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

Re: GN Docket Nos. 09-29, 09-47, 09-51; RM-11358  
*Ex Parte* Notice

Dear Ms. Dortch:

As the Federal Communications Commission (“FCC” or “Commission”) nears completion of its historic blueprint, the National Broadband Plan, XO urges the Commission to include two critical elements in its proposed national policy. First, the National Broadband Plan must recognize the vital importance of pro-competition policies to promoting the wider deployment of broadband service. Second, the Commission’s Plan should highlight the key role that the nation’s embedded copper plant can play in achieving that objective. A well-crafted National Broadband Plan that incorporates these elements will encourage substantial new investment in broadband facilities, help to create new jobs, and enable American consumers to enjoy the benefits of a robustly competitive marketplace for broadband services.

**I. The Vital Importance of Pro-Competition Policies to Broadband Deployment and Penetration**

The Commission’s National Broadband Plan must endorse the need for pro-competition policies in the broadband marketplace, because such policies spur growth, deployment, and consumer benefits. Robust competition is critical to advancing the Commission’s broadband goals, including increased penetration, greater innovation, and lower prices. Historically, vigorous competition has led to extraordinary innovation in the communications industry as companies explore every avenue to attract customers and revenue. Black rotary telephones were supplanted by cordless touchtone units with an array of features, first-generation “brick” cell phones were replaced by a variety of mobile multimedia devices, and consumers have a range of communications packages and plans from which to choose. Once pro-competitive broadband policies are in place and competitors have the tools they need to deploy their offerings, marketplace forces will become the engine of broadband expansion in most areas around the country.

The FCC's National Broadband Plan should foster broadband competition by highlighting the need to ensure that competitors such as XO have a reasonable opportunity to gain efficient access to incumbent local exchange carriers' ("LECs") last-mile, bottleneck facilities as unbundled network elements on a non-discriminatory basis.<sup>1</sup> Once the Commission addresses access issues comprehensively, it will give competitive carriers like XO the opportunity to compete fairly and effectively with Verizon and other incumbent local exchange carriers.<sup>2</sup>

## **II. The Key Role of Existing Copper Plant and the Inadequacy of Current Copper Retirement Procedures**

In the National Broadband Plan, the Commission should make clear that the nation's existing copper infrastructure should play an integral role in the achievement of the FCC's broadband deployment and penetration goals. With the recent advances in Ethernet over Copper ("EoC") technology, copper infrastructure is a ready solution for the delivery of broadband services throughout the United States.<sup>3</sup> Copper plant is the most widely deployed infrastructure that can be used to offer broadband services, and provides far greater reach than fiber. In stark contrast to ubiquitously-deployed copper facilities, fiber facilities extend to only around twenty

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<sup>1</sup> For XO, efficient access to incumbent local exchange carrier facilities is essential. XO has spent over \$7 billion to construct extensive network facilities serving 75 local markets across the United States, and it uses these facilities to provide state-of-the-art business and carrier services to more than 90,000 customers. Even with all of this capital investment and network capability, however, XO's own facilities reach only a small percentage of the nation's customer premises, and XO must continue to lease incumbent LEC facilities to bring competitive alternatives to most customers. Overall, XO serves only one percent of its customers entirely over its own facilities, and relies on incumbent LECs for ninety-six percent of its last mile access.

<sup>2</sup> In recent *ex parte* filings with the Commission, Verizon ignores the crucial benefits of vigorous competition in the provision of broadband services, and instead advocates a regulatory approach, including retention of the current copper retirement framework, that will only entrench its own place in the broadband marketplace. The Commission should reject this self-interested stance. See Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC Secretary, GN Docket No. 09-51 (Jan. 13, 2010) ("Verizon January 13 *Ex Parte*"); Letter from Donna Epps, Verizon, to Marlene Dortch, FCC Secretary, GN Docket No. 09-51 (Feb. 12, 2010) ("Verizon February 12 *Ex Parte*").

<sup>3</sup> See, e.g., Comments of XO Communications, LLC, GN Docket No. 09-51, at 8-18 (June 8, 2009) ("XO Broadband NOI Comments"); Letter from Heather B. Gold, XO Communications, LLC, to Marlene Dortch, FCC Secretary, GN Docket Nos. 09-29, 09-47, 09-51, RM-11358; WC Docket No. 09-223 (Feb. 12, 2010) ("XO February 12 *Ex Parte*"); Letter from Regina M. Keeney, counsel for XO Communications, LLC, to Marlene Dortch, FCC Secretary, GN Docket Nos. 09-29, 09-47, 09-51, RM-11358 (Jan. 29, 2010) ("XO January 29 *Ex Parte*"); Letters from Regina M. Keeney, counsel for XO Communications, LLC, to Marlene Dortch, FCC Secretary, GN Docket Nos. 09-29, 09-47, 09-51, RM-11358 (Jan. 25, 2010).

percent of the nation's business locations.<sup>4</sup> Whereas approximately eighty percent of commercial buildings are unserved by fiber, nearly every business, large or small, is already served by copper plant facilities that can be used right away to provide cost-effective broadband services.

By utilizing EoC technology, carriers can greatly expand their broadband capacity, deliver business-grade Ethernet solutions and avoid millions of dollars of expenditures that new fiber deployments may require.<sup>5</sup> EoC is fast. Today's EoC technology supports data speeds up to 45 Mbps, and EoC may soon support speeds over 100 Mbps. EoC is also cost effective. With the copper infrastructure already in place, carriers can provide EoC to ten customer locations for price of extending fiber to a single customer location.<sup>6</sup> EoC can reduce carriers' operational expenses by at least twenty-three percent compared to the expenses incurred to operate technologies that rely on time division multiplexing ("TDM").<sup>7</sup>

In addition, and contrary to Verizon's claims,<sup>8</sup> EoC offers consumers benefits and functionality that are comparable to fiber-based Ethernet service. EoC service providers, for example, are able to provide multiple services, such as VoIP, private line, and Internet access, over one physical connection. Further, like fiber-based Ethernet services, EoC also supports a variety of applications, including business access, in-building access, cellular and WiFi backhaul, and backhaul for Digital Subscriber Line Access Multiplexers. This technology also gives carriers substantial operational flexibility, allowing them to expand capacity through a "pay as you grow" installation of additional software. Carriers using EoC can expand bandwidth in 1 Mbps increments without investing in new network infrastructure or having to "roll a truck" to a customer location.<sup>9</sup>

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<sup>4</sup> See *Leveraging Installed Copper to Reach Underserved and Unserved Community Anchor Institutions*, Hatteras Networks, at 6 (June 1, 2009), attached to Letter from Jeffrey K. White, Hatteras Networks, to Marlene Dortch, FCC Secretary, GN Docket No. 09-51 (June 8, 2009) ("Hatteras White Paper") (citing Vertical Systems Group, "Got Business Fiber? U.S. Fiber Penetration," available at: <<http://www.verticalsystems.com>>).

<sup>5</sup> EoC promises particularly important benefits for rural areas of the United States. Continuing improvements in EoC technology should enable carriers to use existing copper facilities to deliver broadband services on a cost-effective basis to rural customer locations, including those that previously lacked affordable broadband access. Further, EoC broadband services can promote regional economic development by attracting small, medium, and large businesses that require high-speed transmission services to these rural areas. See Hatteras White Paper at 4.

<sup>6</sup> Hatteras White Paper at 3. In areas beyond the reach of fiber, a carrier can also provide an anchor tenant with EoC service at least ten times more quickly than it can deploy and deliver a fiber-based Ethernet service to that customer. *Id.*

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Verizon February 12 *Ex Parte* at 2-3.

<sup>9</sup> Hatteras White Paper at 8.

XO and numerous other competitive LECs have utilized EoC technology to extend the reach of their metro and wide area Ethernet networks to business customer locations beyond the existing fiber footprint. In recent years, EoC has been one of XO's fastest growing products. In 2006, XO deployed EoC equipment to approximately fifty local serving offices ("LSOs") where UNE DS-0 circuits were available, and began providing service to approximately fifty customers. By the end of 2009, XO had deployed EoC equipment to over 320 LSOs (frequently locations not served by fiber) and was providing EoC-based service to over 2,700 customers. XO's network plans include making further EoC deployments and initiating service to additional customers during 2010 and 2011.

As XO has previously described in this proceeding, incumbent LECs' premature retirement of copper plant represents a major obstacle to increased broadband access throughout the United States.<sup>10</sup> In the 2003 *Triennial Review Order*, the FCC effectively left copper retirement to the unilateral discretion of incumbent LECs.<sup>11</sup> Consequently, to remove their copper plant or otherwise eliminate competitive access to these facilities, incumbent LECs today need only provide public notice of this planned action, without any substantive justification. Only those parties using the copper facilities at issue are eligible to object, and those objections are limited to timing issues. The current FCC rules governing copper retirement do not consider whether removing incumbent LEC copper facilities would adversely affect competition, broadband availability, homeland security, or public safety, or would otherwise be contrary to the public interest.

With the growing importance of EoC services to broadband deployment and expansion, the retirement of any segment of existing copper infrastructure plainly is an irrevocable action that permanently deprives competitive LECs, consumers, and businesses of the ability to use that plant for broadband and other services. To address the need for fair procedures to preserve these copper facilities, XO and other competitive LECs in 2007 petitioned the Commission to adopt procedural rules governing copper retirement.<sup>12</sup> Three years later, it is more important than ever

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<sup>10</sup> XO Broadband NOI Comments at 14-18; XO February 12 *Ex Parte*; XO January 29 *Ex Parte*.

<sup>11</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶¶ 271, 281 (2003) ("*Triennial Review Order*"). Incumbent LEC retirement of copper facilities, along with other types of network changes, is governed by Part 51 of the FCC's rules.

<sup>12</sup> Petition for Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, XO Communications, LLC; Covad Communications Group, Inc.; NuVox Communications; and Eschelon Telecom, Inc., RM-11358 (Jan. 18, 2007) ("*Copper Retirement Petition*"). The Petition called on the Commission to (1) define the "retirement" of copper facilities as the removal or dismantling of copper loops or copper subloops, including the permanent removal of these facilities from the conduit, pole attachment, or housing; (2) establish formal case-by-case Commission review of incumbent LEC

that the FCC adopt procedures that preserve – as a ready broadband solution – ubiquitously-deployed and cost effective copper facilities. Specifically, in its National Broadband Plan, the Commission should commit to initiate and complete promptly a formal rulemaking to adopt procedures to govern the treatment of copper plant that incumbent LECs wish to remove from service. In this proceeding, the Commission can adopt rules, on the basis of a complete record, that will lead to a comprehensive reform of the copper retirement process, including resolution of the technical and financial issues associated with competitive providers' use of copper plant to offer broadband services.<sup>13</sup> With new procedures in place to ensure greater transparency in the copper retirement process, the FCC can prevent incumbent LECs from squandering a crucial national resource and promote broadband competition and deployment throughout the United States.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this *ex parte* presentation is being filed electronically for inclusion in the public record of the above-referenced proceedings.

Respectfully submitted,

/s/ Regina M. Keeney  
Regina M. Keeney

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applications to retire copper loops or copper subloops, subject to a presumption that such retirement does *not* serve the public interest; and (3) require incumbent LECs to provide uniform, written notification of copper retirements directly to all carriers that interconnect with the incumbent LECs' networks, so that all interested parties receive the same type of information regarding the planned copper retirement. Notably, a second petition for rulemaking on copper retirement issues was filed on the same date in 2007 by another group of competitive LECs. See Petition for Rulemaking and Clarification of BridgeCom International, Inc.; Broadview Networks, Inc.; Cavalier Telephone, LLC; Eureka Telecom, Inc.; Florida Digital Network, Inc.; IDT Corporation; Integra Telecom, Inc.; DeltaCom, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; Norlight Telecommunications, Inc.; RCN Telecom Services, Inc.; RNK, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; and U.S. Telepacific Corp., RM-11358 (Jan. 18, 2007).

<sup>13</sup> See, e.g., XO Broadband NOI Comments at 15-16; XO January 29 *Ex Parte*; Verizon January 13 *Ex Parte* at 3; Verizon February 12 *Ex Parte* at 2-3; Letter from Karen Reidy, COMPTTEL, to Marlene Dortch, FCC Secretary, GN Docket Nos. 09-47, 09-51, 09-137, RM-11358 (Dec. 7, 2009).