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JUL 15 2008

Federal Communications Commission  
Office of the Secretary

DIRECT LINE: 202-342-8614

EMAIL: dsmith@kelleydrye.com

July 15, 2008

**BY HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**ORIGINAL**

Re: *Notice of Ex Parte Presentation*: In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Docket No. 07-97

**REDACTED FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

Yesterday, Carl Grivner and Heather B. Gold of XO Communications, LLC ("XO"), Brad Mutschelknaus of Kelley Drye & Warren, LLP, and Kevin Joseph of The Joseph Group, met with Chairman Kevin J. Martin, and Amy Bender, Legal Advisor, Wireline Issues to Chairman Martin. During that meeting information was presented addressing Qwest's forbearance requests in Denver, Minneapolis, Phoenix and Seattle. Attached to this *Notice of Ex Parte Presentation*, is a redacted version of the presentation provided at the meeting.

In accordance with paragraph 14 of the *Second Protective Order*, dated June 1, 2007 (DA 07-2293) in the above-captioned proceeding, a copy of the presentation, containing Highly Confidential information is being submitted to your attention under separate cover.

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KELLEY DRYE & WARREN LLP

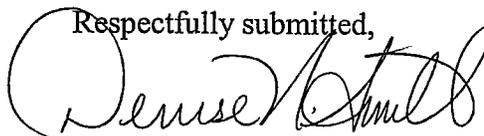
Ms. Marlene H. Dortch

July 15, 2008

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Kindly date stamp the duplicate of this letter and return it to the courier. Please contact the undersigned at (202) 342-8614, if you have any questions about this letter.

Respectfully submitted,

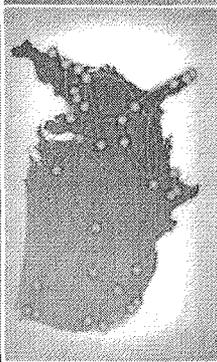
A handwritten signature in cursive script, appearing to read "Denise N. Smith". The signature is written in black ink and is positioned below the typed name.

Denise N. Smith

Enclosures



21<sup>st</sup> Century Communications



www.xo.com

# QWEST FORBEARANCE REQUESTS IN DENVER, MINNEAPOLIS, PHOENIX AND SEATTLE

## Presentation by:

Carl Grivner, Chief Executive Officer, XO Communications  
Heather B. Gold, Senior Vice President/External Affairs,  
XO Communications

Lisa Youngers, Director/Federal Regulatory, XO  
Communications

Brad Mutschelknaus, Kelley Drye & Warren LLP

Kevin Joseph, Principal, The Joseph Group

July 14, 2008

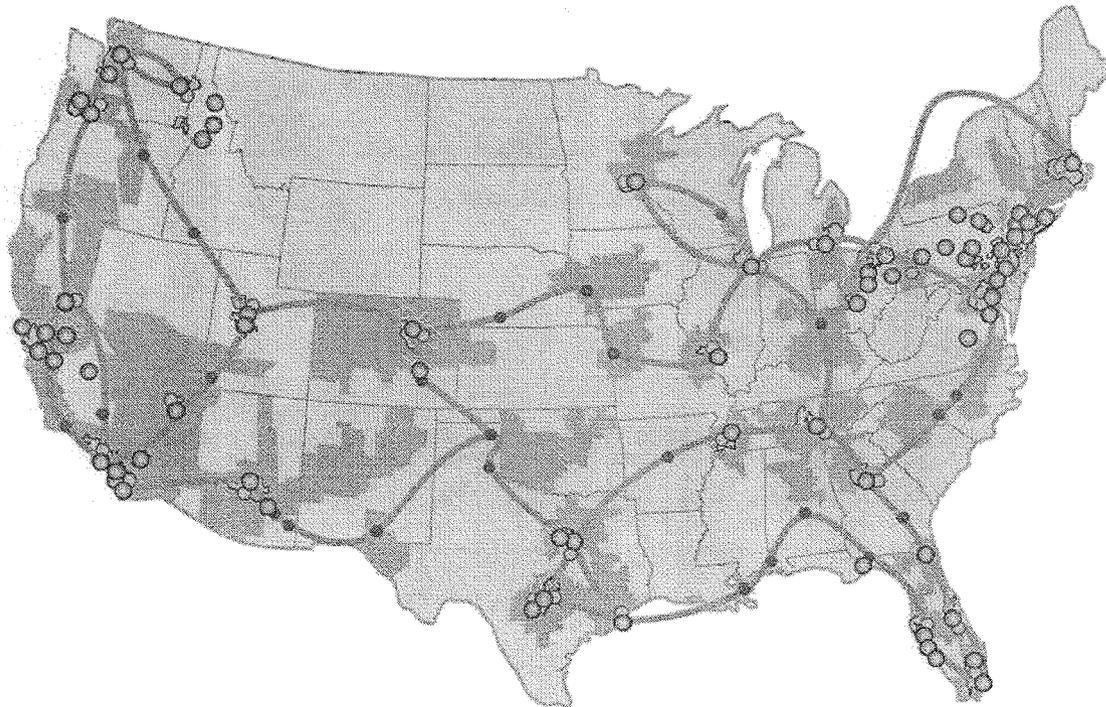
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For Public Inspection



# XO HAS SERIOUS "SKIN IN THE GAME"



## \$7+ Billion Network Investment

- 37 Metro networks in 75 Markets
- 60 Class 5 switches
- 100 Sonus Networks softswitches
- 4,000 Traffic Aggregation Points
- 1M Metro Fiber Miles
- OC-192 IP Network
- 18,000 Route Miles
- 1.2 terabytes Capacity

## Fixed Wireless

- Average 1 GHz Spectrum in 81 Markets
- Deliver 10-622 Mbps Services

REDACTED

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## **XO HAS BUILT FIBER BACKBONE NETWORKS IN EACH OF THE MSAs COVERED BY THE QWEST PETITIONS**

- Minneapolis/St. Paul - 133 route miles (or 14,000 fiber miles)
- Seattle - 192 route miles (or 25,000 fiber miles)
- Phoenix - 90 route miles (or 10,000 fiber miles)
- Denver - 200 route miles (or 21,000 fiber miles)

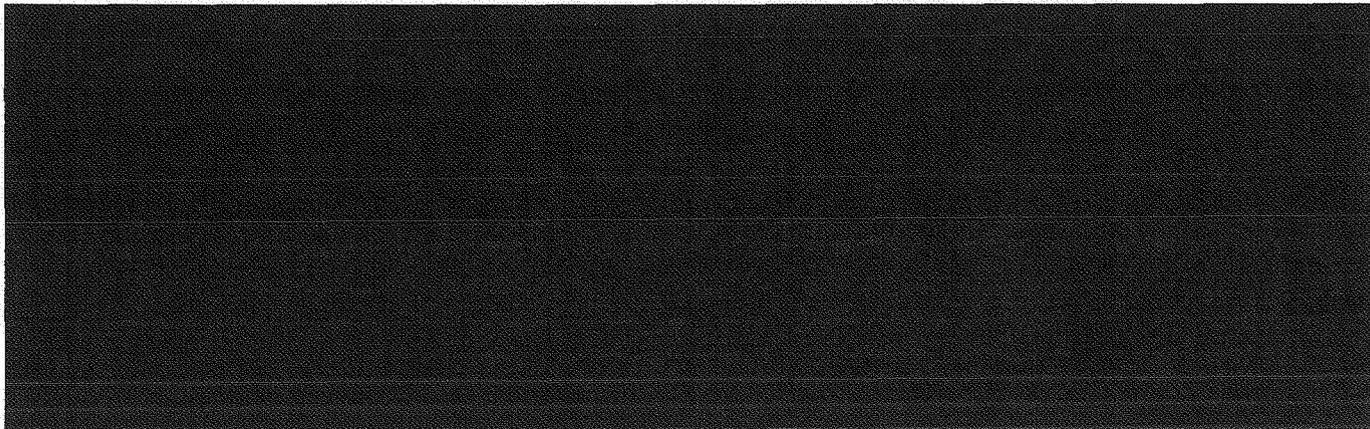
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## **EVEN WITH XO'S ENORMOUS INVESTMENTS WE MUST RELY ON ILEC LAST MILE FACILITIES**

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



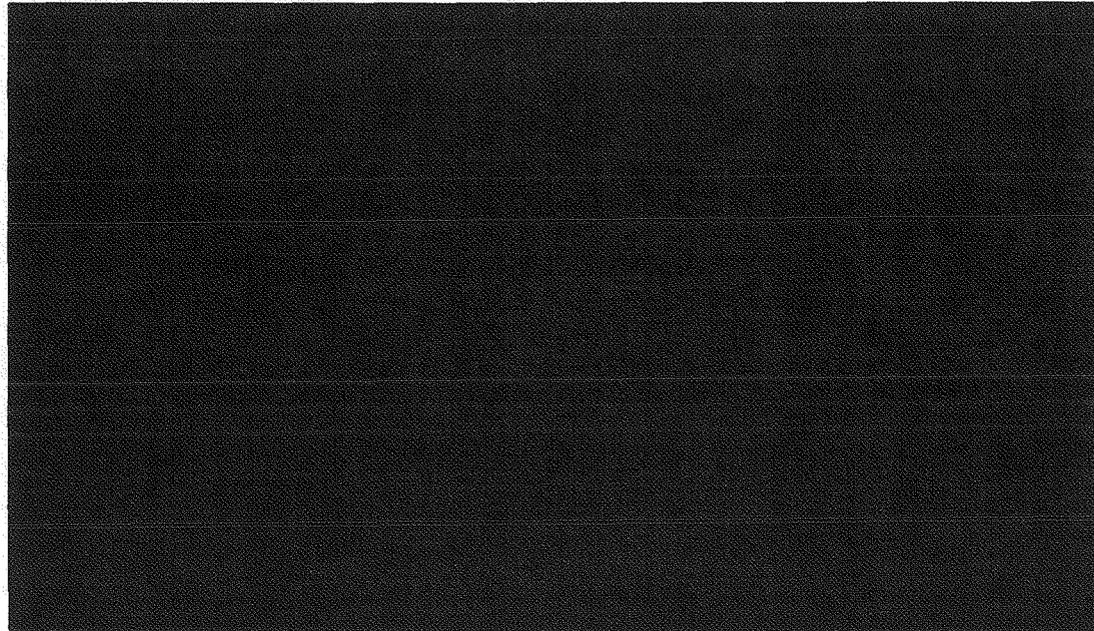
**[End Highly Confidential Information]\***

**REDACTED**

**For Public Inspection**



**XO's CURRENT FACILITIES-BASED LIT COMMERCIAL BUILDING  
MARKET PENETRATION [BEGIN HIGHLY CONFIDENTIAL]**



**[END HIGHLY CONFIDENTIAL]**

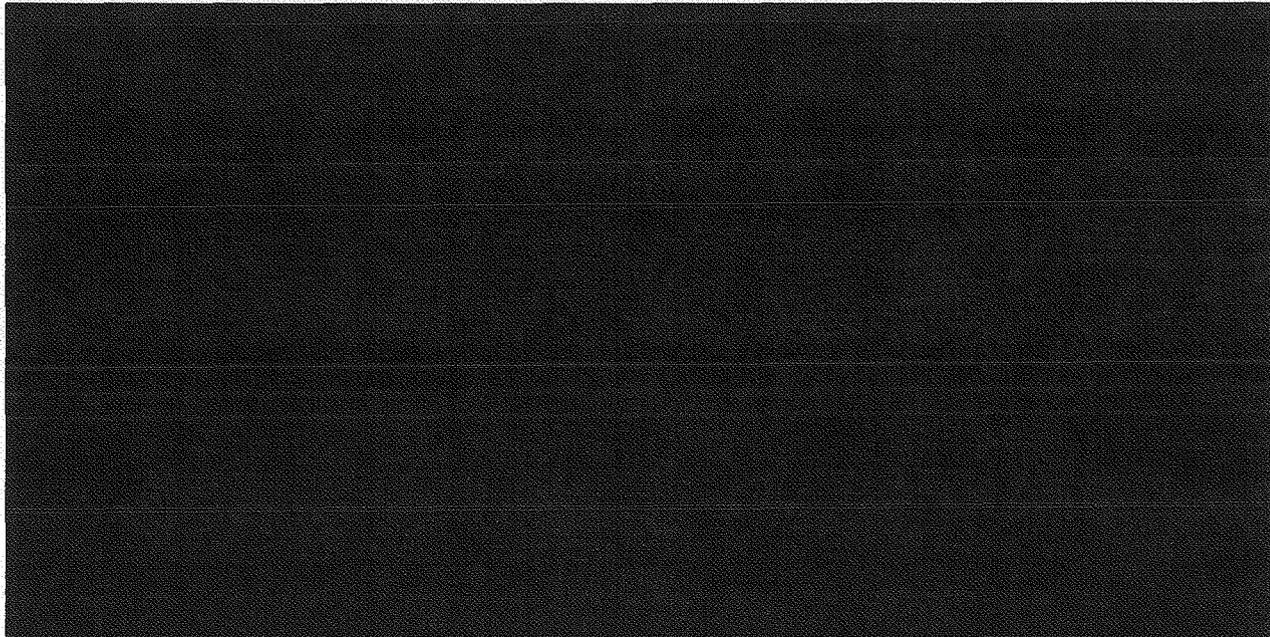
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**MOST COMMERCIAL BUILDINGS ARE TOO DISTANT FROM  
XO'S FIBER BACKBONE NETWORKS TO JUSTIFY  
CONSTRUCTION OF LATERALS**

**[BEGIN HIGHLY CONFIDENTIAL]**



**[END HIGHLY CONFIDENTIAL]**

**REDACTED**

**For Public Inspection**



**ALL CLECS COMBINED CONNECT WITH THEIR OWN FACILITIES TO A MINOR PORTION OF COMMERCIAL BUILDINGS IN THE AFFECTED MSAs**

<b>MSA</b>	<b>Total Number of Commercial Buildings in MSA</b>	<b>% of Commercial Buildings Served by Facilities-Based CLECs</b>
<b>Denver</b>	<b>104,385</b>	<b>0.24%</b>
<b>Minneapolis/ St. Paul</b>	<b>124,740</b>	<b>0.26%</b>
<b>Phoenix</b>	<b>127,763</b>	<b>0.17%</b>
<b>Seattle</b>	<b>127,880</b>	<b>0.18%</b>

**REDACTED**

**For Public Inspection**



**EVEN IN THE MOST COMPETITIVE WIRE CENTERS, ALL CLECS COMBINED CONNECT WITH THEIR OWN FACILITIES TO VERY FEW COMMERCIAL BUILDINGS**

<b>MSA</b>	<b>Wire Center with Highest Percentage of Commercial Buildings Served by Facilities-Based CLECs</b>	<b>Total Number of Commercial Buildings in Wire Center</b>	<b>Percentage of Commercial Buildings Served by Facilities-Based CLECs</b>
<b>Denver</b>	<b>ENWDCOMA</b>	<b>2433</b>	<b>2.28%</b>
<b>Minneapolis/ St. Paul</b>	<b>MPLSMNDT</b>	<b>1574</b>	<b>3.63%</b>
<b>Phoenix</b>	<b>PHNXAZSE</b>	<b>1095</b>	<b>1.46%</b>
<b>Seattle</b>	<b>STTLWAEL</b>	<b>666</b>	<b>3.15%</b>

**REDACTED**

**For Public Inspection**



**ALL CLECS COMBINED SELDOM CAN SERVE MORE THAN 5% OF THE AFFECTED COMMERCIAL MARKET OVER THEIR OWN FACILITIES**

<b>MSA</b>	<b>Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 0%-5%</b>	<b>Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 5%-10%</b>	<b>Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 10%-15%</b>	<b>Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Above 15%</b>
<b>Denver</b>	<b>41</b>	<b>3</b>	<b>3</b>	<b>0</b>
<b>Minneapolis/ St. Paul</b>	<b>133</b>	<b>6</b>	<b>1</b>	<b>0</b>
<b>Phoenix</b>	<b>72</b>	<b>4</b>	<b>0</b>	<b>0</b>
<b>Seattle</b>	<b>66</b>	<b>2</b>	<b>1</b>	<b>0</b>

**REDACTED**

**For Public Inspection**



## **FIXED WIRELESS IS STILL AN EMERGING SOLUTION**

- Early Success Has Largely Been in Cellular Backhaul and Diversity Solutions
- Given the State of the Available Technology, Fixed Wireless is NOT a Viable Alternative to UNEs at This Point

**REDACTED**

**For Public Inspection**



## **QWEST HAS NOT PRODUCED DATA THAT MEETS ITS BURDEN OF PROOF FOR MASS MARKET SHARE LOSS**

- White Page Directory Listing Data Showed Collective Competitor Market Share Far Below the Required Threshold in Denver, Minneapolis-St. Paul and Seattle
- Cox and Qwest Supplied Data Regarding Collective Competitive Market Share in Phoenix Fails the Test After Non-Qualifying Lines are Subtracted
  - Exclude QPP and resale lines from competitor tally
  - Omit cut-the-cord wireless from wireline market analysis; or, at a minimum:
    - Employ granular, market specific data from neutral source
    - Delete 18-24 year old age group
    - Not substitutable for business at any level and broadband services

**REDACTED**

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## GRANTING FORBEARANCE WOULD RESULT IN AN IMMEDIATE WHOLESALE COST INCREASE

- Cost-Based Rates for UNE Facilities Would Immediately be Re-priced at Non-Cost Based 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**

**REDACTED**

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## STATE, LOCAL OFFICIALS AND PUBLIC INTEREST GROUPS HAVE CONDEMNED THE QWEST PETITION

- Arizona Corporation Commission
- Arizona State Attorney General's Office
- Members of Arizona House of Representatives and Senate
- City of St. Paul, Minnesota
- Colorado Public Utility Commission
- Consumer Federation of America
- Consumers Union
- Educause
- Free Press
- The Greater Metro Telecommunications Consortium (Denver)
- Media Access Project
- Minnesota Public Utilities Commission
- Minnesota Association of Telecommunications Administrators
- National Association of Telecommunications Officers and Advisors
- National Association of State Utility Consumer Advocates
- New America Foundation
- The New Jersey Division of Rate Counsel
- Public Knowledge
- U.S. Public Interest Research Group
- Washington State Attorney General's Office
- Washington Independent Business Association
- Washington Utilities and Transportation Commission

**REDACTED**

**For Public Inspection**