

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**SUMMARY**

43. The availability of cost-based ILEC DS-1 and DS-3 loops and transport is essential to XO's ability to serve many thousands of small- and medium-sized business customers. Utilizing just ILEC Special Access is not an economically feasible alternative because Special Access rates are priced too far above cost already, and in the absence of commission intervention, they could increase still more. Unless the FCC acts to re-initialize Special Access DS-1 and DS-3 loops and transport pricing at more rational levels XO — the nation's largest CLEC — will not be able to provide competitive telecommunications services electronically to small and medium sized business customers in most areas.

  
Ajay Govil  
XO Communications, LLC

Dated: August 8, 2007

# **Attachment AG-1**

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