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REDACTED FOR PUBLIC INSPECTION

December 2, 2013

ACCEPTED/FILED
DEC - 2 2013
Federal Communications Commission
Office of the Secretary
DEC 03 2013
PRD

BY HAND DELIVERY

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

Re: **XO Communications, LLC Petition to Suspend and Investigate (PUBLIC)**

Dear Ms. Dortch,

Enclosed on behalf of XO Communications, LLC ("XO"), please find an original and three copies of the public (redacted) version of XO's petition to suspend and investigate the following tariff filings:

Ameritech Operating Companies, Transmittal No. 1803 (Tariff F.C.C. No. 2)
BellSouth Telecommunication, LLC, Transmittal No. 71 (Tariff F.C.C. No. 1)
Nevada Bell Telephone Company, Transmittal No. 254 (Tariff F.C.C. No. 1)
Pacific Bell Telephone Company, Transmittal No. 498 (Tariff F.C.C. No. 1)
Southwestern Bell Telephone Company, Transmittal No. 3383 (FCC Tariff No. 73)
The Southern New England Telephone Company, Transmittal No. 1061 (Tariff F.C.C. No. 39)

A complete unredacted version of this filing is being submitted under separate cover with a request for confidential treatment pursuant to sections 0.457 and 0.459 of the Commission's rules.[1]

[1] 47 C.F.R. §§ 0.457, 0.459.

If there are any questions regarding this filing, please contact me at (202) 342-8819 or via email at wbrantl@kelleydrye.com. Thank you for your assistance with this matter.

Sincerely,

Winafred Brantl
Counsel for XO Communications, LLC

cc: Julie Veach, Chief, Wireline Competition Bureau
Kalpak Gude, Chief, Pricing Policy Division
Best Copy and Printing Inc.
Scott Murray, Area Manager – Rates/Tariffs / AT&T

REDACTED FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Ameritech Operating Companies Tariff F.C.C. No. 2	)	Transmittal No. 1803
	)	
BellSouth Telecommunication, LLC Tariff F.C.C. No. 1	)	Transmittal No. 71
	)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 254
	)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 498
	)	
Southwestern Bell Telephone Company FCC Tariff No. 73	)	Transmittal No. 3383
	)	
The Southern New England Telephone Company Tariff F.C.C. No. 39	)	Transmittal No. 1061
	)	

PETITION TO SUSPEND AND INVESTIGATE

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	)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 498
	)	
Southwestern Bell Telephone Company FCC Tariff No. 73	)	Transmittal No. 3383
	)	
The Southern New England Telephone Company Tariff F.C.C. No. 39	)	Transmittal No. 1061
	)	

PETITION TO SUSPEND AND INVESTIGATE

Pursuant to Section 204(a)(3) of the Communications Act of 1934, as amended (the "Act") and Section 1.773 of the Rules of the Federal Communications Commission ("Commission"), XO Communications Services, LLC ("XO") respectfully requests that the Commission suspend and investigate in relevant part the above-captioned tariff filings of the Ameritech Operating Companies, BellSouth Telecommunication, LLC, Nevada Bell Telephone Company, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company, and The Southern New England Telephone Company (collectively, "AT&T") which were submitted on November 25, 2013 (collectively, the "Tariff Filings") to take effect on fifteen days' notice,

i.e., on December 10, 2013.[1] In particular, the Commission should suspend and investigate the proposed changes to the provisions in the tariffs by which AT&T currently offers customers the ability to obtain new or successor term plans longer than 36 months in duration for tariffed TDM services, including DS1 and DS3 special access circuits (such tariff provisions referred to herein as the "Longer Term Plans Provisions"). Suspension of the Tariff Filings would be in the public interest and otherwise meet the Commission's prerequisites set forth in Section 1.773(1)(a)(iv).

I. INTRODUCTION AND SUMMARY

XO is one of the largest facilities-based competitive providers of telecommunications and information services in the country, focusing on the business and enterprise customer segments. XO is a leading innovator in the provision of IP-based telecommunications and other services as well as copper-based broadband services including high speed Ethernet over Copper services.[2] XO, like other competitors, relies on AT&T's DS1 and DS3 services to complement its own facilities and provide wholesale and retail services within AT&T's significant operating territory. Under the Longer Term Plans Provisions, XO is a party to AT&T commitment plans of **[begin confidential]** **[end confidential]** years in the former Ameritech,

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1 XO currently does not have commitment plans with AT&T in Nevada or Connecticut. Nonetheless, the increases in rates in the commitment plans in those states as a result of the proposed tariff changes by the Nevada Bell Telephone Company and The Southern New England Telephone Company are comparable to those that will occur in AT&T's other operating territories as a result of the proposed tariff changes captioned above. Because the impact will be comparable for competitors, XO seeks suspension of and investigation into Nevada Bell Telephone Company Tariff F.C.C. No. 1, Transmittal No. 254, and The Southern New England Telephone Company Tariff F.C.C. No. 39 , Transmittal No. 1061

2 *See discussion in* Comments of XO Communications Services, LLC filed in Docket No. 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) at 2-3 (filed Jan. 28, 2013) ("XO Comments on AT&T Petition") (discussing XO's network and market innovations contributing to the evolution toward an all-IP public communications network).

Southwestern Bell, BellSouth, and PacBell regions. These plans offer the lowest possible, although still unreasonably high, rates for XO to meet its needs for DS1 and DS3 circuits.

As explained in other proceedings before the Commission earlier this year, XO's only source for DS1 and DS3 capacity reaching a substantial portion of end user locations is to obtain special access from the price cap incumbent local exchange carriers ("ILECs"), such as AT&T.[3] AT&T is classified as dominant in the provision of DS1 and DS3 special access services in its operating territories where it is an incumbent LEC (in both Phase II and non-Phase II areas). To obtain DS1 and DS3 capacity circuits at prices that enable some measure of meaningful competition with AT&T, XO has been required to enter into long term plans of more than 36 months with lock-up provisions that require minimum volume thresholds and impose other onerous provisions that keep XO "loyal" to AT&T.[4]

Under the Tariff Filings, AT&T proposes to eliminate the Longer Term Plans Provisions and no longer offer TDM-based DS1 and DS3 circuits under commitment plans that exceed 36

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3 ILEC facilities are typically the only practical means by which competitors such as XO can access end users at most building locations, because no other local exchange carrier or competitive access provider offers physical access to the location. *See, e.g., XO Comments on AT&T Petition* at 4-6, 23-30 (noting the clear market advantages that ILECs have today over competitors due to unparalleled facilities-based reach to end user locations, particularly in business and enterprise settings, which will not automatically dissipate as the public switched network evolves toward an Internet protocol public communications network); Reply Comments of XO Communications Services, LLC filed in Docket No. 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) at 3-4 & n. 7 (filed Feb. 25, 2013); Comments of XO Communications, LLC, WC Docket No. 05-25 (Special Access for Price Cap Local Exchange Carriers) and RM-10593 (AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services) (filed Feb. 11, 2013) ("XO Special Access Comments"), Exhibit 2, Declaration of John T. Dobbins, XO Vice President of Network and Access Optimization, ¶ 4 (ILEC channel terminations that provide business and enterprise customers with network access and ILEC transport facilities are far more extensively deployed in all markets in which XO operates than those of any of the ILECs' rivals) ("Dobbins Declaration").

4 *See generally XO Special Access Comments.*

months.[5] This would eliminate current options for TDM-based contracts for DS1 and DS3 lines longer than three years and lasting up to seven years. Those customers with existing arrangements for DS1 and DS3 circuits with terms longer than 36 months (from their effective date) will be allowed to keep them but will be unable to enter into new agreements with terms exceeding three years. By deleting the Longer Term Plans Provisions, AT&T would force customers of considerable volumes of its DS1 and DS3 services to enter into more expensive shorter term plans of no more than 36 months when their current plans expire.

Simply stated, AT&T is effectively raising its rates for DS1 and DS3 services because of its continued market power regarding DS1 and DS3 capacity circuits. Indeed, the loss of the discounts will result in substantial price increases for special access customers when their contacts expire -- in the range of 14-23%. XO estimates that AT&T's rate hike would increase its current spend by over **[begin confidential]**

[end confidential] were XO to pay the rates under the three-year plans in effect today. The cumulative cost to competitive carriers as a whole is likely to be many times higher. That AT&T can unilaterally impose such price increases is a sign of its continuing market power over a broad range of

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5 A note, associated with each reference to term plans greater than 36 months, has been added to each of the revised pages in the Tariff Filings to the effect of "Effective December 10, 2013, new term plans greater than 36 months will no longer be available. There will be no change with respect to existing term plans." (On a number of the tariff pages, this statement has been tailored to reference the specific service(s) or term plan regulations addressed on the page.) *See, e.g., generally* proposed revised pages in Ameritech Operating Companies, Transmittal No. 1803 (Tariff F.C.C. No. 2); BellSouth Telecommunication, LLC, Transmittal No. 71 (Tariff F.C.C. No. 1); Nevada Bell Telephone Company, Transmittal No. 254 (Tariff F.C.C. No. 1); Pacific Bell Telephone Company, Transmittal No. 498 (Tariff F.C.C. No. 1); Southwestern Bell Telephone Company, Transmittal No. 3383 (FCC Tariff No. 73); and The Southern New England Telephone Company, Transmittal No. 1061 (Tariff F.C.C. No. 39).

special access services. This market power is well entrenched because of its control of physical facilities to most business and enterprise locations, as XO explained above.[6]

These proposed cost increases will reverberate to the customers XO and other competitors serve, affecting a wide range of services and activities provided by businesses, government, and other institutions. Special access is a critical component of the communications services that XO offers business and enterprise as well as wholesale customers, from data services, private networks, Internet access, and basic capacity.

As detailed in this Petition, the criteria set forth in the Commission's Rules under Section 1.773(a)(1)(iv) for suspension and investigation of a tariff filing by a price cap carrier are met in this case, warranting the Commission to take such action.[7] The proposed tariff revisions are demonstrably unlawful. AT&T, by virtue of its market power in the provision of DS1 and DS3 special access, seeks to substantially increase the prices for these circuits and would thereby exacerbate the anticompetitive effects of its already unjust and unreasonable term commitment plans. Suspension of the proposed revisions will not adversely affect any interested party except AT&T, who seeks to exploit its market power to extract unwarranted additional revenues, comfortable in its expectation that there will be no meaningful competitive response if the Tariff Filings take effect. Failure to suspend these revisions will inflict irreparable harm upon telecommunications competition. Finally, suspension would advance the public interest by promoting competition in telecommunications markets.

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6 *See* n. 3, *supra.*

7 *See* 47 C.F.R. § 1.773(a)(1)(iv). The Tariff Filings do not specifically state what subsection of the Commission's rules under which AT&T seeks to eliminate the Long Term Plan Revisions. XO believes that the revisions were filed under Section 61.49(b).

II. THERE IS A HIGH PROBABILITY THAT THE TARIFF WOULD BE FOUND UNLAWFUL AFTER INVESTIGATION.

The Commission is already engaged in an investigation into the market failure within the special access market.[8] Indeed, in that proceeding, the Commission suspended its rules governing grants of pricing flexibility pending its investigation of market power in the special access reform docket.[9] Suspension of and an investigation into the Tariff Filings and their anticompetitive effect is warranted in the same spirit because AT&T is able to propose to eliminate the Longer Term Plan Provisions solely because of its market power.[10] AT&T,

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8 *See, e.g., Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-25, 27 FCC Rcd 16318, ¶ 67 (2012).

9 *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, WC Docket No. 05-25, 27 FCC Rcd 10557 (2012).

10 AT&T tries to confer some measure of policy-based justification on the Tariff Filings by claiming that they are required because of the need to transition from its TDM-based network to an all-IP based network. *See, e.g.,* AT&T Accessible Letter, ACCESS13-073, AT&T 13-STATE - Announces Revised Date for the Elimination of Term Plans Exceeding 3 Years for Multiple Digital Services, dated October 25, 2013 ("These tariff modifications are an initial step toward implementing AT&T's plan to upgrade its network to meet growing demand for next generation broadband services, and to migrate its legacy TDM network to IP-based network facilities and services. As AT&T 13-State has previously announced, it intends to complete that transition by 2020."); *see also* AT&T Public Policy Blog, *The End of the Beginning of the IP Transition* found at http://webcache.googleusercontent.com/search?q=cache:http://www.attpublicpolicy.com/uncategorized/the-end-of-the-beginning-of-the-ip-transition/ (posted Nov. 25, 2013) ("Quinn Blog") ("The first step of that plan [to transform the AT&T network to one that is all Internet Protocol] is to align the commitments we make to our customers with the goal of transitioning to an all-IP network. That is why today we have taken a step to make sure that multi-year commitments we enter into today for aging TDM-based services reflect the on-going transition to IP and do not extend beyond the expected completion of our transition in 2020.") These purported public policy justifications ring hollow because AT&T is not discontinuing any DSx services, but merely eliminating commitment plans with competitively significant pricing. The Tariff Filings, ultimately, therefore, have nothing to do with the transition to an all-IP network and everything to do with the assertion of market power and an effort to reap (additional) supracompetitive profits. Moreover, as XO has argued in response to the AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, "[t]he change in format technology and the new services that those technologies permit will not, in and of themselves, undermine market advantages that providers have at present, particularly as those

through elimination of the Longer Term Plan Provisions, can unilaterally impose a substantial price increase on its customer base for DS1 and DS3 special access services without fear of meaningful competitive response, thereby demonstrating its continuing market power over DS1 and DS3 special access services.[11]

As XO demonstrated earlier this year in WC Docket No. 05-25, the terms and conditions of the special access commitment plans of AT&T (and other price cap LECs) are unjust and unreasonable, in violation of Section 201(b) of the Communications Act of 1934, as amended, even without reference to price.[12] The commitment plans with AT&T tie up a large part of XO's (and other carriers') demands for special access DS1 and DS3 circuits, frustrating the development of competitive market conditions. As XO explained, these commitment plans severely restrict XO's ability to purchase special access circuits or the equivalent from other

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advantages principally reside in the facilities customers use to access the PCN." *XO Comments on AT&T Petition* at 5. Because AT&T (and other ILECs) will likely continue to have market power over access to end user customers, especially in the business and enterprise markets, during and after the move to an all-IP public communications network ("PCN"), AT&T's purported basis for Tariff Filings serves as a reminder that the Commission must ensure that AT&T and other ILECs continue to be required to make their customer access connection facilities available to competitors on a wholesale, unbundled basis subject to an appropriate pro-competitive regulatory framework. *See id.* at 29; *see also* XO Comments on Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials, at 14-17 (file Aug 7, 2013). The supracompetitive price increases the Tariff Filings would introduce for DS1 and DS3s are a first step by AT&T to leverage its market power in special access to increase the price it charges for its IP-based alternatives and prejudge issues central to the regulatory framework that applies to an all-IP PCN. Before letting the Tariff Filings take effect, the Commission should first complete its review, in existing proceedings, of issues critical to developing a framework that applies during and following the evolution to an all-IP PCN. *See XO Comments on AT&T Petition* at 20-21 (discussing the proceedings the Commission already has underway which consider the principal issues presented by the evolution to an all-IP PCN).

11 *See* n. 3 *supra.*

12 *See XO Special Access Comments* at 8-17; Reply Comments of XO Communications, LLC, WC Docket No. 05-25 (Special Access for Price Cap Local Exchange Carriers) and RM-10593 (AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services), at 9-14 (filed March 12, 2013) (specifically discussing AT&T commitment plans) ("XO Special Access Reply Comments"),

suppliers – if such suppliers even existed at all the locations where AT&T provides end user access – therefore hampering the development of a competitive marketplace, and place burdens on XO not faced when XO purchases special access from other providers.[13] AT&T seeks to exploit the anticompetitive effects of its commitment plans further by eliminating the Longer Term Plan Provisions. AT&T is confident it can raise the prices because, due to its market power, there is no reason to expect a competitive response if the Tariff Filings are permitted to take effect.

Given AT&T's market power, the substantial increase in price under AT&T's commitment plans presented by the Tariff Filings exacerbates the unlawfulness of AT&T's tariffed special access offerings. Accordingly, there is a high probability that the Tariff Filings would be found unlawful after investigation. The Tariff Filings should be suspended and investigated, especially given that the Commission is examining the lawfulness of the commitment plans, as well as the lawfulness of special access rates generally, in WC Docket No. 05-25.

III. THE SUSPENSION WOULD NOT SUBSTANTIALLY HARM OTHER INTERESTED PARTIES.

Only AT&T would be impacted if the Tariff Filings are suspended, because the primary, if not only effect, of the changes, as they apply to commitment plans for DS1 and DS3 special access services is to increase the rates AT&T charges for these services. The suspension of the

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13 *See XO Special Access Comments* at 11, 15-16; *Dobbins Declaration* ¶ 6. At the same time, the commitment plans adversely affect XO's ability as a provider to win both carrier and commercial contracts and to cover its risks adequately on occasions when it does secure those contracts. *See XO Special Access Comments*, Exhibit 1, Declaration of James A. Anderson, Director of Standard Pricing and Analysis at XO Communications, LLC, ¶¶ 14-16 ("Anderson Declaration"). The commitment plans also inhibit XO's ability to transition customers to the ILECs' Ethernet services, which contradicts any ameliorative effect that the availability of AT&T alternative IP-based services might provide, assuming the price and other features were both suitable and acceptable. *See XO Special Access Comments* at 13; *Dobbins Declaration* ¶ 13.

Tariff Filings will not impede AT&T's provision of services to any party or the transition that AT&T claims is underway in its network from a TDM-platform to an all-IP network because AT&T does not propose by the Tariff Filings to discontinue any DS1 or DS3 or other TDM offerings. Since the provisions in the Tariff Filings changes solely have the effect of increasing the rates for DS1 and DS3 offerings, all other parties – the customers of such services and, where the DS1 and DS3 circuits are inputs into other services, those customers' customers – will be adversely affected, warranting a suspension.

IV. IRREPARABLE INJURY WILL RESULT TO COMPETITION IF THE TARIFF FILINGS ARE NOT SUSPENDED.

If the Tariff Filings are not suspended, customers seeking to sign successor commitment plans with AT&T or to enter into new ones will face higher prices when their need for AT&T's DS1 and DS3 special access offerings exceeds three years, a need which for XO and for AT&T's competitors (and their customers), based on the *ex partes* that have been submitted regarding AT&T's anticipated Tariff Filings, has been typical.[14] . This can be expected because, even on AT&T's unilaterally-imposed schedule to move to an all-IP network, TDM-based DS1 and DS3 circuits will remain in place for more than 36 months. **[begin confidential]**

[end confidential][15] When those commitment plans expire at various times following

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14 *See, e.g., ex parte* Letter executed by Representatives of Ad Hoc Telecommunications Users Committee, Cbeyond, Inc., EarthLink, Inc., Level 3 Communications, LLC, MegaPath Corporation, Sprint Corporation, tw telecom inc., and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos 05-25 *et al.* (dated October 18, 2013); Letter of Eric N. Einhorn, Senior Vice President, Government Affairs, Windstream Corporation, to Marleen H. Dortch, Secretary, FCC, ex parte submission in WC Docket Nos 05-25, *et al.* (dated Nov. 22, 2013).

15 The *Quinn Blog* suggests that AT&T will negotiate individual plans outside of the tariff provisions for alternative services, but XO submits that there is no reason to expect,

December 10, 2013, XO will face steep price increases. XO has analyzed its own commitment plans and concluded that, if the current tariffed rates for AT&T's three-year plans were substituted for the rates in XO current arrangements, the increases would be **[begin confidential]**

[end confidential] for the DS1 circuits it takes, on average, and **[begin confidential]** **[end confidential]** for the DS3 circuits it currently takes, on average. The overall weighted increase in rates would be **[begin confidential]** **[end confidential]** for XO, which represents an annual increase in costs of **[begin confidential]** **[end confidential]** based on XO's current requirements (as of October 24, 2013). The impact for XO in some regions would be particularly acute. **[begin confidential]**

[end confidential][16]

The foregoing discussion does not describe an adverse impact that would be unique to XO. The total impact on competitors of AT&T likely would be increased many-fold. As customers' longer term plans expire, they will face sharp price increases under plans of 36 months or shorter, as they will be barred from obtaining more competitively significant pricing under the no-longer-effective Longer Term Plan Provisions. Customers' wholesale and retail margins will be reduced dramatically, and they may be unable to retain their own customers as a result of the cost increases that will force them to raise their own rates. No doubt, AT&T

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based on current market conditions and AT&T's current practices, that AT&T will provide competitors such as XO any better deal for DS1 and DS3 capacity than that offered under the longest term plan in AT&T's special access tariffs.

16 **[begin confidential]**

[end confidential]

anticipates as a result of the price increases due to the elimination of the Longer Term Pricing Provisions that many of their customers' customers will turn to AT&T for service. Additionally, as a consequence of losing their own customers, AT&T's carrier customers that are forced to take higher-priced 36 month plans will also experience increased difficulty satisfying the volume provisions under their commitment plans to maintain the pricing under these plans.[17] Because this would be the result of AT&T exercising its market power, competition itself would be harmed. That harm, as well as the harm to individual competitors is likely to be irreparable because even if the Commission does not suspend but later vacates the Tariff Filings, AT&T's current customers will not be able to recover those lost customers who have turned to and locked into contracts with AT&T, leaving competition impaired indefinitely.

V. THE SUSPENSION WOULD NOT OTHERWISE BE CONTRARY TO THE PUBLIC INTEREST.

Suspension of the AT&T Tariff Filings pending an investigation would be wholly consistent with the public interest with no countervailing public interest considerations. The Commission has an obligation to ensure that AT&T's rates are just and reasonable and that its interstate tariff provisions are otherwise lawful. AT&T cannot be allowed to reap supracompetitive profits from providing its special access services. As discussed in detail above, AT&T's market power allows it, even under the Longer Term Plan Provisions, to lock-up customers for its DS1 and DS3 services and charge unjust and unreasonable rates. The elimination of the Longer Term Plan Provisions would raise rates significantly and therefore exacerbate the situation and further ensure AT&T's ability to reap supracompetitive profits. As

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17 *See XO Special Access Comments* at 12-13; *Dobbins Declaration* ¶¶ 11-12 (describing the requirements under AT&T's commitment plans and the effect of failing to meet them). These sources discuss the loyalty-like lock-up provisions of the AT&T commitment plans applicable to XO at the time and the consequences of not maintaining the committed volume of circuits. As noted above, all of XO's commitment plans with AT&T are **[begin confidential]** **[end confidential]**.

a result of the proposed Tariff Filings going into effect, many end users and carriers would lose reasonably priced alternative services that are available today.

There are no countervailing public policy interests. As explained above, AT&T, because of its market power and the already onerous terms of the commitment plans, is able to propose the price increase without fear of meaningful competitive response. AT&T is the only party that stands to gain if the Tariff Filings are permitted to take effect. Further, despite AT&T's claims, the evolution to an all-IP CPN will not be advanced by the Tariff Filings taking effect since the Tariff Filings do not correspond to a "next step" in that evolution. Rather, the Tariff Filings serve only to demonstrate that AT&T has the market power by which it can unilaterally raise competitors' costs and, due to operation of the terms of the commitment plans, prevent those competitors from moving to alternative sources, including AT&T's IP-based services, assuming they were otherwise suitable, which they are not.[18]

VI. CONCLUSION

For the foregoing reasons, the Commission should suspend and investigate the above-captioned Tariff Filings of the Ameritech Operating Companies, BellSouth Telecommunication, LLC, Nevada Bell Telephone Company, Pacific Bell Telephone Company, [and] Southwestern Bell Telephone Company, and The Southern New England Telephone Company to the extent they seek to eliminate the Longer Term Plan Provisions for AT&T's tariffed DS1 and DS3 special access services. If the Tariff Filings were permitted to go into effect, they would

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18 *See Windstream Letter* at 2-4 (discussion the lack of substitutability of AT&T's Ethernet services for its DS1 and DS3 special access services). Moreover, to the extent that AT&T continues to rebuff efforts by competitive providers to interconnect with competitors for the exchange of managed-IP traffic, AT&T's claims that it is advancing the evolution to an all-IP PCN rings extremely hollow. *See XO Comments on AT&T Petition* at 23 (explaining that AT&T's lack of willingness to enter into a managed IP interconnection arrangement with XO contradicts AT&T's call for a deregulated transition to an all-IP network)

exacerbate the already unlawful nature of AT&T's term commitment plans and lead to irreparable harm to XO, other AT&T customers, and competition. No party would be harmed by the suspension and the public interest would be served without any countervailing considerations.

Respectfully submitted,

XO COMMUNICATIONS SERVICES, LLC

Thomas Cohen

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December 2, 2013

Please Send and Fax Replies to:

Winafred Brantl
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3050 K Street NW
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Telephone: 202-342-8819
Facsimile: 202-342-8451

VERIFICATION

I, Michael H. Parker, hereby attest that I am the Director – Cost of Sales Planning and Analysis / Network and Access Management for XO Communications, LLC ("XO"); that, as such, I am authorized to make this verification on behalf of XO; that I have reviewed the statements in the foregoing *Petition to Suspend and Investigate* ("Petition") of XO regarding the term commitment plans that XO currently has with AT&T and find that those statements are true and correct to the best of my knowledge, information and belief; and that I provided the data referenced in the *Petition* concerning the impact of the proposed tariff revisions on XO and, having reviewed the *Petition,* find that the statements in it regarding the impact of the proposed tariff revisions are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 2, 2013

Michael H. Parker
Director – Cost of Sales Planning and Analysis /
Network and Access Management
XO Communications, LLC
13865 Sunrise Valley Drive, Herndon, VA 20171

CERTIFICATE OF SERVICE

I, Winafred Brantl, do hereby certify that on this 2d day of December, 2013, I have caused the foregoing "Petition to Suspend and Investigate" of XO Communications, LLC to be filed with the Office of the Secretary of the FCC with a copy served via hand delivery, electronic mail and/or facsimile, to the parties listed below:

Julie Veach
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Julie.Veach@fcc.gov
(via email and hand delivery)

Kalpak Gude
Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
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(via facsimile)

Winafred Brantl

[1] Public (redacted) version. A copy of the complete (unredacted) Petition will be provided to AT&T pursuant to completion of arrangements between AT&T and XO for appropriate confidential treatment of the contents.

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REDACTED FOR PUBLIC INSPECTION

ACCEPTED/FILED
DEC - 2 2013
Federal Communications Commission
Office of the Secretary

December 2, 2013

BY HAND DELIVERY

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

Re: **XO Communications, LLC Petition to Suspend and Investigate (PUBLIC)**

Dear Ms. Dortch,

Enclosed on behalf of XO Communications, LLC ("XO"), please find an original and three copies of the public (redacted) version of XO's petition to suspend and investigate the following tariff filings:

Ameritech Operating Companies, Transmittal No. 1803 (Tariff F.C.C. No. 2)
BellSouth Telecommunication, LLC, Transmittal No. 71 (Tariff F.C.C. No. 1)
Nevada Bell Telephone Company, Transmittal No. 254 (Tariff F.C.C. No. 1)
Pacific Bell Telephone Company, Transmittal No. 498 (Tariff F.C.C. No. 1)
Southwestern Bell Telephone Company, Transmittal No. 3383 (FCC Tariff No. 73)
The Southern New England Telephone Company, Transmittal No. 1061 (Tariff F.C.C. No. 39)

A complete unredacted version of this filing is being submitted under separate cover with a request for confidential treatment pursuant to sections 0.457 and 0.459 of the Commission's rules.[1]

[1] 47 C.F.R. §§ 0.457, 0.459.

If there are any questions regarding this filing, please contact me at (202) 342-8819 or via email at wbrantl@kelleydrye.com. Thank you for your assistance with this matter.

Sincerely,

Winafred Brantl
Counsel for XO Communications, LLC

cc: Julie Veach, Chief, Wireline Competition Bureau
Kalpak Gude, Chief, Pricing Policy Division
Best Copy and Printing Inc.
Scott Murray, Area Manager – Rates/Tariffs / AT&T

REDACTED FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Ameritech Operating Companies Tariff F.C.C. No. 2	)	Transmittal No. 1803
	)	
BellSouth Telecommunication, LLC Tariff F.C.C. No. 1	)	Transmittal No. 71
	)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 254
	)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 498
	)	
Southwestern Bell Telephone Company FCC Tariff No. 73	)	Transmittal No. 3383
	)	
The Southern New England Telephone Company Tariff F.C.C. No. 39	)	Transmittal No. 1061
	)	

PETITION TO SUSPEND AND INVESTIGATE

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REDACTED FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
Ameritech Operating Companies Tariff F.C.C. No. 2	)	Transmittal No. 1803
	)	
BellSouth Telecommunication, LLC Tariff F.C.C. No. 1	)	Transmittal No. 71
	)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 254
	)	
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 498
	)	
Southwestern Bell Telephone Company FCC Tariff No. 73	)	Transmittal No. 3383
	)	
The Southern New England Telephone Company Tariff F.C.C. No. 39	)	Transmittal No. 1061
	)	

PETITION TO SUSPEND AND INVESTIGATE

Pursuant to Section 204(a)(3) of the Communications Act of 1934, as amended (the "Act") and Section 1.773 of the Rules of the Federal Communications Commission ("Commission"), XO Communications Services, LLC ("XO") respectfully requests that the Commission suspend and investigate in relevant part the above-captioned tariff filings of the Ameritech Operating Companies, BellSouth Telecommunication, LLC, Nevada Bell Telephone Company, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company, and The Southern New England Telephone Company (collectively, "AT&T") which were submitted on November 25, 2013 (collectively, the "Tariff Filings") to take effect on fifteen days' notice,

i.e., on December 10, 2013.[1] In particular, the Commission should suspend and investigate the proposed changes to the provisions in the tariffs by which AT&T currently offers customers the ability to obtain new or successor term plans longer than 36 months in duration for tariffed TDM services, including DS1 and DS3 special access circuits (such tariff provisions referred to herein as the "Longer Term Plans Provisions"). Suspension of the Tariff Filings would be in the public interest and otherwise meet the Commission's prerequisites set forth in Section 1.773(1)(a)(iv).

I. INTRODUCTION AND SUMMARY

XO is one of the largest facilities-based competitive providers of telecommunications and information services in the country, focusing on the business and enterprise customer segments. XO is a leading innovator in the provision of IP-based telecommunications and other services as well as copper-based broadband services including high speed Ethernet over Copper services.[2] XO, like other competitors, relies on AT&T's DS1 and DS3 services to complement its own facilities and provide wholesale and retail services within AT&T's significant operating territory. Under the Longer Term Plans Provisions, XO is a party to AT&T commitment plans of **[begin confidential]** **[end confidential]** years in the former Ameritech,

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1 XO currently does not have commitment plans with AT&T in Nevada or Connecticut. Nonetheless, the increases in rates in the commitment plans in those states as a result of the proposed tariff changes by the Nevada Bell Telephone Company and The Southern New England Telephone Company are comparable to those that will occur in AT&T's other operating territories as a result of the proposed tariff changes captioned above. Because the impact will be comparable for competitors, XO seeks suspension of and investigation into Nevada Bell Telephone Company Tariff F.C.C. No. 1, Transmittal No. 254, and The Southern New England Telephone Company Tariff F.C.C. No. 39 , Transmittal No. 1061

2 *See discussion in* Comments of XO Communications Services, LLC filed in Docket No. 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) at 2-3 (filed Jan. 28, 2013) ("XO Comments on AT&T Petition") (discussing XO's network and market innovations contributing to the evolution toward an all-IP public communications network).

Southwestern Bell, BellSouth, and PacBell regions. These plans offer the lowest possible, although still unreasonably high, rates for XO to meet its needs for DS1 and DS3 circuits.

As explained in other proceedings before the Commission earlier this year, XO's only source for DS1 and DS3 capacity reaching a substantial portion of end user locations is to obtain special access from the price cap incumbent local exchange carriers ("ILECs"), such as AT&T.[3] AT&T is classified as dominant in the provision of DS1 and DS3 special access services in its operating territories where it is an incumbent LEC (in both Phase II and non-Phase II areas). To obtain DS1 and DS3 capacity circuits at prices that enable some measure of meaningful competition with AT&T, XO has been required to enter into long term plans of more than 36 months with lock-up provisions that require minimum volume thresholds and impose other onerous provisions that keep XO "loyal" to AT&T.[4]

Under the Tariff Filings, AT&T proposes to eliminate the Longer Term Plans Provisions and no longer offer TDM-based DS1 and DS3 circuits under commitment plans that exceed 36

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3 ILEC facilities are typically the only practical means by which competitors such as XO can access end users at most building locations, because no other local exchange carrier or competitive access provider offers physical access to the location. *See, e.g., XO Comments on AT&T Petition* at 4-6, 23-30 (noting the clear market advantages that ILECs have today over competitors due to unparalleled facilities-based reach to end user locations, particularly in business and enterprise settings, which will not automatically dissipate as the public switched network evolves toward an Internet protocol public communications network); Reply Comments of XO Communications Services, LLC filed in Docket No. 12-353 (AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition) at 3-4 & n. 7 (filed Feb. 25, 2013); Comments of XO Communications, LLC, WC Docket No. 05-25 (Special Access for Price Cap Local Exchange Carriers) and RM-10593 (AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services) (filed Feb. 11, 2013) ("XO Special Access Comments"), Exhibit 2, Declaration of John T. Dobbins, XO Vice President of Network and Access Optimization, ¶ 4 (ILEC channel terminations that provide business and enterprise customers with network access and ILEC transport facilities are far more extensively deployed in all markets in which XO operates than those of any of the ILECs' rivals) ("Dobbins Declaration").

4 *See generally XO Special Access Comments.*

months.[5] This would eliminate current options for TDM-based contracts for DS1 and DS3 lines longer than three years and lasting up to seven years. Those customers with existing arrangements for DS1 and DS3 circuits with terms longer than 36 months (from their effective date) will be allowed to keep them but will be unable to enter into new agreements with terms exceeding three years. By deleting the Longer Term Plans Provisions, AT&T would force customers of considerable volumes of its DS1 and DS3 services to enter into more expensive shorter term plans of no more than 36 months when their current plans expire.

Simply stated, AT&T is effectively raising its rates for DS1 and DS3 services because of its continued market power regarding DS1 and DS3 capacity circuits. Indeed, the loss of the discounts will result in substantial price increases for special access customers when their contacts expire -- in the range of 14-23%. XO estimates that AT&T's rate hike would increase its current spend by over **[begin confidential]**

[end confidential] were XO to pay the rates under the three-year plans in effect today. The cumulative cost to competitive carriers as a whole is likely to be many times higher. That AT&T can unilaterally impose such price increases is a sign of its continuing market power over a broad range of

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5 A note, associated with each reference to term plans greater than 36 months, has been added to each of the revised pages in the Tariff Filings to the effect of "Effective December 10, 2013, new term plans greater than 36 months will no longer be available. There will be no change with respect to existing term plans." (On a number of the tariff pages, this statement has been tailored to reference the specific service(s) or term plan regulations addressed on the page.) *See, e.g., generally* proposed revised pages in Ameritech Operating Companies, Transmittal No. 1803 (Tariff F.C.C. No. 2); BellSouth Telecommunication, LLC, Transmittal No. 71 (Tariff F.C.C. No. 1); Nevada Bell Telephone Company, Transmittal No. 254 (Tariff F.C.C. No. 1); Pacific Bell Telephone Company, Transmittal No. 498 (Tariff F.C.C. No. 1); Southwestern Bell Telephone Company, Transmittal No. 3383 (FCC Tariff No. 73); and The Southern New England Telephone Company, Transmittal No. 1061 (Tariff F.C.C. No. 39).

special access services. This market power is well entrenched because of its control of physical facilities to most business and enterprise locations, as XO explained above.[6]

These proposed cost increases will reverberate to the customers XO and other competitors serve, affecting a wide range of services and activities provided by businesses, government, and other institutions. Special access is a critical component of the communications services that XO offers business and enterprise as well as wholesale customers, from data services, private networks, Internet access, and basic capacity.

As detailed in this Petition, the criteria set forth in the Commission's Rules under Section 1.773(a)(1)(iv) for suspension and investigation of a tariff filing by a price cap carrier are met in this case, warranting the Commission to take such action.[7] The proposed tariff revisions are demonstrably unlawful. AT&T, by virtue of its market power in the provision of DS1 and DS3 special access, seeks to substantially increase the prices for these circuits and would thereby exacerbate the anticompetitive effects of its already unjust and unreasonable term commitment plans. Suspension of the proposed revisions will not adversely affect any interested party except AT&T, who seeks to exploit its market power to extract unwarranted additional revenues, comfortable in its expectation that there will be no meaningful competitive response if the Tariff Filings take effect. Failure to suspend these revisions will inflict irreparable harm upon telecommunications competition. Finally, suspension would advance the public interest by promoting competition in telecommunications markets.

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6 *See* n. 3, *supra.*

7 *See* 47 C.F.R. § 1.773(a)(1)(iv). The Tariff Filings do not specifically state what subsection of the Commission's rules under which AT&T seeks to eliminate the Long Term Plan Revisions. XO believes that the revisions were filed under Section 61.49(b).

II. THERE IS A HIGH PROBABILITY THAT THE TARIFF WOULD BE FOUND UNLAWFUL AFTER INVESTIGATION.

The Commission is already engaged in an investigation into the market failure within the special access market.[8] Indeed, in that proceeding, the Commission suspended its rules governing grants of pricing flexibility pending its investigation of market power in the special access reform docket.[9] Suspension of and an investigation into the Tariff Filings and their anticompetitive effect is warranted in the same spirit because AT&T is able to propose to eliminate the Longer Term Plan Provisions solely because of its market power.[10] AT&T,

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8 *See, e.g., Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-25, 27 FCC Rcd 16318, ¶ 67 (2012).

9 *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, WC Docket No. 05-25, 27 FCC Rcd 10557 (2012).

10 AT&T tries to confer some measure of policy-based justification on the Tariff Filings by claiming that they are required because of the need to transition from its TDM-based network to an all-IP based network. *See, e.g.,* AT&T Accessible Letter, ACCESS13-073, AT&T 13-STATE - Announces Revised Date for the Elimination of Term Plans Exceeding 3 Years for Multiple Digital Services, dated October 25, 2013 ("These tariff modifications are an initial step toward implementing AT&T's plan to upgrade its network to meet growing demand for next generation broadband services, and to migrate its legacy TDM network to IP-based network facilities and services. As AT&T 13-State has previously announced, it intends to complete that transition by 2020."); *see also* AT&T Public Policy Blog, *The End of the Beginning of the IP Transition* found at http://webcache.googleusercontent.com/search?q=cache:http://www.attpublicpolicy.com/uncategorized/the-end-of-the-beginning-of-the-ip-transition/ (posted Nov. 25, 2013) ("Quinn Blog") ("The first step of that plan [to transform the AT&T network to one that is all Internet Protocol] is to align the commitments we make to our customers with the goal of transitioning to an all-IP network. That is why today we have taken a step to make sure that multi-year commitments we enter into today for aging TDM-based services reflect the on-going transition to IP and do not extend beyond the expected completion of our transition in 2020.") These purported public policy justifications ring hollow because AT&T is not discontinuing any DSx services, but merely eliminating commitment plans with competitively significant pricing. The Tariff Filings, ultimately, therefore, have nothing to do with the transition to an all-IP network and everything to do with the assertion of market power and an effort to reap (additional) supracompetitive profits. Moreover, as XO has argued in response to the AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, "[t]he change in format technology and the new services that those technologies permit will not, in and of themselves, undermine market advantages that providers have at present, particularly as those

through elimination of the Longer Term Plan Provisions, can unilaterally impose a substantial price increase on its customer base for DS1 and DS3 special access services without fear of meaningful competitive response, thereby demonstrating its continuing market power over DS1 and DS3 special access services.[11]

As XO demonstrated earlier this year in WC Docket No. 05-25, the terms and conditions of the special access commitment plans of AT&T (and other price cap LECs) are unjust and unreasonable, in violation of Section 201(b) of the Communications Act of 1934, as amended, even without reference to price.[12] The commitment plans with AT&T tie up a large part of XO's (and other carriers') demands for special access DS1 and DS3 circuits, frustrating the development of competitive market conditions. As XO explained, these commitment plans severely restrict XO's ability to purchase special access circuits or the equivalent from other

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advantages principally reside in the facilities customers use to access the PCN." *XO Comments on AT&T Petition* at 5. Because AT&T (and other ILECs) will likely continue to have market power over access to end user customers, especially in the business and enterprise markets, during and after the move to an all-IP public communications network ("PCN"), AT&T's purported basis for Tariff Filings serves as a reminder that the Commission must ensure that AT&T and other ILECs continue to be required to make their customer access connection facilities available to competitors on a wholesale, unbundled basis subject to an appropriate pro-competitive regulatory framework. *See id.* at 29; *see also* XO Comments on Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials, at 14-17 (file Aug 7, 2013). The supracompetitive price increases the Tariff Filings would introduce for DS1 and DS3s are a first step by AT&T to leverage its market power in special access to increase the price it charges for its IP-based alternatives and prejudge issues central to the regulatory framework that applies to an all-IP PCN. Before letting the Tariff Filings take effect, the Commission should first complete its review, in existing proceedings, of issues critical to developing a framework that applies during and following the evolution to an all-IP PCN. *See XO Comments on AT&T Petition* at 20-21 (discussing the proceedings the Commission already has underway which consider the principal issues presented by the evolution to an all-IP PCN).

11 *See* n. 3 *supra.*

12 *See XO Special Access Comments* at 8-17; Reply Comments of XO Communications, LLC, WC Docket No. 05-25 (Special Access for Price Cap Local Exchange Carriers) and RM-10593 (AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services), at 9-14 (filed March 12, 2013) (specifically discussing AT&T commitment plans) ("XO Special Access Reply Comments"),

suppliers – if such suppliers even existed at all the locations where AT&T provides end user access – therefore hampering the development of a competitive marketplace, and place burdens on XO not faced when XO purchases special access from other providers.[13] AT&T seeks to exploit the anticompetitive effects of its commitment plans further by eliminating the Longer Term Plan Provisions. AT&T is confident it can raise the prices because, due to its market power, there is no reason to expect a competitive response if the Tariff Filings are permitted to take effect.

Given AT&T's market power, the substantial increase in price under AT&T's commitment plans presented by the Tariff Filings exacerbates the unlawfulness of AT&T's tariffed special access offerings. Accordingly, there is a high probability that the Tariff Filings would be found unlawful after investigation. The Tariff Filings should be suspended and investigated, especially given that the Commission is examining the lawfulness of the commitment plans, as well as the lawfulness of special access rates generally, in WC Docket No. 05-25.

III. THE SUSPENSION WOULD NOT SUBSTANTIALLY HARM OTHER INTERESTED PARTIES.

Only AT&T would be impacted if the Tariff Filings are suspended, because the primary, if not only effect, of the changes, as they apply to commitment plans for DS1 and DS3 special access services is to increase the rates AT&T charges for these services. The suspension of the

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13 *See XO Special Access Comments* at 11, 15-16; *Dobbins Declaration* ¶ 6. At the same time, the commitment plans adversely affect XO's ability as a provider to win both carrier and commercial contracts and to cover its risks adequately on occasions when it does secure those contracts. *See XO Special Access Comments*, Exhibit 1, Declaration of James A. Anderson, Director of Standard Pricing and Analysis at XO Communications, LLC, ¶¶ 14-16 ("Anderson Declaration"). The commitment plans also inhibit XO's ability to transition customers to the ILECs' Ethernet services, which contradicts any ameliorative effect that the availability of AT&T alternative IP-based services might provide, assuming the price and other features were both suitable and acceptable. *See XO Special Access Comments* at 13; *Dobbins Declaration* ¶ 13.

Tariff Filings will not impede AT&T's provision of services to any party or the transition that AT&T claims is underway in its network from a TDM-platform to an all-IP network because AT&T does not propose by the Tariff Filings to discontinue any DS1 or DS3 or other TDM offerings. Since the provisions in the Tariff Filings changes solely have the effect of increasing the rates for DS1 and DS3 offerings, all other parties – the customers of such services and, where the DS1 and DS3 circuits are inputs into other services, those customers' customers – will be adversely affected, warranting a suspension.

IV. IRREPARABLE INJURY WILL RESULT TO COMPETITION IF THE TARIFF FILINGS ARE NOT SUSPENDED.

If the Tariff Filings are not suspended, customers seeking to sign successor commitment plans with AT&T or to enter into new ones will face higher prices when their need for AT&T's DS1 and DS3 special access offerings exceeds three years, a need which for XO and for AT&T's competitors (and their customers), based on the *ex partes* that have been submitted regarding AT&T's anticipated Tariff Filings, has been typical.[14] . This can be expected because, even on AT&T's unilaterally-imposed schedule to move to an all-IP network, TDM-based DS1 and DS3 circuits will remain in place for more than 36 months. **[begin confidential]**

[end confidential][15] When those commitment plans expire at various times following

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14 *See, e.g., ex parte* Letter executed by Representatives of Ad Hoc Telecommunications Users Committee, Cbeyond, Inc., EarthLink, Inc., Level 3 Communications, LLC, MegaPath Corporation, Sprint Corporation, tw telecom inc., and XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos 05-25 *et al.* (dated October 18, 2013); Letter of Eric N. Einhorn, Senior Vice President, Government Affairs, Windstream Corporation, to Marleen H. Dortch, Secretary, FCC, ex parte submission in WC Docket Nos 05-25, *et al.* (dated Nov. 22, 2013).

15 The *Quinn Blog* suggests that AT&T will negotiate individual plans outside of the tariff provisions for alternative services, but XO submits that there is no reason to expect,

December 10, 2013, XO will face steep price increases. XO has analyzed its own commitment plans and concluded that, if the current tariffed rates for AT&T's three-year plans were substituted for the rates in XO current arrangements, the increases would be **[begin confidential]**

[end confidential] for the DS1 circuits it takes, on average, and **[begin confidential]** **[end confidential]** for the DS3 circuits it currently takes, on average. The overall weighted increase in rates would be **[begin confidential]** **[end confidential]** for XO, which represents an annual increase in costs of **[begin confidential]** **[end confidential]** based on XO's current requirements (as of October 24, 2013). The impact for XO in some regions would be particularly acute. **[begin confidential]**

[end confidential][16]

The foregoing discussion does not describe an adverse impact that would be unique to XO. The total impact on competitors of AT&T likely would be increased many-fold. As customers' longer term plans expire, they will face sharp price increases under plans of 36 months or shorter, as they will be barred from obtaining more competitively significant pricing under the no-longer-effective Longer Term Plan Provisions. Customers' wholesale and retail margins will be reduced dramatically, and they may be unable to retain their own customers as a result of the cost increases that will force them to raise their own rates. No doubt, AT&T

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based on current market conditions and AT&T's current practices, that AT&T will provide competitors such as XO any better deal for DS1 and DS3 capacity than that offered under the longest term plan in AT&T's special access tariffs.

16 **[begin confidential]**

[end confidential]

anticipates as a result of the price increases due to the elimination of the Longer Term Pricing Provisions that many of their customers' customers will turn to AT&T for service. Additionally, as a consequence of losing their own customers, AT&T's carrier customers that are forced to take higher-priced 36 month plans will also experience increased difficulty satisfying the volume provisions under their commitment plans to maintain the pricing under these plans.[17] Because this would be the result of AT&T exercising its market power, competition itself would be harmed. That harm, as well as the harm to individual competitors is likely to be irreparable because even if the Commission does not suspend but later vacates the Tariff Filings, AT&T's current customers will not be able to recover those lost customers who have turned to and locked into contracts with AT&T, leaving competition impaired indefinitely.

V. THE SUSPENSION WOULD NOT OTHERWISE BE CONTRARY TO THE PUBLIC INTEREST.

Suspension of the AT&T Tariff Filings pending an investigation would be wholly consistent with the public interest with no countervailing public interest considerations. The Commission has an obligation to ensure that AT&T's rates are just and reasonable and that its interstate tariff provisions are otherwise lawful. AT&T cannot be allowed to reap supracompetitive profits from providing its special access services. As discussed in detail above, AT&T's market power allows it, even under the Longer Term Plan Provisions, to lock-up customers for its DS1 and DS3 services and charge unjust and unreasonable rates. The elimination of the Longer Term Plan Provisions would raise rates significantly and therefore exacerbate the situation and further ensure AT&T's ability to reap supracompetitive profits. As

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17 *See XO Special Access Comments* at 12-13; *Dobbins Declaration* ¶¶ 11-12 (describing the requirements under AT&T's commitment plans and the effect of failing to meet them). These sources discuss the loyalty-like lock-up provisions of the AT&T commitment plans applicable to XO at the time and the consequences of not maintaining the committed volume of circuits. As noted above, all of XO's commitment plans with AT&T are **[begin confidential]** **[end confidential]**.

a result of the proposed Tariff Filings going into effect, many end users and carriers would lose reasonably priced alternative services that are available today.

There are no countervailing public policy interests. As explained above, AT&T, because of its market power and the already onerous terms of the commitment plans, is able to propose the price increase without fear of meaningful competitive response. AT&T is the only party that stands to gain if the Tariff Filings are permitted to take effect. Further, despite AT&T's claims, the evolution to an all-IP CPN will not be advanced by the Tariff Filings taking effect since the Tariff Filings do not correspond to a "next step" in that evolution. Rather, the Tariff Filings serve only to demonstrate that AT&T has the market power by which it can unilaterally raise competitors' costs and, due to operation of the terms of the commitment plans, prevent those competitors from moving to alternative sources, including AT&T's IP-based services, assuming they were otherwise suitable, which they are not.[18]

VI. CONCLUSION

For the foregoing reasons, the Commission should suspend and investigate the above-captioned Tariff Filings of the Ameritech Operating Companies, BellSouth Telecommunication, LLC, Nevada Bell Telephone Company, Pacific Bell Telephone Company, [and] Southwestern Bell Telephone Company, and The Southern New England Telephone Company to the extent they seek to eliminate the Longer Term Plan Provisions for AT&T's tariffed DS1 and DS3 special access services. If the Tariff Filings were permitted to go into effect, they would

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18 *See Windstream Letter* at 2-4 (discussion the lack of substitutability of AT&T's Ethernet services for its DS1 and DS3 special access services). Moreover, to the extent that AT&T continues to rebuff efforts by competitive providers to interconnect with competitors for the exchange of managed-IP traffic, AT&T's claims that it is advancing the evolution to an all-IP PCN rings extremely hollow. *See XO Comments on AT&T Petition* at 23 (explaining that AT&T's lack of willingness to enter into a managed IP interconnection arrangement with XO contradicts AT&T's call for a deregulated transition to an all-IP network)

exacerbate the already unlawful nature of AT&T's term commitment plans and lead to irreparable harm to XO, other AT&T customers, and competition. No party would be harmed by the suspension and the public interest would be served without any countervailing considerations.

Respectfully submitted,

XO COMMUNICATIONS SERVICES, LLC

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December 2, 2013

Please Send and Fax Replies to:

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VERIFICATION

I, Michael H. Parker, hereby attest that I am the Director – Cost of Sales Planning and Analysis / Network and Access Management for XO Communications, LLC ("XO"); that, as such, I am authorized to make this verification on behalf of XO; that I have reviewed the statements in the foregoing *Petition to Suspend and Investigate* ("Petition") of XO regarding the term commitment plans that XO currently has with AT&T and find that those statements are true and correct to the best of my knowledge, information and belief; and that I provided the data referenced in the *Petition* concerning the impact of the proposed tariff revisions on XO and, having reviewed the *Petition,* find that the statements in it regarding the impact of the proposed tariff revisions are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 2, 2013

Michael H. Parker
Director – Cost of Sales Planning and Analysis /
Network and Access Management
XO Communications, LLC
13865 Sunrise Valley Drive, Herndon, VA 20171

CERTIFICATE OF SERVICE

I, Winafred Brantl, do hereby certify that on this 2d day of December, 2013, I have caused the foregoing "Petition to Suspend and Investigate" of XO Communications, LLC to be filed with the Office of the Secretary of the FCC with a copy served via hand delivery, electronic mail and/or facsimile, to the parties listed below:

Julie Veach
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Julie.Veach@fcc.gov
(via email and hand delivery)

Kalpak Gude
Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Kalpak.Gude@fcc.gov
(via email and hand delivery)

Best Copy and Printing Inc. (Public)
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com
(via email and hand delivery)

Scott Murray (AT&T)[1]
Area Manager – Rates/Tariffs
311 S. Akard St., Room 1940.04
Dallas, TX 75202
Facsimile No. (214) 464-2006
(via facsimile)

Winafred Brantl

[1] Public (redacted) version. A copy of the complete (unredacted) Petition will be provided to AT&T pursuant to completion of arrangements between AT&T and XO for appropriate confidential treatment of the contents.