



Opening Remarks of Carl J. Grivner Chief Executive Officer XO Communications

Subcommittee on Telecommunications and the Internet
July 22, 2008



Introduction

- Chairmen Markey and Dingell, Ranking Members Stearns and Barton, and Members of the Subcommittee; Thank you for the opportunity to appear
- Hearing on Issues in Telecommunications Competition and HR 3914, the “Protecting Consumers through Proper Forbearance Procedures Act.”
- Thank you Chairmen Dingell and Markey for introducing HR 3914 – addressing the problem of deemed granted forbearance petitions

Forbearance is part of the broader issue of competition and broadband access



Broadband Access and the Last Mile

- Broadband access is the most important challenge in telecom
- The U.S. lags many nations – and is falling further behind
- Other countries use the full power of legacy networks to make broadband widely available.
- But in the U.S., the ILECs constrain broadband by fighting competitive access to the legacy network.
- As we all know, competition is the key driver of broadband

XO is one of the key competitors helping to accelerate broadband availability in the U.S.



XO Profile

- Established in 1996 in conjunction with the Telecom Act
- Invested \$7 billion in advanced networks – 400 million since 2006
- Strong presence in 75 major U.S. metro areas in 26 states
- Industry leading voice, data, and next generation IP services to small, medium, and large business customers
- Multi-terabit capable IP and transport networks to meet demand.
- But one significant barrier to entry remains: the last mile

The last mile is critical to competition



The Last Mile

- With TA96, Congress mandated access to the last mile *because*:
 - Ratepayer financed legacy ILEC network already in the ground
- Still today: In over 90% of the business market, the ILEC loop facilities are the only route into the building
- XO pays ILECs hundreds of \$millions each year for last mile access
- We prefer not to rely the ILECs to fill out our networks, but it would cost over \$50 billion to build to the 2.3 million buildings within reach of our network.*

***The FCC agrees that it is not cost-effective
to duplicate existing facilities***



Copper is a Ubiquitous, Versatile Broadband Resource

- Copper Networks are Ubiquitous
 - Copper serves most businesses and 100 million households
 - 75% of all telephone access lines are “home run” copper
- Copper Facilities are a Broadband Resource
 - Copper has evolved far beyond analog voice & dial-up
 - Copper is now a leading broadband infrastructure
 - XO offers Ethernet over copper at speeds of 10 Mbps
 - Soon, 100 Mbps will be possible

Yet the Bells are Leveraging their “Copper Cartel” to Restrict Access to the Last Mile



The Copper Cartel

- The ILECs control access to nearly all “last mile” facilities
 - ILECs want to control supply through Copper Retirement
 - ILECs want to control access and pricing through the use of Forbearance
 - ILECs want to squeeze out the broadband competition

Let's start with what's wrong with copper retirement



Copper Retirement

- As the ILECS deploy fiber, they disable the copper loop
- This harms the public interest at least three ways:
 - Destroys an alternative broadband resource
 - Threatens Public safety: copper supplies its own power
 - Poses a danger to National security: redundancy in emergencies
- The FCC should adopt a formal process for approval of copper retirement
 - ILECs must prove that copper retirement is in the public interest
- Current rules give the ILECs free rein
 - ILECs simply file notice, then retire copper
 - Consumers and competitors have no recourse

If copper destruction is dire, forbearance is even more horrific



Forbearance – Hijacking a Good Intention

- TA96 included forbearance as a tool to eliminate obsolete policies.
- It worked until the ILECs hijacked forbearance to raise rates on the last mile and take out their competition
- The most dangerous aspect is “deemed granted”
 - Decision through Inaction
 - Lack of appealable order
- This Committee has taken the right steps with H.R. 3914, which would eliminate “deemed granted.”

But even with this legislation, there are still many problems with forbearance



A Process with No Rules

- Private parties can dictate the FCC's agenda and resources.
- Frivolous petitions are filed as "place holders" to start the "deemed granted" clock. Supporting data is incomplete or filed months or even a year later. "Lets See What Sticks!"
- Petitions are filed at will. A rejected petition can be refiled immediately with only minor modifications. "That didn't work, lets try this!"
- Every frivolous ILEC petition places a huge burden on the resources of the FCC and industry. "Death by a thousand petitions!"
- Fighting each and every petition drains valuable capital that could be better spent on broadband investment.

The lack of rules encourages frivolous forbearance petitions



Procedural Rules Are Needed Now

- Last Fall, XO and other competitors petitioned the FCC to create long-needed rules governing forbearance. The FCC finally issued a notice of proposed rulemaking. [date?]
- I want to thank Congressman Stearns, Deal, Pickering and other Republican members for stressing the importance of having a deregulatory process based on rules and procedure.
- At a minimum the rules should:
 - Require a forbearance petition to be “complete as filed”
 - Require the FCC to seek public comment on petitions
 - Set guidelines for the treatment of confidential data
 - Forbid late-filed data by petitioners

Adoption of rules will help channel dollars to broadband investment instead of time-wasting forbearance petitions and litigation costs.



Conclusion

- As Congress considers policies to encourage broadband access and next generation deployment there are two fundamental issues that must be addressed:
- **Protect legacy copper infrastructure as a valuable broadband resource**
 - Encourage the FCC to amend its rules to preserve access to copper facilities by subjecting all retirement proposals to a formal review process
- **Reform Section 10 of the 1996 Telecommunications Act**
 - Pass HR 3914 and encourage the FCC to implement necessary procedures to ensure the forbearance process is properly used



Conclusion

- By addressing these fundamental issues, Congress and the FCC can ensure certainty and stability in the telecommunications market
- Consumers and businesses will continue to benefit from competition, innovation and choice in broadband services.
- Thank you for the opportunity to appear before the Subcommittee today.