

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

|   |   |                      |
|---|---|----------------------|
| In the Matter of                            | ) |                      |
|   | ) |                      |
| AT&T Petition to Launch a Proceeding        | ) |                      |
| Concerning the TDM-to-IP Transition         | ) | GN Docket No. 12-353 |
|   | ) |                      |
| Petition of the National Telecommunications | ) |                      |
| Cooperative Association for a Rulemaking To | ) |                      |
| Promote and Sustain the Ongoing TDM-to-IP   | ) |                      |
| Evolution                                   | ) |                      |
|   | ) |                      |
|   | ) |                      |
| Petitions for Rulemaking and                | ) |                      |
| Clarification Regarding the Commission's    | ) | RM-11358             |
| Rules Applicable to Retirement of Copper    | ) |                      |
| Loops and Copper Subloops                   | ) |                      |
|   | ) |                      |

**COMMENTS OF XO COMMUNICATIONS, LLC  
AND  
BROADVIEW NETWORKS, INC.**

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

Charles Hunter  
Broadview Networks, Inc.  
800 Westchester Avenue – Suite N-501  
Rye Brook, NY 10573  
Telephone: (914) 922-7589

Edward A. Yorkgitis, Jr.  
Kelley Drye & Warren LLP  
3050 K Street, NW – Suite 400  
Washington, DC 20007  
Telephone: (202) 3342-8400  
Facsimile: (202) 342-8451

Attorney for XO Communications, LLC and  
Broadview Networks, Inc.

March 5, 2013

Table of Contents

|  | <u>Page</u> |
|--|-------------|
| I. Introduction and Summary .....  | 2           |
| II. Ethernet over Copper Is an Advanced Communications Capability Experiencing Growing Demand and Which the Congress Has Directed the Commission to Act to Encourage ..... | 3           |
| III. The Commission Should Update the Copper Retirement Rules to Reflect the Growing Importance of Ethernet over Copper to America’s Businesses and Institutions.....      | 8           |
| A. The Current Rules Are Beset by Several Fundamental Deficiencies .....   | 8           |
| B. The Copper Retirement Rules Should Be Modified on an Interim Basis as Set Forth in the Refresh Letter.....  | 12          |
| IV. Conclusion .....   | 16          |

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

|   |   |                      |
|---|---|----------------------|
| In the Matter of                            | ) |                      |
|   | ) |                      |
| AT&T Petition to Launch a Proceeding        | ) |                      |
| Concerning the TDM-to-IP Transition         | ) | GN Docket No. 12-353 |
|   | ) |                      |
| Petition of the National Telecommunications | ) |                      |
| Cooperative Association for a Rulemaking To | ) |                      |
| Promote and Sustain the Ongoing TDM-to-IP   | ) |                      |
| Evolution                                   | ) |                      |
|   | ) |                      |
|   | ) |                      |
| Petitions for Rulemaking and                | ) |                      |
| Clarification Regarding the Commission's    | ) | RM-11358             |
| Rules Applicable to Retirement of Copper    | ) |                      |
| Loops and Copper Subloops                   | ) |                      |
|   | ) |                      |

**COMMENTS OF XO COMMUNICATIONS, LLC  
AND  
BROADVIEW NETWORKS, INC.**

XO Communications, LLC (“XO”), and Broadview Networks, Inc. (“Broadview”) by their attorneys, hereby file initial comments in response to the February 4, 2013, Public Notice released in the above-referenced proceedings.<sup>1</sup> In the Public Notice, the Wireline Competition Bureau seeks comments on the request of Mpower Communications Corp., U.S. TelePacific Corp.; ACN Communications Services, Inc.; Level 3 Communications, LLC; TDS Metrocom, LLC and Telecommunications for the Deaf and Hard of Hearing, Inc. (collectively “TelePacific *et al.*”)<sup>2</sup> that the Commission “refresh the record” developed in RM-11358 in which the

---

<sup>1</sup> See Public Notice, Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission’s Copper Retirement Rules, WC Docket No. 12-353; RM-11358, DA 13-147 (rel. Feb. 4, 2013).

<sup>2</sup> See Letter of US TelePacific Corp. et al. Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules, WC Docket Nos. 10-188,

Commission is considering certain petitions to update the copper retirement rules.<sup>3</sup> The Refresh Letter also asks the Commission to act expeditiously to change its copper retirement rules<sup>4</sup> “to ensure that in today’s challenging economic environment, no customer loses the affordable broadband it receives from its chosen provider, and more customers have the option of adopting high-speed broadband using affordable Ethernet over copper.”<sup>5</sup>

## **I. Introduction and Summary**

XO and Broadview support the relief requested in the Refresh Letter to the extent that the current copper retirement rules enable incumbent local exchange carriers (“ILECs”) to decommission loops used to provide their Ethernet over Copper (“EoC”) services.<sup>6</sup> The provision of EoC using copper loops and subloops obtained from ILECs remains a critical means by which XO and Broadview provide advanced broadband services to business and enterprise customers in both major metropolitan and smaller markets. Indeed, through continued innovation in EoC technologies, XO, Broadview, and others have achieved greater EoC speeds

---

12-353; GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013) (“Refresh Letter”).

<sup>3</sup> See Petition for Rulemaking filed by XO Communications, LLC, *et al.*, Rulemaking to Amend Certain Part 52 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Subloops (filed January 18, 2007) (“XO Petition”); Petition for Rulemaking filed by BridgeCom International Inc., *et al.*, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers (filed January 18, 2007) (“BridgeCom Petition”).

<sup>4</sup> See, e.g., 47 C.F.R. § 51.333.

<sup>5</sup> Refresh Letter at 1.

<sup>6</sup> As a threshold issue, on their face, the copper retirement rules apply only where copper loops or subloops are replaced with fiber-to-the-home (“FTTH”) loops or fiber-to-the-curb (“FTTC”) loops. See, e.g., 47 C.F.R. §§ 51.319(a)(3)(iv) and 51.333(b). By definition, FTTH and FTTC loops are loops provided to residential customers, not to business and enterprise users, as in the case of the copper loops XO and Broadview obtain to provide EoC services. See 47 C.F.R. §§ 51.319(a)(3)(i)(A) & (B). In other words, the Commission has no copper retirement rules that apply to copper loops and subloops that are incapable of being replaced by FTTH and FTTC loops. The Commission has not provided a means for ILECs to retire copper loops to business and enterprise premises.

in the past several years, meeting the expanding and varied demands of customers for broadband capacity. Under the copper retirement rules as currently written, the potential exists for ILECs to wipe out competitive broadband alternatives deployed using EoC in competition with their own Ethernet services.

As TelePacific *et al.* advocate in the Refresh Letter, the Commission should immediately clarify or modify, as needed, the copper retirement rules on an interim basis to require ILECs to provide competitive carriers with access to unbundled copper loops despite having received permission from the Commission to “retire” such copper loops for their own use and to prohibit ILECs from physically removing copper loops from their network until they obtain affirmative permission from the Commission. The Commission should also conduct a complete rulemaking to modernize the copper retirement rules as requested in the pending XO and BridgeCom Petitions.

## **II. Ethernet over Copper Is an Advanced Communications Capability Experiencing Growing Demand and Which the Congress Has Directed the Commission to Act to Encourage**

The *Triennial Review Order* adopted rules to govern ILEC copper loop retirement while “ensur[ing] that the [C]LECs maintain access to loop facilities” to provide their telecommunications services.<sup>7</sup> The Commission, by adopting copper retirement rules, did not

---

<sup>7</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 281 (2003) (“Triennial Review Order”), *corrected by Errata*, 18 FCC Rcd 19020 (2003), *vacated and remanded in part, aff’d in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II), *cert. denied*, 543 U.S. 925 (2004), *on remand, Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (“TRRO”), *aff’d, Covad Comm. Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

intend to give the ILECs a tool by which they could eliminate robust broadband competition, a result which would be antithetical to the pro-competitive framework established by Congress in Telecommunications Act of 1996 (the “1996 Act”). To promote competition, Congress, through Sections 251 and 252 of the Communications Act of 1934, added by the 1996 Act, provided a framework for competition through the use of unbundled network elements (“UNEs”), interconnection, and resale.<sup>8</sup> In implementing the 1996 Act, the Commission has determined where UNEs will be available and has made clear that UNEs can be used to provide a nearly unlimited array of narrowband and broadband services.

Further, the *Triennial Review Order* provides that where “the retirement scenario suggests that competitors will be denied access to the loop facilities required under [the Commission’s] rules,” an opposition in response to the ILEC’s copper loop retirement notice will not be “deemed denied.”<sup>9</sup> Clearly the Commission never intended to allow ILECs to “kill” the copper loop infrastructure, as AT&T and Verizon have vowed to do,<sup>10</sup> where it would result in the gutting of competition, particularly competition in advanced communications services.

In Section 706 of the 1996 Act, Congress directed the Commission to do quite the opposite.<sup>11</sup> There, Congress mandated that the Commission not only “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans,” but also, where advanced telecommunications capability is not being deployed “on a reasonable

---

<sup>8</sup> See, e.g., 47 U.S.C. §§ 251(c)(2), (3) and (4).

<sup>9</sup> *Triennial Review Order* ¶ 281.

<sup>10</sup> Transcript, Verizon at Guggenheim Securities Symposium, at p. 8 (June 21, 2012) (“every place we have FiOS, we are going to kill the copper”); AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition (filed Nov. 7, 2012) (“AT&T IP Transition Petition”) (seeking the freedom to no longer maintain the “legacy network”).

<sup>11</sup> See 47 U.S.C. § 1302.

and timely basis,” to “take immediate action to accelerate deployment of such capability.”<sup>12</sup>

There can be little doubt, therefore, that the Congress did not instruct the Commission to stand in the way of broadband deployment, let alone to condone actions undermining its actual competitive deployment.

There is no debate that EoC, which supports high-speed Internet broadband access and Internet protocol-based (“IP-based”) applications, is advanced telecommunications capability. “[A]dvanced telecommunications capability” is defined in the statute, “without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”<sup>13</sup> This definition makes clear that advanced communications does not depend on a false distinction between copper and fiber, a distinction which AT&T and others try to impress upon the Commission even as they promote a starkly deregulated environment as the public communications network evolves toward an all-IP network. Advanced IP-based services are equally available over fiber and copper broadband channel terminations, as the nature of EoC services amply demonstrates.

The emergence and maturation of EoC services over the past decade demonstrates that copper is the lynchpin for many receiving broadband service where fiber has not yet penetrated and, where fiber is available, copper is essential to provide customers with cost effective advanced broadband services. Speaking from XO’s own experience, in 2006, XO pioneered the deployment of high-capacity services over existing copper facilities with the launch of EoC. EoC could initially provide speeds at up to 10 Mbps, then 20 Mbps, and last year XO accelerated

---

<sup>12</sup> 47 U.S.C. §§ 1302(a) and (b).

<sup>13</sup> 47 U.S.C. § 1302(d).

its EoC connections to speeds of 100 Mbps.<sup>14</sup> Currently, XO is exploring ways to increase downlink speeds using EoC several fold beyond what is offered today.<sup>15</sup>

Broadview has four years of offering EoC throughout its service footprint in the Northeastern United States. Taking advantage of the scalability of EoC, Broadview offers EoC at several speeds up to 30 Mbps, allowing business and enterprise customers' needs to obtain the speeds they require.<sup>16</sup>

XO's deployment of EoC to business and enterprise customers has grown tremendously, underscoring that the need for competitive access to copper loop facilities is as acute as it was over six years ago when the XO and BridgeCom Petitions were filed. In the third quarter of 2012, XO provided EoC in just over 480 local serving offices ("LSOs"), whereas in 2009, it offered EoC in fewer than 350 LSOs. That number is projected to exceed 500 LSOs by the second quarter of 2013.<sup>17</sup> Similarly, the number of EoC channel terminations XO provides continues to increase. Today, XO provides at least 7,300 broadband connections, a 78 percent increase over the past year, and XO's sales volume is expected to keep growing.<sup>18</sup>

Broadview equally has seen considerable acceptance of EoC in its territory. Introducing EoC services in 2009, Broadview is providing EoC in over 38 percent of the collocations it has

---

<sup>14</sup> All information regarding these and other XO innovations can be found on XO's website in the press archive section: <http://www.xo.com/about/pressroom/Pages/press-releases-view-all.aspx>. See also Declaration of Samuel J. Koetter, attached hereto, ¶ 4 ("Koetter Declaration").

<sup>15</sup> See Other competitive providers are already deploying even faster speeds. In fact, on February 27, 2013, one competitor announced the availability of speeds up to 220 Mbps in California and Nevada markets. <http://www.fiercetelecom.com/story/telepacific-introduces-220-mbps-eoc-service/2013-02-28> ("FierceTelecom").

<sup>16</sup> See Declaration of Rebecca Sommi, attached hereto, ¶ 3 ("Sommi Declaration").

<sup>17</sup> See Koetter Declaration, ¶ 5.

<sup>18</sup> See *id.*, ¶ 16.

with ILECs today, representing 100 LSOs.<sup>19</sup> Broadview today provides just under 10,000 EoC customer connections.<sup>20</sup>

The principal reasons for growth in deployment of EoC are several.<sup>21</sup> First and foremost, the demand for broadband capabilities by business and enterprise customers is ever increasing. Second, there are still many commercial buildings where the incumbent LECs have not yet built fiber facilities, and the present rate of fiber build-out indicates it will be a significant amount of time before fiber is ubiquitous. By some estimates, approximately two-thirds of commercial buildings in the United States are without fiber.<sup>22</sup> In these cases, EoC is the only real solution for cost effective broadband speeds greater than 10 Mbps.<sup>23</sup> Third, even where fiber is deployed, XO and Broadview finds that EoC is an attractive competitive solution for business and enterprise customers because of its lower cost and scalability without sacrificing features or functions.<sup>24</sup> This demonstrates decisively the importance of copper availability to robust competition and highlights why the large ILECs would be so eager to “kill” copper where they have already deployed fiber and in locations where they will deploy fiber in the future.<sup>25</sup>

In sum, EoC represents an advanced communications capability that continues to serve

---

<sup>19</sup> See Sommi Declaration ¶ 4.

<sup>20</sup> See *id.*

<sup>21</sup> See *discussion in* Koetter Declaration, ¶¶ 8-10.

<sup>22</sup> See, e.g., *FierceTelecom, supra*, (“According to Vertical Systems Group, fiber penetration for the U.S. business market increased to 36.1 percent in 2012, up from 31.8 percent in 2011.”)

<sup>23</sup> Ethernet over TDM-based T-1 circuits is possible, what XO calls Ethernet over Serial (“EoS”), but it is not generally a cost effective alternative. Typically, business and enterprise customers find EoC far more affordable for the speeds provided and would tend to choose EoS only where EoC is not available due to, for example, the unsuitability of the copper DS0 loops due to distance from the LSO. See Koetter Declaration, ¶ 11.

<sup>24</sup> See, e.g., *id.* ¶ 10.

<sup>25</sup> As explained in the Koetter Declaration, services based on ILEC fiber cannot be used to provide affordable competitive alternatives at the speeds attainable by EoC using voice grade copper loops. See Koetter Declaration ¶¶ 13-14.

the increasingly demanding broadband requirements of the business and enterprise markets both in the many locations where fiber alternatives are not available and as a more affordable and scalable alternative where fiber-based Ethernet services are being offered today. This will remain true for the foreseeable future. More importantly, the explosive growth in these advanced communication capabilities using existing infrastructure could not have been foreseen when the Commission adopted the current copper retirement rules ten years ago nor even when the XO and BridgeCom Petitions were filed six years ago. As a result of current marketplace realities, the Commission should act expeditiously to eliminate the shortcomings of the present rules, as explained in the next section.

### **III. The Commission Should Update the Copper Retirement Rules to Reflect the Growing Importance of Ethernet over Copper to America's Businesses and Institutions**

Where ILECs take action to retire copper permanently, existing broadband service relationships supported by EoC will be disrupted. In addition, the removal of copper from portions of an LSO will undermine the potential for additional competition developing at buildings within that area. Both results would disserve consumers, undermine competition, and harm the public interest. Accordingly, as explained below, the Commission should update its copper retirement rules to reflect the current importance of EoC to the nation's economy and preserve and better utilize this ubiquitous nationwide asset.

#### **A. The Current Rules Are Beset by Several Fundamental Deficiencies**

The Commission's current copper retirement rules impose only modest public notification requirements on ILECs that elect to retire legacy copper facilities, allow for only limited "objection," and ensure that copper loop and copper subloop retirements will take place

with little or no Commission oversight.<sup>26</sup> The rules require only that ILECs provide public notification of planned network changes, including retirement of copper loops and copper subloops.<sup>27</sup> Accordingly, the rules allow the ILECs to unilaterally remove from service those facilities that otherwise would remain subject to mandatory unbundling obligations under Section 251(c)(3) of the Act. The operation of the rules could undermine existing services being provided to customers by competitors over copper loop and copper subloop facilities as well as nullify the ability of consumers to receive a full suite of narrowband and broadband service offerings over an alternative and competing copper network. Further, the availability of copper facilities, through UNEs, could prove essential to ensuring redundant network facilities are present to provide communications in times of homeland security crises, natural disasters, and recovery periods that follow.

While there is some opportunity for objection to a planned and properly noticed retirement under the current rules, that ability is available only for providers using the network facilities to be retired and, even then, only in the event that such parties are unable to transition from that network in a timely manner as determined by the Commission. In particular, Section 1.533(c) permits objections to proposed retirements only by “an information service provider or a telecommunications service provider that directly interconnects with the incumbent LEC’s network.”<sup>28</sup> As a result, the current rules deny interested parties, such as prospective users of the copper facilities to be retired – not only providers looking to expand advanced service offerings, but also customers such as emergency first-responders – any meaningful opportunity to bring

---

<sup>26</sup> The ILECs must also comply with applicable state requirements. 47 C.F.R. § 51.391(a)(3)(iv)(B).

<sup>27</sup> See 47 C.F.R. § 51.333. Notably, the Commission’s existing rules do not even define what it means to “retire” copper.

<sup>28</sup> 47 C.F.R. § 51.333(c).

before the Commission important public interest considerations unrelated to what may be the then current services being provided using the copper.

Moreover, the existing rule expressly limits the content of such objections to issues of timing of the retirement of copper loops and copper subloops, as proposed by the ILECs.<sup>29</sup> The rules do not allow challenges to copper loop and copper subloop retirements on other grounds, including public interest grounds and harm to others (*e.g.*, stranding of competitor investment such as collocated equipment in central offices).<sup>30</sup>

The narrowband channel on replacement fiber voice grade facilities offered to providers when copper is retired under the current rules does not create the same opportunity to provide services equivalent to EoC. The supposed “upgrade” from copper to fiber is an illusion. With the replacement, providers that had been offering robust EoC services lose that capability with no effective replacement. ILEC provided fiber voice grade lines do not support the services over copper facilities or any of the other broadband services (including bundled service packages) that XO, Broadview, and other carriers are providing over copper facilities now and will be able to provide for the foreseeable future. In short, retirement of copper loops and copper subloops by the ILECs, pursuant to the current rules, effectively denies competitive LECs nondiscriminatory access to facilities that enable competitive bundled and broadband service offerings, subject to the regulatory protections of Section 251(c)(3) of the Act.

Continued operation of the copper retirement rules, if they are not modified in light of current broadband marketplace realities, will inevitably lead to substantially higher prices and fewer advanced broadband choices for business and enterprise customers with the diminishment of competition. The cost effective deployment of broadband services will be inhibited and

---

<sup>29</sup> See 47 C.F.R. §§ 51.333(c)(1)-(3).

<sup>30</sup> See *id.*

current deployment of EoC broadband services will be undermined. Broadband access and services provided using ILEC inputs where competitors have not deployed their own fiber will become more costly.<sup>31</sup> Provisioning intervals for such broadband – approximately one week for DS0 loops that support EoC versus two-to-three months for fiber-based-Ethernet, according to XO’s and Broadview’s experience – will lengthen considerably.<sup>32</sup> And consumers of broadband services provided today by EoC will lose choice and flexibility.

Even setting aside the loss of broadband competition and the benefits that consumers, including businesses and enterprise users, derive from the availability of EoC, economic considerations do not necessarily justify retirement of copper loops and copper subloops where the ILECs overbuild fiber facilities. Indeed, ILECs must incur substantial and potentially non-recoverable costs to dismantle legacy copper networks and to reconfigure embedded copper facilities to accommodate specific copper loop and copper subloop retirements. Conversely, were copper to remain deployed after ILEC fiber is in place, the Commission’s rules do not impose any obligation on ILECs to maintain, in serviceable condition, existing copper loops and copper subloops, unless and to the extent that such facilities are requested by competitive LECs as UNEs, pursuant to Section 251(c)(3) of the Act. When those facilities are provided on an unbundled basis, ILECs are appropriately compensated at rates established by state commissions pursuant to Section 252(d) of the Act and the Commission’s pricing rules. Thus, retirement and removal of copper loops and copper subloops needlessly results in the ILECs incurring substantial expenses and foregoing significant revenue opportunities, suggesting that a principal

---

<sup>31</sup> The “alternative” of building out to locations, assuming there is backbone fiber nearby, is often cost-prohibitive and may cost from many thousands of dollars to upwards of several hundred thousand dollars. *See* “ILEC Copper Retirement Customer Impact” prepared by Mike Robinson, President and CEO, Broadview, at 5 (dated Feb. 21, 2013), attached to Letter of Karen Reidy, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, in GN Docket No. 09-51 et al. (filed Feb 25, 2013).

<sup>32</sup> *See* Koetter Declaration, ¶ 14; Sommi Declaration, ¶ 5.

motivation for ILECs to decommission copper is to curb their competition by undermining affordable alternatives to their own services.

**B. The Copper Retirement Rules Should Be Modified on an Interim Basis as Set Forth in the Refresh Letter**

As discussed above, the existing copper loop and subloop retirement rules improperly fail to provide an opportunity for the Commission to consider how removal of certain legacy copper facilities, as proposed by an ILEC, adversely affect competition, broadband availability, and the public interest (such as by limiting redundant facilities available to support homeland security, disaster recovery, and public safety generally). To remedy these flaws, the Commission should complete the rulemaking requested in the XO and BridgeCom Petitions and establish a formal process for approval by the Commission, on a case-by-case basis, of any proposed retirement of copper loops or copper subloops by the ILECs, subject to a presumption that such retirement does not serve the public interest. The Commission should also abolish notification-only procedures for “short-term” modifications to incumbent LEC networks, including copper loop and copper subloop retirements that currently do not permit any interested party, including the Commission and state regulatory agencies, to contest elimination of UNEs that enable competitive narrowband and broadband services over redundant facilities.<sup>33</sup> The Commission should not allow the ILECs to exercise such unilateral control over the nationwide copper infrastructure and over competition itself – that is the Commission’s role. The Commission should also define “retirement” to not include removal of the copper facilities.

In the meantime, TelePacific *et al.* seek certain relief on an interim basis to guard against further dismantling of the legacy copper network and injury to consumers of advanced

---

<sup>33</sup> See XO Petition at 20-23 and Exhibit A.

communications capability under the flawed Commission rules.<sup>34</sup> XO and Broadview fully support these interim measures.

As an initial matter, suspension of the current copper retirement rules is necessary to curtail the potential damage to consumers, competition, and the public interest, as described above, that would result from the continued operation of the flawed rules. In their place, the Commission should implement several measures:

1. The Commission should require ILECs that wish to permanently disable or remove copper plant including both full loops as well as copper feeder<sup>35</sup> to apply to the Commission and give notice to all interconnecting carriers in the state, providing the carriers with the opportunity to object on any grounds, not just timing issues.<sup>36</sup> The ILEC should be required specifically to make a public interest showing that any broadband customers of competitors served over the fiber in question will not have their service disrupted and will, after the retirement is complete, have a choice among reasonably priced competitive offerings of the same or similar service. With any application for permission to retire copper, the ILEC should be required to describe the service area (geographic location, population, and general character),

---

<sup>34</sup> See Refresh Letter at 20-22.

<sup>35</sup> As explained in the Koetter Declaration, EoC services cannot be provided except on full copper loops between the network interface device and the serving LSO. See Koetter Declaration, ¶ 12.

<sup>36</sup> The Commission should make clear that such notice, and the period for objections, commences with the public notice of the ILEC application. The Commission should, at the same time, deny the United States Telecom Association forbearance petition, *inter alia*, to the extent that it requests that the notice time period for retiring copper loops and other network changes begins with the ILEC notice to interconnecting carriers rather than the Commission's public notice. Accord Refresh Letter at 22. See also Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61, Category 9 (filed Feb. 16, 2012) ("USTelecom Petition"). That aspect of the USTelecom Petition remains pending. *In the Matter of United States Telecom Association Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Order, WC Docket No. 12-61, FCC 13-23, at 2, n. 6 (rel. Feb. 28, 2013).

the name of other carriers currently providing service to the area, a description of other copper retirements or removals in the same geographic area within the previous twelve months and any present plans for future retirements or removals within the service area but not subject to the application.

2. XO and Broadview concur with TelePacific *et al.* that objections to applications for permission to retire copper should not be “deemed denied” as under the current rules.<sup>37</sup> Rather, the Commission should exercise oversight over this nationwide infrastructure; only if the Commission affirmatively finds that the planned retirement of the copper is in the public interest, should the ILEC be permitted to proceed. Even where the Commission permits retirement, the interim rules should expressly limit retirement to rendering the copper unfit for use without destroying or removing the copper. On an interim basis, as noted by TelePacific *et al.*, the Commission should clarify that, while the ILEC may disable the copper while leaving it in place, it must be in a condition allowing the ILEC to make it available to competitors on an unbundled basis with modest modifications. As the Refresh Letter explains, “retirement could mean that the ILEC no longer intends to use the facility but it will otherwise remain in place and be maintained, or it could mean that the ILEC carrier will disable the copper while leaving it in place in a condition from which it could be made available with some modification; or it could mean that the ILEC will no longer maintain the facility, but will not physically remove or disable it.”<sup>38</sup>

4. The interim rules should make clear an ILEC’s obligation, where copper has been retired, to make the copper available for lease on an unbundled basis by competitors, subject to Section 251.

---

<sup>37</sup> See Refresh Letter at 20.

<sup>38</sup> Refresh Letter at 21.

5. Only in limited circumstances should the Commission permit removal of copper by an ILEC (as distinct from retirement). Any such determination should explain why the removal of the facilities is necessary to alleviate an exceptional burden on the ILEC or to remove a specific obstacle to deployment of fiber facilities by the ILEC. If removal is permitted, that permission should be narrowly tailored so only those facilities the ILEC has provided adequate justification for removal are within the scope of the permission.

6. XO and Broadview concur with TelePacific *et al.* that the Commission should direct ILECs to establish and maintain a comprehensive database regarding copper availability that can be accessed freely by CLECs and both federal and state regulators. The database should clearly indicate whether copper has been retired or is being retired, as described in paragraph 2 above, or permanently removed. The database should reflect, and contain links for, pending applications for Commission permission to retire or remove copper as well as retirement or removal which has already taken place. The database should be searchable on a geographic basis, as TelePacific *et al.* suggest.

In addition to these measures, XO and Broadview join TelePacific *et al.* in urging the Commission to make plain that the States retain the authority to adopt restrictions on retirement and removal of copper loops, including copper feeder, that are stronger than the Commission's rules. The Commission, in doing so, should explain that such state action would be consistent with Section 251 of the Act. In particular, the Commission should remove any doubts that such state requirements would be consistent with and not substantially prevent implementation of Section 251 or the purposes of Part II of Title II of the Act.<sup>39</sup>

---

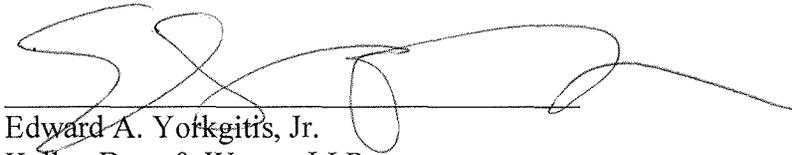
<sup>39</sup> See 47 U.S.C. §§ 251(d)(3)(B) and (C).

**IV. Conclusion**

For the foregoing reasons, the Commission should suspend the existing copper retirement rules and adopt the interim measures set forth herein. The Commission should also proceed expeditiously to complete the rulemaking and modify the copper retirement rules consistent with the principles set forth herein and in the XO Petition.

Respectfully submitted,

XO COMMUNICATIONS, LLC and  
BROADVIEW NETWORKS, INC.



Edward A. Yorkgitts, Jr.  
Kelley Dye & Warren LLP  
3050 K Street, NW – Suite 400  
Washington, DC 20007  
Telephone: (202) 3342-8400  
Facsimile: (202) 342-8451

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

Charles Hunter  
Broadview Networks, Inc.  
800 Westchester Avenue – Suite N-501  
Rye Brook, NY 10573  
Telephone: (914) 922-7589

Attorney for XO Communications, LLC and  
Broadview Networks, Inc.

March 5, 2013

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|  |   |                      |
|--|---|----------------------|
| In the Matter of   | ) |                      |
|  | ) |                      |
| AT&T Petition to Launch a Proceeding<br>Concerning the TDM-to-IP Transition  | ) | GN Docket No. 12-353 |
|  | ) |                      |
| Petition of the National Telecommunications<br>Cooperative Association for a Rulemaking To<br>Promote and Sustain the Ongoing TDM-to-IP<br>Evolution | ) |                      |
|  | ) |                      |
|  | ) |                      |
| Petitions for Rulemaking and<br>Clarification Regarding the Commission's<br>Rules Applicable to Retirement of Copper<br>Loops and Copper Subloops    | ) | RM-11358             |
|  | ) |                      |

**DECLARATION OF SAMUEL J. KOETTER**

1. My name is Samuel J. Koetter. I am the Product Manager for Ethernet over Copper (“EoC”) at XO Communications, LLC (XO). I submit this Declaration in support of XO’s Comments refreshing the record in the above-referenced proceeding.

2. As the Product Manager for Ethernet over Copper of XO, I have been developing XO’s Ethernet services portfolio since 2008. Before taking on Ethernet at XO, I managed XO’s Transport services, which included DS1 to 10 Gbps Wavelength services. Before joining XO, I served as the Voice Product Manager for Broadwing communications from 2004 to 2007. Prior to 2004, I held both Sales and Product Management positions at a subsidiary of Verizon Communications (Verizon Avenue).

3. The majority of carriers offer Ethernet exclusively via their fiber networks. XO was one of the first carriers to realize that, while fiber-based Ethernet may at some point

represent the future, the demand for Ethernet speeds by businesses and enterprise users is present now whether fiber is available or not. In response to this demand, and given the less than ubiquitous reach of XO's own fiber facilities that could support Ethernet, XO became a pioneer in the deployment of high-capacity Ethernet services *over existing copper facilities* of the legacy public switched telephone network ("PSTN"). This solution would utilize the unbundled copper loops of incumbent local exchange carriers ("ILECs") that were available at commercial buildings far more pervasively than both ILEC fiber facilities, and facilities of competitors of whatever type, to XO at reasonable, pro-competitive rates through interconnection agreements.

4. XO first introduced its Ethernet over Copper ("EoC") offerings in 2006. XO could initially provide EoC at speeds at up to 10 megabits per second ("Mbps") -- in both directions -- using five copper pairs. In the succeeding years, the demand by business and enterprise customers for faster speeds has pushed providers to respond in kind. Within a few years XO was able to provide EoC at speeds of 20 Mbps utilizing additional numbers of copper loops. Last year, XO accelerated its EoC connections to speeds of 100 Mbps in both directions. Even greater speeds will likely be demanded by customers in the future. To meet that challenge, XO is exploring innovative options, including ways to increase downlink speeds using EoC many-fold beyond what is offered today while preserving sufficient uplink speeds.

5. In addition to offering EoC with greater capacity, XO has expanded the territories where its EoC products are available. In 2009, XO offered EoC in just under 350 local serving offices ("LSOs"). As of the third quarter of 2012, XO provided EoC in just over 480 LSOs. XO projects that number to exceed 500 LSOs by the second quarter of 2013, more than a 50% increase in less than four years.

6. Just as the number of LSOs in which XO provides EoC continues to rise, so too does the number of XO's customers. Today, XO provides at least 7,300 EoC access circuits, including 3,200 installations in the last year alone. That represents a 78% increase over the past year. This type of growth validates the market's demand. XO's expects sales volume to continue growing.

7. Over the past five years, XO has consistently outpaced annual growth rates in the Ethernet market and is consistently ranked by Vertical Systems Group as an Ethernet Market leader. I attribute XO's success largely to its focus on EoC technology, which allows XO to bring affordable bandwidth to those who otherwise would not have access to it.

8. The main drivers for the continued growth of EoC for XO are, from my perspective, threefold. Of principal importance, business and enterprise users are more frequently demanding broadband and are looking for ever greater speeds. As I mentioned before, EoC speeds have increased tremendously and XO has been able to satisfy the demanding broadband requirements of users in most situations, whether customers require the maximum speeds XO can offer or wish to take advantage of EoC's scalability if their throughput demands do not require maximum speeds. Customers can start with 3 Mbps connections and they can grow incrementally as their demand for greater speeds grow. Beyond the general ability to satisfy the growing general demand for broadband at today's speeds, EoC is growing for two additional reasons: availability and affordability.

9. Often, EoC is the only solution *available* for business and enterprise users. For a large number of commercial buildings, even in major and mid-size markets, neither ILECs nor competitors serve them with fiber. The business case to build-out the fiber to these locations has not yet been made. Therefore, fiber-based Ethernet is not an option. Thus, the only way for

businesses and enterprises in these locations to get affordable broadband at the speeds they require may be EoC, provided it is technically feasible. Basically, EoC requires the availability of sufficient numbers of copper pairs at no more than a certain distance from the serving central office or LSO.

10. The success of EoC is not limited to where it is the only broadband option available. EoC can compete where fiber-based offerings are also on tap because EoC is typically more *affordable*. Indeed, it is estimated that customers accounting for more than 50% of all of the EoC connections served by XO today have fiber-based options available to them. In fact, in major markets, such as New York City, that number approaches 80 and even 90%. The reason for this is that EoC, without sacrificing features or functions, is a much more affordable option for business and enterprise users for broadband than ILEC fiber-based Ethernet.

11. As I noted earlier, EoC is provided using unbundled copper loops of ILECs. Theoretically, a single copper pair can support speeds above 5 Mbps up to at least 15 Mbps, but only at increasingly limited distances from the customer to the serving central office and through different, more expensive equipment than used to support lower speeds (over greater distances). The basic XO EoC service supports 2 Mbps per copper pair at distances of approximately 8000 feet from the LSO.

12. EoC uses voice grade, or DS0 copper loops. While Ethernet can be provided over copper-based T-1s, known as Ethernet over Serial (“EoS”), the available speeds are fixed per loop, 1.5 Mbps, which is lower than what can be achieved with EoC – 2-to-5 Mbps per loop, depending upon distance from the LSO. Further, the cost per loop for T-1s is prohibitively more expensive than DS0 copper loops. Often T-1 loops are a couple orders of magnitude more expensive than their DS0 counterparts. Accordingly, EoS is far less cost effective per Mbps than

EoC. As a result, EoS has not achieved anywhere near the level of penetration as EoC, and is commonly relegated to situations where voice grade copper loops suitable for EoC are not available, for example because the closest LSO is too far away or there is fiber in the feeder portion of the loops. T-1s can be used for EoS whether the entire loop is copper or fiber is used in the feeder portion of the loop. By contrast, the requisite technology employed for EoC does not work if fiber is anywhere in the path, whether the whole loop is fiber or even if fiber is used only in the feeder portion of the loop.

13. It is worth noting that EoC cannot cost-effectively be replaced using fiber-based loops, where fiber is available. Unlit fiber loops are typically not available from ILECs. Even if they were, the loops would likely be so expensive that there would be no economic justification for competitors to use such loops to provide service to customers at speeds comparable to EoC services. There is no scalability with fiber loops, such that the unlit fiber loop input to provide a customer with 3 Mbps speeds would be just as costly for a customer that wanted 50 or 100 Mbps speeds or greater.

14. Further, the ILECs fiber-based Ethernet services are so expensive that the potential resale of such services to customers taking EoC would likely be completely unattractive economically. Finally, any effort a competitor would make to meet customers' needs using ILEC-provided fiber services versus EoC would be additionally undermined by the gross disparity in provisioning intervals. XO's experience is that DS0 copper loops often are ready in five-to-seven business days whereas fiber-based services typically take sixty-to-ninety days, and sometimes involve the additional expense of special construction.

15. In short, were copper DS0 loops no longer, quite simply, the benefits EoC offers businesses and enterprise customers as an affordable competitive alternative to ILEC Ethernet services simply would no longer be available.

16. In sum, the continued success and growth of EoC services in the presence of fiber-based competition underscores that these innovative services are meeting market demand for advanced, packet-switched services. As discussed earlier, in many locations, EoC is *the* advanced broadband option where no other adequate alternative is currently available. In other locations, EoC provides an affordable competitively-provided option to typically much higher-priced ILEC fiber-based Ethernet services. Where copper loops are not available or are replaced with fiber loops, that affordable broadband option for business and enterprise users is simply eliminated.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed on March 5, 2013

A handwritten signature in black ink, appearing to read "S. J. Koetter", written over a horizontal line.

Samuel J. Koetter

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|   |   |                      |
|---|---|----------------------|
| In the Matter of                            | ) |                      |
|   | ) |                      |
| AT&T Petition to Launch a Proceeding        | ) |                      |
| Concerning the TDM-to-IP Transition         | ) | GN Docket No. 12-353 |
|   | ) |                      |
| Petition of the National Telecommunications | ) |                      |
| Cooperative Association for a Rulemaking To | ) |                      |
| Promote and Sustain the Ongoing TDM-to-IP   | ) |                      |
| Evolution                                   | ) |                      |
|   | ) |                      |
|   | ) |                      |
| Petitions for Rulemaking and                | ) |                      |
| Clarification Regarding the Commission's    | ) | RM-11358             |
| Rules Applicable to Retirement of Copper    | ) |                      |
| Loops and Copper Subloops                   | ) |                      |
|   | ) |                      |

**DECLARATION OF REBECCA SOMMI**

1. My name is Rebecca Sommi. I am the Senior Vice President of Operations Support and Engineering at Broadview Networks, Inc. (“Broadview”). I submit this Declaration in support of Broadview’s Comments (filed jointly with XO Communications, LLC) refreshing the record in the above-referenced proceeding.

2. As Senior Vice President of Operations Support and Engineering, I am responsible for network planning, engineering, warehousing, vendor management, network provisioning and optimization among other things.

3. Broadview introduced its Ethernet over Copper (“EoC”) services throughout large portions of its territory, the New England States plus Pennsylvania and New Jersey, in 2009. Taking advantage of the scalability of EoC as more copper loops are used, Broadview offers EoC at several speeds starting at 1.5 Mbps up to 30 Mbps to meet its business and enterprise

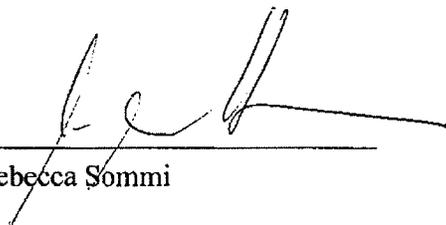
customers' varying needs. EoC supports a variety of services including IP telephony, PRI, MPLS, and Dedicated Internet Access to name a few.

4. From the beginning, Broadview provided EoC throughout much of its operating territory out of those central offices where it is collocated with the incumbent local telephone companies. Four years ago, in March of 2009, Broadview provided EoC in 93 Local Serving Offices ("LSOs"). Today, that number is 100 LSOs, which represents over 38% of all LSOs where Broadview is collocated. In those 100 LSOs, Broadview currently supports nearly 10,000 EoC customer connections.

5. Broadview is able to bring EoC to customers rapidly because of the short provisioning intervals for DS0 copper loops. In Verizon territory, in which most of Broadview's EoC customers reside, the average interval to obtain copper loops is 5 days. This compares very favorably with provisioning intervals of 60-90 days for Verizon's fiber-based Ethernet services.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed on March 5, 2013



Rebecca Sommi