

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Universal Service Contribution Methodology</b>	)	
	)	<b>WC Docket No. 06-122</b>
<b>Application for Review of Decision of the Wireline Competition Bureau filed by Global Crossing Bandwidth, Inc.</b>	)	
	)	
<b>Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications</b>	)	
	)	
<b>XO Communications Services, Inc. Request for Review of Decision of the Universal Service Administrator</b>	)	
	)	
<b>Universal Service Administrative Company Request for Guidance</b>	)	

**REPLY COMMENTS OF XO COMMUNICATIONS SERVICES, LLC  
IN SUPPORT OF U.S. TELEPACIFIC'S PETITION FOR  
PARTIAL RECONSIDERATION AND REQUEST FOR STAY**

XO Communications Services, LLC and its affiliate companies (“XO”), by its attorneys, hereby files its reply to the comments filed in response to the Petition for Partial Reconsideration and the Request for Stay Pending Reconsideration filed by U.S. TelePacific Corp., d/b/a TelePacific Communications (“TelePacific”), in the above-captioned proceedings.<sup>1</sup> The

---

<sup>1</sup> Petition for Partial Reconsideration by U.S. TelePacific Corp. d/b/a TelePacific Communications, WC Dkt. No. 06-122 (filed Dec. 5, 2012) (“TelePacific Petition”). The Wireline Competition Bureau provided for reply comments through January 24, 2013. *See Wireline Competition Bureau Seeks Comment on a Petition for Partial Reconsideration of the Wholesaler-Reseller Clarification Order by U.S. TelePacific Corp. d/b/a TelePacific Communications*, Public Notice, DA 12-1996 (rel. Dec. 10, 2012) (“Public Notice”). Therefore, these reply comments are timely.

Commission’s finding in its *Reseller Order* that reseller certifications must be provided on a service-specific basis (the “Service-Specific Certification Requirement”)<sup>2</sup> is unlawfully discriminatory and violates the Commission’s principles of competitive neutrality in implementing section 254. TelePacific seeks reconsideration of that finding and a stay while its Petition remains pending. For the reasons set forth below, XO joins those commenters supporting grant of the TelePacific Petition and its request for stay.<sup>3</sup>

The Service-Specific Certification Requirement compels a wholesale provider to demonstrate on a service-by-service basis, through certificates consistent with the Form 499-A instructions or “other reliable proof,” that it has a reasonable expectation that each of its customers is in fact a “reseller” as defined in the *Reseller Order* before classifying revenues from telecommunications sold to those customers as “reseller revenues.”<sup>4</sup> If a telecommunications provider’s customer does not meet the definition of “reseller” for a particular service, for example for special access circuits the customer uses as inputs into broadband Internet access services or other non-assessable services provided to its customers, the provider must treat revenues from that customer for that service as end user revenues subject to USF contribution obligations (rather than as exempt reseller revenues).

---

<sup>2</sup> *Universal Contribution Methodology, Application for Review of Decision of the Wireline Competition Bureau Filed by Global Crossing Bandwidth, Inc., et al.*, WC Docket No. 06-122, Order, FCC 12-134, ¶¶ 40-41 and n. 111 (Nov. 5, 2012) (“*Reseller Order*”).

<sup>3</sup> On December 5, 2012, XO submitted a Petition for Clarification and Partial Reconsideration of the *Reseller Order* in which it seeks (1) clarification or, in the alternative reconsideration, of the instructions to the Universal Service Administrative Company (“USAC”) in evaluating evidence of actual contributions to the Universal Service Fund (“USF”) by resellers and (2) reconsideration of the “clear and convincing” evidence standard to be applied to such evidence of “other reliable proof” and actual contributions to the USF.

<sup>4</sup> *Reseller Order*, ¶¶ 40-41 and n. 111.

As explained by several commenters, the Service-Specific Certification Requirement directly contradicts the Commission’s longstanding policies of competitive neutrality in applying section 254 and in establishing a level playing field among competing providers of broadband Internet access and other information and non-assessable services, including Multi-Protocol Label Switching (“MPLS”)-based services, for which the Commission has not yet clarified contribution obligations.<sup>5</sup> In fact, the requirement blatantly and unlawfully discriminates against resellers that rely on special access inputs to provide Internet access and other information and non-assessable services. The Service-Specific Certification Requirement imposes, in effect, a 14-17% “tax” (depending on the applicable USF factor in any given quarter) on only this subset of providers of broadband Internet access and other non-assessable services.<sup>6</sup> As Sprint argues, “[t]he result is inherently anticompetitive, as resellers face both enormous administrative expenses and a [significant] USF assessment burden that vertically integrated providers do not.”<sup>7</sup> The Commission cannot lawfully impose greater regulatory costs and burdens on one class of providers of a particular type of service but not another, thereby picking competitive winners

---

<sup>5</sup> Comments of tw telecom inc. and Integra Telecom, Inc., WC Docket No. 06-122, at 3-4 (filed Jan. 9, 2013) (“Comments of Joint CLECs”); Comments of COMPTTEL, WC Docket No. 06-122, at 9-10 (filed Jan. 9, 2013); Comments of Sprint Nextel Corporation filed in support of TelePacific’s Petition for Reconsideration, WC Docket No. 06-122, at 12 (filed Jan. 9, 2013) (“Comments of Sprint on Petition for Reconsideration”). *See also* BT Americas Inc., Orange Business Services US, Inc., and BCE Nexxia Corp., WC Docket No. 06-122 at 2 (filed Jan. 9, 2013) (“Comments of BT Americas, *et al.*”) (highlighting that the harmful effect of the Service-Specific Certification Requirement extends beyond just the transmission component of broadband Internet access to inputs for other non-assessable services.)

<sup>6</sup> Comments of Joint CLECs at 4-5; Comments of Sprint on Petition for Reconsideration at 2.

<sup>7</sup> *Id.* at 2-3.

instead of the marketplace, but this is exactly the result of the Service-Specific Certification Requirement.<sup>8</sup>

Although the Service-Specific Certification Requirement imposes direct contribution obligations on the wholesale provider rather than the reseller if the requirement cannot be satisfied, as Sprint notes, “that distinction makes no meaningful difference” since resellers pass through any surcharges assessed on them by their wholesale providers while “vertically integrated providers enjoy favored treatment that shields them from transmission-input USF surcharges altogether.”<sup>9</sup> Thus, XO joins these commenters in urging the Commission to take action to eliminate the market distortions created by the existing contributions system’s unequal treatment of integrated facilities-based providers and reseller service providers that rely on special access inputs for the provision of broadband Internet access or other information and non-assessable services.<sup>10</sup> As an initial step, the Commission, on reconsideration, should remove the Service-Specific Certification Requirement.

XO also joins those parties that support TelePacific’s request to stay application of the Service-Specific Certification Requirement pending Commission review of its petition for reconsideration.<sup>11</sup> In the absence of a stay, irreparable harm upon both wholesalers and resellers of a wide array of IP-enabled enterprise services would result. As discussed above, the burdens created by the Service-Specific Certification Requirement are inequitable, discriminatory, and

---

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 6-7. *See also* Comments of Joint CLECs at 2.

<sup>10</sup> *See, e.g., id.* at 2.

<sup>11</sup> *See, e.g.,* Comments of COMPTTEL, at 18-19; Comments of BT Americas, *et al.* at 2-3; Comments of ITTA, WC Docket No. 06-122, at 2 (filed Jan. 9, 2013), Comments of Sprint Nextel Corporation filed in support of TelePacific’s Petition for Stay, WC Docket No. 06-122 (filed Jan. 9, 2013).

not competitively neutral and confer an unwarranted financial advantage on certain carriers but not others.<sup>12</sup> Accordingly, a stay is appropriate. XO submits that the stay should remain in effect, not only until the Commission addresses the TelePacific Petition, but until the Commission has resolved the regulatory classification of MPLS-based services<sup>13</sup> and determined in the pending *USF Contributions Reform* proceeding whether broadband Internet access and other services should be subject to contributions.<sup>14</sup>

---

<sup>12</sup> See, e.g., Comments of COMPTTEL at 18; Comments of Sprint on Petition for Reconsideration at 6-7.

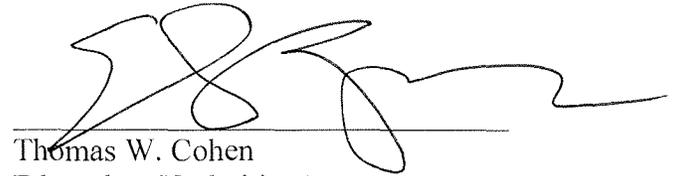
<sup>13</sup> Accord Comments of BT Americas, *et al.* at 9-11.

<sup>14</sup> *Universal Service Contribution Methodology, A National Broadband Plan for Our Future, Further Notice of Proposed Rulemaking*, 27 FCC Rcd 5357, ¶¶ 168-170 (2012) (“Contributions Reform FNPRM”) (seeking Comments on whether the Commission should adopt an “affirmative obligation on [resellers] to specify in its certification the extent to which the wholesale input is incorporated into assessable services versus nonassessable services”).

For the foregoing reasons, the Commission should grant the TelePacific Petition, eliminating the Service-Specific Certification Requirement. Pending the Commission's resolution of the regulatory classification of MPLS-based services and completion of its USF *Contributions Reform* proceeding – or at least until issuance of the Commission's order on reconsideration of the *Reseller Order* – the Commission should suspend the effectiveness and stay the application of the Service-Specific Certification Requirement.

Respectfully submitted,

**XO COMMUNICATIONS SERVICES,  
LLC**



Lisa R. Youngers  
Teresa K. Gaugler  
XO Communications Services, LLC  
13865 Sunrise Valley Drive  
Herndon, VA 20171  
Telephone: (703) 547-2258

Thomas W. Cohen  
Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8400  
Facsimile: (202) 342-8451

January 24, 2013