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August 24, 2012

VIA ECFS

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

Re: Notice of *Ex Parte* Presentations, XO Communications Services, LLC
WC Docket No. 06-122
Universal Service Contribution Methodology
USAC Request for Guidance
XO Request for Review of Decision of Universal Service Administrator

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on August 22, 2012, XO Communications Services, LLC's ("XO's") representatives met with Erin McGrath, Legal Advisor to Commissioner Robert McDowell, in connection with the proceeding identified above. In attendance on behalf of XO were Steven A. Augustino of Kelley Drye & Warren LLP; and Lisa R. Youngers of XO Communications Services, LLC.

XO asked that the Commission grant the reseller portions of its December 29, 2010 appeal of a Universal Service Fund Contributor Audit conducted by USAC. XO also asked the Commission to clarify wholesale carrier obligations in response to USAC's March 1, 2011 Guidance Request and to direct USAC to consider "other reliable proof" submitted by wholesale carriers during an audit to establish its reasonable expectation the customer is a reseller. XO noted that the Wireline Competition Bureau has previously confirmed that the Form 499-A Instructions are guidance and that contributors may rely upon other reliable proof that differs from the information identified in the Instructions. XO supports clarification that re-affirms these findings.

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XO also supports clarification that USAC may not assess USF on wholesale revenues – whether or not the wholesale carrier can demonstrate a “reasonable expectation” – in circumstances where USAC’s records demonstrate that the reseller was a contributor to the Fund during the relevant year. XO stressed that this objective information is the only information reasonably available to USAC or the wholesale carrier during an audit, and that such information is sufficient evidence of potential double assessment of USF on wholesale revenues. In response to the guidance request, XO stated that a confirmatory certification, executed by the reseller after the time period when services were rendered, would also provide reliable proof of the risk of double assessment.

Finally, XO stated that it receives certifications from its resellers using language suggested in the Form 499-A Instructions. XO stated that it has always interpreted the Instructions to permit wholesale carriers to qualify resellers on an entity basis and that it interprets the *Universal Service First Report and Order*¹ and the *NECA Order*² to authorize qualification of resellers on an entity basis. XO does not have the systems in place to track or assess USF based on the specific services ordered by the reseller. XO could not develop those systems without significant difficulty and expense, and requested that, if the Commission mandates a service-specific reseller certification, that it provide the industry with sufficient lead time before it must collect this additional information.

Sincerely,



Steven A. Augustino

SAA:pab

cc: Erin McGrath

¹ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997).

² *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration*, 12 FCC Rcd 18400 (1997).