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August 8, 2008

*The Honorable John D. Dingell, Chairman*  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

*The Honorable Joe Barton, Ranking Member*  
Committee on Energy and Commerce  
2322 Rayburn House Office Building  
Washington, DC 20515

*The Honorable Edward J. Markey, Chairman*  
Subcommittee on Telecommunications and the Internet  
316 Ford House Office Building  
Washington, DC 20515

*The Honorable Cliff Stearns, Ranking Member*  
Subcommittee on Telecommunications and the Internet  
2322 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Dingell, Ranking Member Barton, Chairman Markey and Ranking Member Stearns:

This letter is in response to your request for information dated August 1, 2008, inquiring into whether XO Communications (XO) engages in any targeted Internet advertising aimed at consumers based on the use of XO's communications and Internet services.

By way of background, XO Communications is a leading competitive provider of advanced communications services and solutions for businesses, enterprises, government and service providers nationwide. Its customer base is primarily comprised of small to large enterprises, cable companies, carriers, content providers, and mobile network operators. XO offers its business customers a broad range of voice, data and IP, and Internet services in more than 75 metropolitan markets across the United States, and Web Hosting services nationally.

**1. Has your company at any time tailored, or facilitated the tailoring of, Internet advertising based on consumers' Internet search, surfing, or other use?**

For purposes of making a clear and complete response, XO respectfully interprets the Committee's use of the terms "consumer" and "tailoring" in its request as follows: Notwithstanding XO's primary business-to-business model, we interpret the use of "consumer" to apply to all users of the Internet generally, without reference to their status or location as corporate, family or individual users. XO understands that the Committee's inquiry into "tailoring" is intended to focus on the question of whether XO is using the information related to a consumer's Internet activities (i.e., searching, surfing or other use) to correlate consumer activity on the Internet to advertising of goods and services that can be aimed at that consumer.

XO does not engage the practice of targeting on-line advertising to consumer/end users of XO services based on their activity on the Internet.<sup>1</sup> In the interest of full disclosure, however, XO does engage in two common practices that rely on information provided by web site visitors and Internet users. First, XO, as a web publisher, employs common tracking methods (e.g., cookies, pixel tracking) to monitor the interests and movements of visitors to its corporate website(s). XO uses that information to tailor its website generally and may, in some limited cases, customize a visitor's experience of the website based on tracking done during that visitor's session. This information is not retained or used for any other purpose, nor is it compiled with other data or otherwise correlated to any consumer either at the time of their visit or later. Second, XO employs the services of a third party as an add-on to XO's caching DNS servers, which can supplant and/or offer corrections for misspelled or mistyped URL/address entries in the address field of their browser ("DNS redirect"). This particular service feature is limited to users of XO's caching DNS servers and, thus, affects no other Internet traffic or use.

**2. Please describe the nature and extent of any such practice and if such practice had any limitations with respect to health, financial, or other sensitive personal data, and how such limitations were developed and implemented.**

Pursuant to its response to Question 1, above, XO does not engage in such practices.

**3. In what communities, if any, has your company engaged in such practice, how were those communities chosen, and during what time periods was such practice used in each? If such practice was effectively implemented nationwide, please say so.**

Pursuant to its response to Question 1, above, XO does not engage in such practices. XO does provide telecommunications services in over 75 markets nationally and offers web-hosting and related services nationwide.

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<sup>1</sup> More specifically regarding XO's practices, XO: does not read consumer email for anything more than spam filtering signatures in aggregate; does not listen in on port 80 traffic; and does not perform deep-packet inspection on customer traffic not destined for an XO server or service

**4. How many consumers have been subject to such practice in each affected community, or nationwide?**

Pursuant to its response to Question 1, above, XO does not engage in such practices.<sup>2</sup>

**5. Has your company conducted a legal analysis of the applicability of consumer privacy laws to such practice? If so, please explain what that analysis concluded.**

Pursuant to its response to Question 1, above, XO does not engage in such practices.<sup>3</sup>

**6. How did your company notify consumers of such practice? Please provide a copy of the notification. If your company did not specifically or directly notify affected consumers, please explain why this was not done.**

Pursuant to its response to Question 1, above, XO does not engage in such practices. Nevertheless, XO has had a long-standing Privacy Policy that appears on the XO website and which provides XO retail customers and visitors to XO websites in the U.S. with information about how XO collects and uses information gathered about website visitors and customers.

**7. Please explain whether your company asked consumers to "opt in" to the use of such practice or allowed consumers who objected to "opt out." If your company allowed consumers who objected to opt out, how did it notify consumers of their opportunity to opt out? If your company did not specifically or directly notify affected consumers of the opportunity to opt out, please explain why this was not done.**

Pursuant to its response to Question 1, above, XO does not engage in such practices and has, therefore, not confronted this particular "opt in/opt out" paradigm.

**8. How many consumers opted out of being subject to such practice?**

N/A (See response to Question 7, above)

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<sup>2</sup> The DNS redirect feature for misspelled/mistyped URLs is employed on all Internet access services used by XO customers who use XO DNS caching servers, the precise number of which cannot be accurately determined (e.g. as it may depend on the number of employee users of a business customer's service).

<sup>3</sup> With respect to its own web-site monitoring and the DNS redirect feature for misspelled/mistyped URLs, XO legal staff has conducted a legal analysis regarding the applicability of consumer privacy laws and regulations. It is, and has always been, XO's belief that its conduct is lawful and permissible. Also, please note that we are unable to disclose information that may be protected by the attorney-client privilege.

**9. Did your company conduct a legal analysis of the adequacy of any opt-out notice and mechanism employed to allow consumers to effectuate this choice? If so, please explain what that analysis concluded.**

N/A (See response to Question 7, above)

**10. What is the status of consumer data collected as a result of such practice? Has it been destroyed or is it routinely destroyed?**

Pursuant to its response to Question 1, above, XO does not engage in such practices.

**11. Is it possible for your company to correlate data regarding consumer Internet use across a variety of services or applications you offer to tailor Internet advertising? Do you do so? If not, please indicate what steps you take to make sure such correlation does not happen. If you do engage in such correlation, please provide answers to all the preceding questions with reference to such correlation. If your previous answers already do so, it is sufficient to simply cross-reference those answers.**

Although the technology exists for XO -- as it would be for any Internet Service Provider -- to collect and correlate data regarding consumer Internet use, XO does not collect customer IP traffic data for advertising or marketing purposes. However, as noted in the response to Question 1, above, XO, as a web publisher, collects standard analytical information on our corporate web properties (e.g., as described, to tracking users visiting the XO website as their end destination; enabling users to their intended web destination; preventing others from using the XO network as an intermediary).

In sum, XO does not engage in the particular tailoring activities that are the subject of the Committee's inquiry, namely those aimed at collecting, compiling and correlating the Internet use habits of consumers for purposes of directing on-line or other advertising of goods and services to a particular consumer. XO has long recognized and remained abreast of emerging industry, community and legal standards in the area of data privacy, and in its history has established a record and reputation for protecting its customers' privacy interests in compliance with these standards.

Thank you for the opportunity to present this information to the Committee.

Sincerely,



Carl J. Grivner  
Chief Executive Officer