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EX PARTE OR LATE FILED

ORIGINAL

October 19, 2007

FILED/ACCEPTED
OCT 19 2007
Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY AND ECFS

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notification of Ex Parte Presentation in WC Docket No. 06-172

Dear Ms. Dortch:

On October 18, 2007, Wayne Rehberger and Heather B. Gold, of XO Communications, LLC, and Brad E. Mutschelknaus, of Kelley Drye & Warren LLP met with Commissioner Jonathan S. Adelstein and Scott Bergmann, Legal Advisor to Commissioner Adelstein. At the meeting, the parties discussed attempts by the Verizon Telephone Companies to undermine the Commission's *Triennial Review Remand Order*, and the federal unbundling rules, through their pending forbearance requests. The attached presentation was distributed at the meeting.

Please note, the attached *ex parte* presentation is redacted for public inspection, pursuant to the Second Protective Order in the above-referenced proceeding.[1] As required by the Second Protective Order, unredacted copies of this presentation have been filed with the Commission Secretary, and submitted to Mr. Gary Remondino of the Wireline Competition Bureau, under separate cover.

1 *In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence*, WC Docket No. 06-172, Order, DA 07-208 (rel. Jan. 25, 2007) ("Second Protective Order").

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Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions, or require further information.

Respectfully submitted,

Brett Heather Freedson

cc (via email): Jeremy Miller
Tim Stelzig

BACK TO THE FUTURE: THE VERIZON AND QWEST ATTEMPTS TO UNDERMINE THE TRRO

Presentation by:

Carl Grivner, Chief Executive Officer, XO Communications
Wayne Rehberger, Chief Operating Officer, XO Communications
Heather B. Gold, Senior Vice President/External Affairs, XO Communications
Brad Mutschelknaus, Kelley Drye & Warren LLP

October 18, 2007

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XO AND OTHER LARGE COMPETITIVE CARRIERS ARE SIGNIFICANT PROVIDERS OF COMMUNICATIONS SERVICES

- XO Has Annualized Revenue of $1.4 Billion
- We Serve 140,000 Business Customers
  - Includes 65% of the Fortune 500
  - Serve over half of the world's largest telecommunications companies
  - Vast majority are small to medium businesses utilizing T1 and below access
- XO's Award Winning Bundled VoIP Service is Used by***[Begin Highly Confidential Information] [End Highly Confidential Information]***

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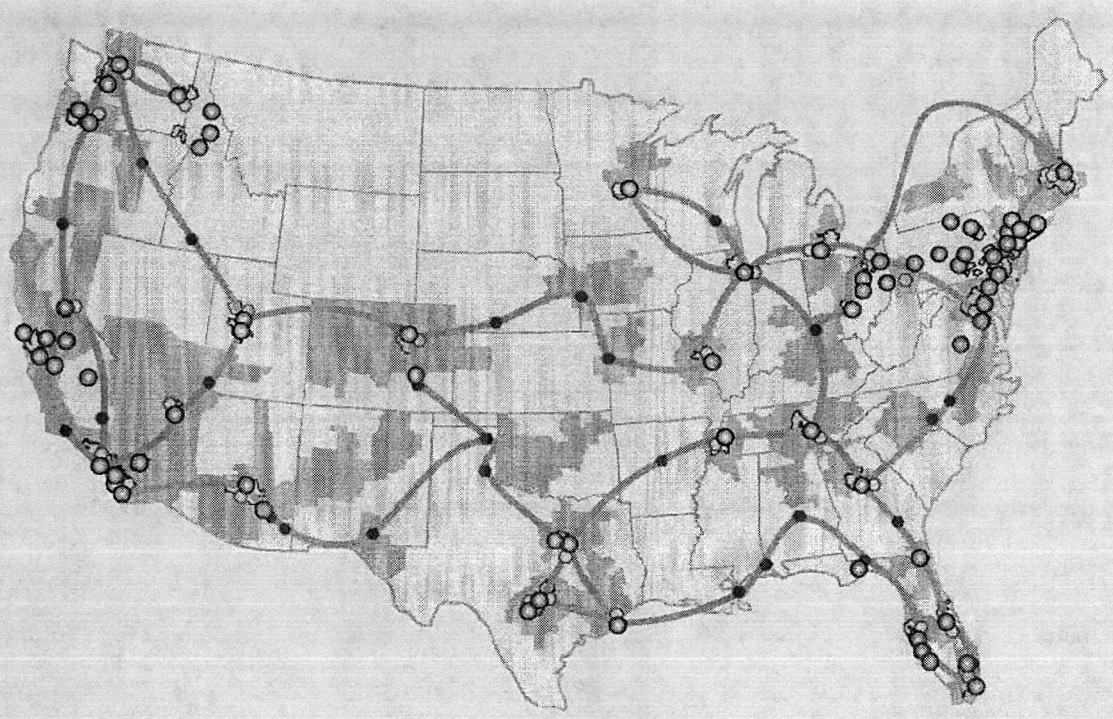
XO HAS SERIOUS "SKIN IN THE GAME"

- XOHO Has Invested More Than $7 Billion in its Network
- Our State-of-the-Art Network Includes:
  - 18,000-mile next generation nationwide inter-city fiber optics network
  - A network fiber footprint of over one million fiber miles
  - 37 metro fiber networks serving 75 markets
  - 950 central office collocations
  - 3,000 "on net" buildings
  - 200 DSL access points
  - 60 Class 5 switches
  - 100 Sonus Networks softswitch controlled media gateways
  - LMDS/39 GHz licenses in 75 markets

XO Holdings: Network Assets



$7+ Billion Invested Fiber

- 75 Markets
- 4,000 Traffic Aggregation Points
- 1M Metro Fiber Miles
- OC-192 IP Network
- 18,000 Route Miles
- 400 Gbps Capacity

Fixed Wireless

- Average 1 GHz Spectrum in 75 Markets
- Deliver 10-622 Mbps Services

XO™

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XO IS USING ITS ASSETS TO BRING NEXT GENERATION BROADBAND SERVICES TO A WIDE VARIETY OF CUSTOMERS

- Next Gen Products Provide More Capabilities at Lower Costs and Greater Flexibility
  - VoIP with dynamic band-width allocation
  - Using so-called "old wires," XO is delivering a cost-effective 10MG ethernet service over copper – more bandwidth at a lower cost
  - IPVPN gives large customer capability to small/medium businesses
  - Private data networking

ILECs reluctantly compete in this market only because we do

XO OFFERS SERVICE IN 8 OF THE 10 METRO AREAS WHERE VERIZON AND QWEST SEEK FORBEARANCE FROM UNE RULES

- New York
- Philadelphia
- Boston
- Pittsburgh
- Denver
- Seattle
- Phoenix
- Minneapolis

THE CITIES AT ISSUE ARE NOT ANOTHER OMAHA OR ANCHORAGE

- Verizon Seeks Complete 251(c)(3) Deregulation in 6 Major Metropolitan Areas in 10 States Affecting 34 Million Customers
- Qwest Requests the Same in 4 More Metropolitan Areas with 13 Million More Customers
- Omaha and Anchorage Involved 9 and 4 Wire Centers Respectively, While the Verizon Petition Alone Covers 800 Wire Centers
- Omaha and Anchorage May Have Unique Characteristics, but These 10 Applications will be Precedential

The earlier decisions addressed unique local conditions, but how the FCC handles these applications will effectively establish a national policy

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EVEN WITH XO's ENORMOUS INVESTMENTS WE MUST RELY ON ILEC LAST MILE FACILITIES

- XO Relies on ILEC Loop Facilities to Provision the Last Mile ***[Begin Highly Confidential Information]**

- **[End Highly Confidential Information]***

- Upon Expiration of Merger Conditions Next July, MCI will Disappear as a Vendor in Major Markets such as New York, Boston and Philadelphia

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EVEN WITH XO's ENORMOUS INVESTMENTS WE MUST RELY ON ILEC LAST-MILE FACILITIES

- 94% of Commercial Buildings are Served Exclusively by ILECs (GAO)
- Options to use Other Competitive Providers are Severely Constrained
  - Percent of competitive loop facilities in each MSA in VZ's petition
    - Boston – .1%
    - New York – .1%
    - Norfolk/VA Beach – 2%
    - Philadelphia – .15%
    - Pittsburgh – .19%
    - Providence – .4%

(Note: XO supplied wire center level data which does not differ materially.)

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EVEN WITH XO's ENORMOUS INVESTMENTS WE MUST RELY ON ILEC LAST-MILE FACILITIES (cont'd)

- Fixed Wireless is Still an Emerging Solution
  - Early success has largely been in cellular backhaul and diversity solutions
  - XO is establishing relationships with major wireless research institutions in order to expedite more commercial applications, BUT
  - Given the state of the available technology, fixed wireless is NOT a viable alternative to UNEs at this point

GRANTING FORBEARANCE IN ALL 8 MARKETS WOULD RESULT IN AN IMMEDIATE AND SHOCKING COST INCREASE

- Cost-Based Rates for UNE Facilities Would Immediately be Re-priced at Monopolistic Special Access Prices
- Even When Purchased at Discounted Pricing Available Under Special Access Volume and Term Plans, the Increases in Monthly Recurring Charges Would be Prohibitive
  - **DS0 costs would triple**
  - **DS1 costs would increase 50%**
  - **DS3 costs would double**

Impact on customers would be devastating – rate increases ranging from*[Begin Highly Confidential Information] [End Highly Confidential Information]* required

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CUSTOMER CHOICE WILL BE GREATLY REDUCED

- The Commission's "Predictive Judgment" that RBOCs Would Replace UNEs with Other Reasonably Priced Wholesale Services in Omaha Proved to be Disastrously Incorrect
  - McLeod forced to withdraw
  - Eschelon and Integra abandoned plans to enter
  - Quickly emerging residential service duopoly and enterprise service monopoly in Omaha
- When UNEs are Eliminated, ILECs Lose Any Remaining Incentive Even to Negotiate Special Access Discount Plans

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TWO YEARS AGO, THIS COMMISSION PROMISED AN ERA OF REGULATORY CERTAINTY

- After Six Years of Uncertainty Surrounding the Triennial Review, the FCC Voted out a TRRO which was Upheld on Appeal
- The then Chairman Noted that the ILECs "Have a Legal Duty to Provide Access Under Limited Conditions and They do Protest Too Much in Arguing for the End of Vast Portions of Their Unbundling Requirements"
- Most Strikingly, the Various Unsuccessful Attempts at Appeal NEVER Challenged the FCC's Finding of Nationwide Impairment for DSO Loops
- One Year After the TRRO was Upheld on Appeal, Verizon and Qwest have Asked the FCC to Abandon the Concept of an Impairment Test Entirely

What has Changed?

XO

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THE ILECs HAVE FOUND A NEW TOOL FOR CIRCUMVENTING THE 1996 ACT AND THE FCC's RULES

- "We are now witnessing a regulatory free-for-all, with last minute filings, improper use of confidential information, and decisions reached without majority vote."
- "The forbearance process has spiraled out of control, and . . . the Bells have sought to take full advantage of it . . .."
- "The promise of the 1996 Act was simply that: a promise. The FCC needs to make good on that promise. Granting forbearance petitions that stifle competition and harm consumers is anathema to all that we tried to create a decade ago."

FORMER HOUSE COMMERCE COMMITTEE CHAIRMAN TOM BLILEY (R-VA), A PRINCIPAL SPONSOR OF THE TELECOMMUNICATIONS ACT OF 1996

Op ed, " 'Forbearance' Promotes Telecom Free-for-all," in the Richmond Times Dispatch, October 1, 2007

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IT IS TIME FOR THE COMMISSION TO "JUST SAY NO"

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