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December 5, 2011

FILED/ACCEPTED

DEC - 5 2011

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

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

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

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Dear Ms. Dortch:

On behalf of XO Communications LLC (“XO”), and in accordance with the *Second Protective Order* and supplements to the *Second Protective Order* adopted in this proceeding,¹ transmitted herewith are two copies of the redacted version of XO’s submission.

The enclosed XO redacted submission consists of: (1) a written response to Commission inquiry numbers III.A.1-3, III.C.1-3, III.D.5-10, III.D.12-13, and a redacted, written response to Commission inquiry number III.D.11; and (2) redacted, printed copies of Excel spreadsheets populated with data in response to Commission inquiry numbers III.C.4 and III.C.5. All information responding to Commission inquiry numbers III.D.1-4 is Highly Confidential, and thus no redacted, printed copy is enclosed.

¹ See *In the Matter of Special Access for Price Cap Local Exchange Carriers, Second Protective Order*, 25 FCC Rcd 17725 (2010); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd 6571 (2011) (supplementing the Second Protective Order).

No. of Copies rec'd 0+2
LIST ABOVE

VIA HAND DELIVERY

Marlene H. Dortch, Secretary

December 5, 2011

Page Two

All Highly Confidential material that has been redacted is denoted by the symbols
* * Begin Highly Confidential and End Highly Confidential * *.

Finally, XO is filing with your office under separate cover and under seal an unredacted Highly Confidential version of this filing, which is made available pursuant to the Second Protective Order and supplements to the Second Protective Order. The XO Highly Confidential submission consists of: (1) a written response to Commission inquiry numbers III.A.1-3, III.C.1-3; and III.D.5-13; (2) printed Excel spreadsheets populated with data in response to III.C.4 and III.C.5; and (3) a CD containing an Excel spreadsheet populated with data in response to Commission inquiry numbers III.D.1-4.

Sincerely,



Randall W. Sifers

Counsel to XO Communications, LLC

Enclosures

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HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC
DOCKET NO. 05-25, RM-10593

XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM
WC Docket No. 05-25, RM-10593

III. Voluntary Information Request

A. All Providers. We request that members of the public that are providers of *DS1*, *DS3* and *PSDS* services respond to the following questions:

1. *Terms and conditions.* Describe any logistical constraints on a customer's ability to make the transition from *DS1*s and *DS3*s: (a) to un-regulated access services offered by your company; and (b) to unregulated access services offered by a competitor. Are there any constraints on how many circuits can be switched per day, per week, per month? Within what geographic region are those constraints applicable? Also state where your upgrade constraint policies are recorded, and how they are communicated to customers.

XO Response:

XO does not create any logistical constraints to transfer from traditional private line services (*DS1* and *DS3*) to *PSDS* as defined in this data request.

2. *Terms and conditions.* Explain what steps a customer must take to transition from regulated *DS1* and/or *DS3* services to unregulated *PSDS* provided by: (a) your company; and (b) a competitor, in order to avoid early termination or other penalties. In your response, provide the relevant *Tariff* or *Contract- Based Tariff* and section numbers, if applicable.

XO Response:

A customer must place a MACD (Move, Add, Change, Disconnect) order in order to terminate their *DS1* or *DS3* service and transition to *PSDS* provided by XO or a competitor. XO does not charge early termination penalties when a customer upgrades their services to *PSDS*.

3. *Terms and conditions.* In each *LSA* in which you have submitted a response to a request for proposal (RFP) for *DS1* and/or *DS3* channel terminations to end users as defined by 47 C.F.R. §69.703(a)(2), but were not selected as the vendor, please describe the reasons your firm was not selected, if known, and whether those reasons were associated with terms and conditions for *DS1* and/or *DS3* services.

XO Response:

When XO is not selected through the RFP process it is typically because the ILEC had a wider geographic reach or coverage and offered lower pricing.

REDACTED – FOR PUBLIC INSPECTION
XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN *SPECIAL ACCESS NPRM*
WC Docket No. 05-25, RM-10593

C. CLEC Providers. We request that members of the public that are competitive local exchange carrier (CLEC) or out-of-region ILEC providers of *DS1*, *DS3* or *PSDS* services respond to the following questions:

1. *CLEC Sales*. Describe how your firm structures sales of *DS1* and *DS3* products to its customers. Include in your answer:

- a. A description of the method by which you sell *DS1* and/or *DS3* products to customers, e.g., via contracts, *Tariffs*, and/or contract-based tariffs (as defined by 47 C.F.R. 61.3(o));
- b. An estimate of the percentage of sales made by each method (50% sold through contracts, etc.);
- c. A description of typical elements of each sale, such as products offered, duration of contract term (one-year term, five-year term), and geographic scope.

XO Response:

XO almost exclusively sells DS1 and DS3 services through individual customer contracts. XO has filed contract tariffs, usually as part of a broader settlement agreement, with the FCC but the services offered represent a small fragment of the DS1 and DS3 services provided by XO. The elements of a DS1 or DS3 sale typically include a distance component and are offered on two or three terms.

2. *CLEC Pricing*. Provide a general description of your pricing structure. For example, how do you price the *DS1* and *DS3* products to your customers? Do you offer reduced prices based on high volume or revenue commitments? If so, please describe those agreements and explain why they were structured in that way.

XO Response:

XO's pricing structure for DS1 and DS3 services includes non-recurring and monthly recurring charges. Since XO sells these services through contract, higher volume sales will often include a discount from a single service sale. These discounts are not volume commitments in the sense that the customer does not need to commit additional sales to XO in order to receive the discount.

3. *CLEC Discounts*. Describe whether you have sold *DS1* or *DS3* products to customers at higher rates, but offered certain non-rate benefits, such as an ability to move circuits within a region. Have any of those sales been contingent on meeting certain revenue or volume commitments? If so, please describe those agreements and explain why they were structured in that way.

XO Response:

REDACTED – FOR PUBLIC INSPECTION
XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM
WC Docket No. 05-25, RM-10593

No, XO does not structure sales in this manner. Some customers have circuit portability capabilities structured into their contracts but it does not require them to meet higher volume or revenue commitments. Frequently, it is the overall size of the contract which will allow for portability.

D. All Purchasers. We request that members of the public that are purchasers of DS1, DS3, or PSDS services respond to the following questions.

5. *Terms and Conditions.* Explain what impact, if any, terms and conditions in *Tariffs* and/or *Contract-Based Tariffs* for DS1 and/or DS3 services have had on your ability to:

- a. Decrease your purchases from your current providers;
- b. Purchase services from alternative providers currently operating in the geographic areas in which you purchase services;
- c. Purchase alternative services, such as Ethernet services, from your current provider of DS1 and/or DS3 services or from alternative providers operating in the geographic areas in which you purchase DS1 and/or DS3 services;
- d. Contract with firms that are considering entering the geographic areas in which you purchase DS1 and/or DS3 services.

Relevant terms and conditions, among others, may include: (a) early termination penalties; (b) shortfall provisions; (c) overlapping/supplemental discounts plans with different termination dates; (d) timing associated with *Changing Service Providers*; (e) requirements to include all services, including new facilities, under a *Tariff* or *Contract-Based Tariff*; or (f) requiring purchases in multiple geographic areas to obtain maximum discounts.

In your explanation, provide at least one example which, at a minimum, states: (a) a description of the term or condition; (b) the geographic area in which the DS1 and/or DS3 services are provided; (c) the name of the vendor providing the DS1 and/or DS3 service; and (d) the specific *Tariff* and/or *Contract-Based Tariff* number(s) and section(s). If you allege that such provisions negatively affect your firm, state whether you have brought a complaint to the Commission, a state commission or court about this issue and the outcome. If you have not brought a complaint to any of those three entities, explain why not.

XO Response:

The terms and conditions of our Tariff Based Plans require us to maintain a minimum number of circuits. If we fall below that minimum, we incur a shortfall penalty. For example, in the legacy PacBell territory of AT&T, if we fall below the minimum committed level of DS1s, we are charged \$900 per DS1 below the minimum threshold. (*Tariff Reference: PacBell Tariff F.C.C. No. 1, Section 7.4.18.(E).(4).(b).i and PacBell Tariff F.C.C. No. 1, Section 31.5.2.7.1.(A).(1)*). As a result of this restriction, we are unable to significantly decrease our purchases from AT&T or purchase services from alternative providers in the specific geographic area. Similar terms are present in all of our Tariff Based Plans.

6. *Terms and Conditions.* Describe any circumstances in which you have purchased circuits for DS1 and/or DS3 services, solely for the purpose of meeting volume or revenue commitments required for a

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XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM
WC Docket No. 05-25, RM-10593

discount from your vendor of *DS1* and/or *DS3* services, that you have not used. In your description, provide at least one example, which at a minimum, states:

- a. The geographic area (e.g., *MSA* or *Non-MSA*) in which you purchased the unnecessary circuits;
- b. The name of the vendor providing the *DS1* and/or *DS3* service at issue;
- c. A description of the discount requirement (i.e., volume commitment, revenue commitment, etc.);
- d. The tariff and section number(s) (or contract tariff and section number(s)), if applicable, of the specific terms and conditions described;
- e. A comparison of the dollar amount of the unnecessary circuit(s) versus the dollar amount of penalties your company would have had to pay had it not purchased and/or maintained the unnecessary circuit(s), and a description of how that comparison was calculated.

XO Response:

N/A, XO has not purchased circuits that we have not used to meet volume or revenue commitments.

7. Terms and Conditions. Describe, if applicable, any previous attempts to *Change Service Providers* or discussions relating to *Changing Service Providers*. What were the steps involved in having your service changed? Other than provisions in *Tariffs* or *Contract-Based Tariffs* addressing a customer's ability to *Change Service Providers*, did the vendor impose any constraints on how many circuits could be changed per day, per week, per month? Within what geographic region were those constraints applicable? Were all changes subject to the same constraints? If not, explain. How were these logistical constraints for changes communicated to your company? How did you overcome the logistical constraints if you were able to do so?

XO Response:

XO is not aware of any constraints outside those found in the tariffs or contracts.

8. Terms and Conditions. Explain how, if at all, sales for *DS1* and *DS3* services in markets subject to *Phase I* or *Phase II Pricing Flexibility* may be effectively conditioned on sales in price cap markets, or vice versa. Provide in your explanation at least one specific example which, at a minimum, states: (a) the geographic area(s) impacted (e.g., *MSA* or *Non-MSA*); (b) the provider potentially conditioning sales between areas; (c) the special access service(s) at issue; (d) a description of the conditional requirement(s); and (e) if applicable, the number and section of the *Tariff(s)* or *Contract-Based Tariff(s)* at issue.

XO Response:

XO is not aware of any such conditions.

9. Terms and Conditions. In *LSAs* in which you ceased buying *DS1* and/or *DS3* services from one vendor and, instead, purchased comparable *DS1* and/or *DS3* services from a competing provider, state the number of times within the past 5 years you have done so, the name(s) of the provider(s) from whom you switched, the name(s) of the competing provider(s) to whom you switched, and the percentage of

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HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC
DOCKET NO. 05-25, RM-10593
XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN *SPECIAL ACCESS NPRM*
WC Docket No. 05-25, RM-10593

DS1 and/or *DS3* circuits within the *LSA* that you switched to the competing provider. Within the same 5-year period, state the number of times your procurement division considered switching from its provider of *DS1* and/or *DS3* services to a competing provider, but decided not to do so, and explain why if those reasons are related to terms and conditions.

XO Response:

XO has never completely ceased buying services from the incumbent vendor in any *LSA*. XO determines which vendor to purchase an individual circuit from based on a number of parameters including but not limited to cost, location and contract volume commitment. Once a circuit is purchased and installed it would rarely be moved to another provider during the term of the customer's service.

10. *Terms and Conditions*. Explain the circumstances under which you have paid *One Month Term Only Rates* for *DS1* and/or *DS3* services and the impact, if any, it had on your business. If you have never paid *One Month Term Only Rates* for *DS1* and/or *DS3* services, explain what impact, if any, paying such rates would likely have on your business.

XO Response:

XO has paid *One Month Term Only Rates* for *DS3* circuits in AT&T regions that are not on a volume commitment plan, but on individual circuit term plans. This occurs when our customer contract term does not coincide with the term of the underlying leased circuit. For example, the leased circuit term may expire 3 months before the XO customer contract expiration date. We would not renew the individual circuit term because we would incur a large penalty for disconnecting early. Thus, the leased circuit would move to a month to month rate for 3 months and then we would disconnect the circuit at the same time as the customer contract expiration.

11. *Terms and Conditions*. By *LSA*, provide the following information about each *Contract-Based Tariff* through which you buy *DS1* and *DS3* services:

- a. A description of the contingency (or contingencies) on which the *Contract-Based Tariff's* discount, if any, is based (that is, requirements for a commitment of term, volume, revenue, combination, or other);

XO Response:

**** BEGIN HIGHLY CONFIDENTIAL ****

**** END HIGHLY CONFIDENTIAL ****

- b. A description of whether the customer's *DS1* and/or *DS3* purchases in areas not subject to either *Phase I* or *Phase II Pricing Flexibility* count towards any discount contingencies in the *Contract-*

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HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC
DOCKET NO. 05-25, RM-10593
XO Communications, LLC
Response to:
FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM
WC Docket No. 05-25, RM-10593

Based Tariff, and if so identify which of the *non-Phase I/Phase II Pricing Flexibility* areas (e.g. *MSAs* or *Non-MSAs*) count and their associated *Tariff* and section numbers;

XO Response:

* * BEGIN HIGHLY CONFIDENTIAL * *

* * END HIGHLY

CONFIDENTIAL * *

- c. A description of whether the customer's *DS1* and/or *DS3* purchases in the *Contract-Based Tariff* count towards any discount contingencies in other areas (e.g., other *MSAs* or *Non-MSAs*) that are subject to *Tariff Discount Plans*, and if so, identify the other areas and the associated *Tariff* and section numbers(s) of those *Tariff Discount Plans*; or

XO Response: N/A

- d. A description of whether the customer's *DS1* and/or *DS3* purchases in the *Contract-Based Tariff* count towards any discount contingencies in other areas (e.g., other *MSAs* or *Non-MSAs*) subject to *Phase I* or *Phase II Pricing Flexibility*, and if so, identify the other areas at issue and their associated *Contract-Based Tariff* and section numbers; or

XO Response: N/A

- e. A description of whether the customer's *DS1* and/or *DS3* purchases in the *LSA* do not apply toward other discounts in any other areas – whether in a *Tariff Discount Plan* or *Contract-Based Tariff*.

XO Response: N/A

12. *Terms and Conditions*. If your company did *Change Service Providers*, or entered into discussions related to doing so, identify and describe the relevant *Tariff* and/or *Contract-Based Tariff* and section numbers discussing policies for *Changing Service Providers*. Include in your description whether the *Tariff* or *Contract-Based Tariff* discusses constraints on the number of circuits that can be changed on a daily, weekly, or monthly basis, and whether the customer must continue to pay for circuits until they are changed, and at what rate.

XO Response: N/A

13. *Terms and Conditions*. In each *LSA* in which you issued an RFP for *DS1* and/or *DS3* channel terminations to an end user within the past 5 years, but either received no responses or received responses

XO Communications, LLC
Response to:
**FCC COMPETITION DATA REQUESTED IN *SPECIAL ACCESS* NPRM
WC Docket No. 05-25, RM-10593**

that failed to meet your minimum selection criteria, describe the reasons your RFP failed, if known, and whether those reasons were associated with terms and conditions.

XO Response: N/A

XO Communications,LLC

Response to:

FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM, WC Docket No. 05-25, RM-10593

Section C

Part 4

CLEC Revenues for DS1/DS3

(\$ in Millions)

	DS1	DS3	Total
** BEGIN HIGHLY CONFIDENTIAL			
C.4.a			
C.4.b.i			
C.4.b.ii			
C.4.b.iii.a			
C.4.b.iii.b			
C.4.b.iii.c			
C.4.b.iii.d			
C.4.b.iii.e			
C.4.b.iii.f			
** END HIGHLY CONFIDENTIAL			
C.4.c.i	N/A	N/A	N/A
C.4.c.ii	N/A	N/A	N/A
C.4.c.iii.a	N/A	N/A	N/A
C.4.c.iii.c	N/A	N/A	N/A
C.4.c.iii.c	N/A	N/A	N/A
C.4.c.iii.d	N/A	N/A	N/A
C.4.c.iii.e	N/A	N/A	N/A
C.4.c.iii.f	N/A	N/A	N/A

XO Communications, LLC

Response to:

FCC COMPETITION DATA REQUESTED IN SPECIAL ACCESS NPRM

WC Docket No. 05-25, RM-10593

Section C

Part 5

CLEC Revenues for PSDS

(\$ in Millions)

	<=51.84 Mbps	>51.84 Mbps and <1 Gbps	>= 1 Gbps	Total
** BEGIN HIGHLY CONFIDENTIAL				
C.5.a				
C.5.b.i				
C.5.b.ii				
C.5.b.iii				
** END HIGHLY CONFIDENTIAL				