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JUN 26 2012

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Federal Communications Commission
Office of the Secretary

REDACTED—FOR PUBLIC INSPECTION

***SPECIAL ACCESS RATES FOR PRICE CAP LOCAL EXCHANGE CARRIERS, WC
DOCKET NO. 05-25, RM -1093, DA 10-2419 (REL. DEC. 27, 2010), DA 11-805 (REL.
MAY 2, 2011)***

June 26, 2012

VIA HAND DELIVERY AND 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 (“XO”) and the undersigned, Thomas Cohen of Kelley, Drye & Warren LLP, met with Michael Steffan, Legal Advisor, for Chairman Genachowski, and Travis Litman, Wireline Competition Bureau, in regard to the above-referenced docket. XO hereby submits the enclosed Notice of Ex Parte Presentation redacted pursuant to the Second Protective Order (DA 10-2419 re. Dec. 27, 2010) and the May 2, 2011 letter from Sharon Gillett (DA 11-805) in the above-referenced proceeding, which designate certain categories of information as highly confidential.

XO, through its attorney, hereby submits two copies of the enclosed Notice of Ex Parte Presentation stamped “Redacted—For Public Inspection” to the Secretary’s Office.

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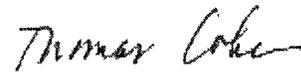
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Marlene H. Dortch
June 26, 2012
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In addition, this letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



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Counsel for XO Communications LLC

cc: Michael Steffen
Travis Litman

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On June 21, 2012, Lisa Youngers of XO Communications LLC (“XO”) and the undersigned, Thomas Cohen of Kelley, Drye & Warren LLP, met with Michael Steffan, Legal Advisor, for Chairman Genachowski, and Travis Litman, Wireline Competition Bureau, 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

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expected to continue for the foreseeable future. For instance, in the San Francisco MSA, today XO's expenditures for DS1/DS3 channel termination circuits is **REDACTED XXXX REDACTED** times as great as for Ethernet circuits – and the latter tend to be overpriced because of the lack of competitive alternatives. Because of the needs of its customers in this MSA, XO expects it will take at least **REDACTED XXXX REDACTED** years for its purchases of Ethernet circuits to be comparable.

- 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. Proof of this fact can be demonstrated by use of building lists and prices from competitive suppliers, which are standard in the industry. From these lists, XO knows that there is competitive on-net (Type 1) supply of DS1 and DS3 channel termination circuits to approximately **REDACTED XXXX REDACTED** buildings in the MSA. (The major cable operator in the market, Comcast, does not offer access solutions at wholesale.) This number of competitive connections is very small when viewed in comparison to the over 100,000 buildings in the MSA. (This ratio of competitively connected buildings to total buildings holds in other markets where XO operates. In addition, XO can purchase DS1/DS3 channel termination circuits from **REDACTED XXXX REDACTED** cable provider, which only serves a handful of markets.) XO itself serves just over **REDACTED XXXX REDACTED** buildings even though it has fiber rings in many areas of the MSA because of, as discussed below, the significant barriers to connecting to a customer in a building. By using the building lists, XO knows it can, for instance, purchase from a competitive supplier a DS3 channel termination circuit to most of those on-net buildings for a monthly recurring charge (MRC) of less than **REDACTED XXXX REDACTED** per month. In contrast, in the California MSAs where PacBell has received Phase II pricing flexibility for channel terminations, the rack rate MRC in Zone 1 is over \$2,000 and even with a term commitment of 60 months the MRC is between \$740-970. If one assumes the competitive price is close to marginal cost (although it is likely somewhat higher because competitors lack the same scale economies as PacBell),

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that means PacBell's profit margin ranges from approximately **REDACTED XXXX REDACTED** percent – margins that by any objective standard is far in excess any that could be earned in a competitive market.

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. In XO's experience a competitive provider does not connect to a building unless there is a customer requiring over **REDACTED XXXX REDACTED** of capacity and willing to give a long term commitment for that capacity. In addition, the fiber splice point must be relatively close to the building (approximately **REDACTED XXXX REDACTED** feet), and a build cannot occur unless it relatively easy to obtain access to public and private rights of way, including municipal permitting and building access.

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.

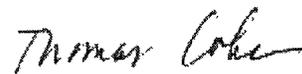
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