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June 22, 2012

**VIA ECFS**

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

Re: Notice of Ex Parte Presentation – WC Docket No. 05-25

Dear Ms. Dortch:

On June 21, 2012, Lisa Youngers of XO Communications LLC and the undersigned, Thomas Cohen of Kelley, Drye & Warren LLP, met with Nicholas Degani, Legal Advisor, Wireline for Commissioner Pai in regard to the above-referenced docket. In the meeting, we discussed the current nature of the special access market and the fact that there is a clear mismatch between the market's lack of competitive alternatives and the regulatory relief provided pursuant to the Commission's pricing flexibility rules. More specifically, we submitted that:

- Business customers continue to drive the special access market. Even though many are demanding higher bandwidth Ethernet services, they continue to use and demand DS1 and DS3 TDM channel termination circuits, and this trend is expected to continue for the foreseeable future; and
- Use of traditional antitrust analytical methodologies demonstrates that, where they have received Phase II pricing flexibility relief, incumbent local exchange carriers (LECs) are taking advantage of the lack of competitive alternatives to price TDM channel termination circuits far above competitive levels and earn supra-competitive profits.

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The fact that incumbent LECs can earn supra-competitive profits in these markets indicates that the Commission's pricing flexibility triggers for channel terminations, which are based on collocations by competitors in incumbent LEC central offices, are flawed. That is not surprising since whether a competitor collocates in a central office says virtually nothing about whether it will construct facilities to an individual building. Such a decision is driven by a number of factors specific to each building, including demand by the tenants in a building, the cost of constructing facilities to that site, and the ease of gaining access to public and private rights of way.

Because there is sufficient evidence in the record to demonstrate that the current channel termination triggers are flawed, Ms. Youngers urged the Commission to suspend their use and not grant any further relief based on them. She also advocated that, instead of relying on collocation-based triggers to determine regulatory relief for the provision of channel terminations by incumbent LECs, the Commission should provide relief based on the existence of competitively provided facilities to a building. This most closely reflects how providers actually operate in a market. Finally, she volunteered that XO would respond to any data request by the Commission, as it has already done twice in this proceeding.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



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*Counsel for XO Communications LLC*

cc: Nicholas Degani