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VIA ECFS

EX PARTE

November 9, 2017

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

Re: *WC Docket No. 17-84, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

On Tuesday, November 7, 2017, the undersigned, on behalf of Windstream Services LLC (“Windstream”), met separately with Claude Aiken, Wireline Legal Advisor to Commissioner Mignon Clyburn, and Amy Bender, Wireline Legal Advisor to Commissioner Michael O’Rielly, to discuss the draft Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking in the above-referenced proceeding. On November 8, 2017, the undersigned met with Travis Litman, Chief of Staff to Commissioner Jessica Rosenworcel, on the same matter.

In its meetings, Windstream focused on the item’s discussion of the copper retirement and network change notification process. While Windstream strongly supported the improvements to the copper retirement notification process made in the *2015 Technology Transitions Order*¹ and opposes the elimination of those improvements, Windstream appreciates the Commission’s efforts to balance competing interests in its draft framework and urges that these balancing efforts remain in the item. These include: (1) retaining objection procedures for short-term notices of network changes; (2) retaining the distinction between copper retirements and other, less impactful types of network changes; (3) retaining the feeder portion of loops in the definition of copper retirement; (4) retaining the direct notice requirement; (5) having the waiting period for copper retirements run from the date of release of public notice, rather than the date of the ILECs’ notice; and (6) reinstating the previously applicable objection procedures for copper retirements.

Windstream also requested that the Commission modify draft paragraph 52 and proposed rule section 51.333(a) to make clear that an incumbent local exchange carrier must provide

¹ *Technology Transitions et al.*, 30 FCC Rcd 9372 (2015) (*2015 Technology Transitions Order*).

notice of network changes and copper retirements to “those wholesale entities whose circuits are directly affected by the planned network changes or copper retirements,” rather than, or in addition to, “each telephone exchange service provider that directly interconnects with the incumbent LEC’s network.” Windstream explained that in some cases it is purchasing wholesale voice service provided over copper loops, and these circuits are directly affected by planned copper retirements, but it is not technically an “interconnecting entity” entitled to notice in the proposed rule. Requiring direct notice to “wholesale entities whose circuits are directly affected by the planned changes”—phrasing proposed by incumbent LEC Verizon in its comments in this proceeding²—would prevent service disruptions to customers by ensuring that all affected providers receive adequate notice of copper retirements and other network changes.

Finally, Windstream noted that one of its business owners’ biggest concerns is the growing volume of copper retirement notices. Windstream received one notice last month that is 5 to 6 times larger in terms of affected circuits than any it had received before. In addition, Windstream is experiencing increasing numbers of “de facto” retirements, in which the incumbent LEC declines requests for copper repair and instead requires the wholesale purchaser to convert to a fiber-based facility or service. Moreover, because Windstream currently gets nearly all of its copper retirement notices from a single incumbent LEC, it expects the volume of notices to increase exponentially in the coming months and years as that incumbent LEC and others ramp up their technology transitions.

Even with the current level of copper retirements, Windstream invariably misses the incumbent LECs’ imposed deadlines for a variety of reasons, including data mismatches and customers who are resistant to the required changes because they use equipment and/or services, such as alarm systems, that are incompatible with fiber. While the incumbent LECs currently provide reasonable transition periods and are flexible with deadlines, Windstream is concerned that these practices may not continue, and customers will experience service disruptions, as incumbent LECs come under increasing internal pressure to execute their technology transitions.

Therefore, with respect to the draft Further Notice of Proposed Rulemaking, Windstream requested that the Commission ask questions about whether it should extend the waiting period for copper retirements that affect large numbers of circuits used by wholesale entities to provide retail service. In the Report and Order, the Commission is reducing the generally applicable 180-day waiting period to a 90-day waiting period after it releases a public notice of the copper retirement, reasoning that such a time frame meets the needs of interconnecting carriers while minimizing the risk of undue delay for incumbent LECs and fostering our goal of encouraging and accelerating next-generation network deployment.³ While copper retirement has been ongoing for many years now and thus far has been a gradual, organic, carrier-driven process, copper retirement notices are growing in number and scope and wholesale entities are being required to migrate larger numbers of affected circuits to other forms of last-mile access within

² See Declaration of Kevin N. Smith, *attached to* Comments of Verizon, WC Docket No. 17-84, at ¶ 12 (June 15, 2017).

³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Draft Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC-CIRC1711-04, at ¶ 53, fn.188 (2017).

the same timeframe applicable to smaller-scale copper retirements. It is likely this trend will continue and grow more challenging for wholesale purchasers as incumbent LECs accelerate their efforts to deploy fiber and other next-generation technologies.

In the pole attachment context, in response to the practical concerns of utilities in processing pole attachment requests in conjunction with their other critical work, the Commission adopted rules limiting the size of attachment requests subject to the regulatory timeline and expanding the make-ready timeline for larger orders.⁴ Windstream requested that the Commission seek comment on whether it should adopt similar rules in the copper retirement context, including posing the following questions:

- Should the Commission increase the waiting period for copper retirements that implicate large numbers of circuits used by wholesale purchasers?
- What should be the threshold above which a copper retirement would be subject to the expanded waiting period?
- In addition, or in the alternative, should the Commission adopt limits on the volume of customer-impacting copper retirements an incumbent LEC can undertake at one time? For example, should the Commission dictate that an incumbent LEC cannot initiate copper retirements affecting more than a certain number of circuits per month, or three-month period? If so, what should those limits be?

Please feel free to contact me if you have any more questions or need more information.

Sincerely,

/s/_____
Malena F. Barzilai

cc: Claude Aiken
Amy Bender
Travis Litman
Kris Monteith

⁴ See *Implementation of Section 224 of the Act, A National Broadband Plan for our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, at ¶ 63 (2011) (applying an extended timeline to orders greater than the lesser of 0.5 percent of the utility's total poles in a state or 3,000 poles within a state, and exempting from the timeline in-state orders of more than 3,000 poles).