

October 28, 2014

Ex Parte

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

Re: *Technology Transitions*, GN Docket No. 13-5; *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353

Dear Ms. Dortch:

On October 24, 2014, Jennie Chandra and Malena Barzilai of Windstream Communications, Inc. (“Windstream”), and I, on behalf of Windstream, met with Matthew DelNero and Daniel Kahn of the Wireline Competition Bureau. In the meeting, we discussed the six guiding principles that Windstream proposed for determining whether an applicant for a Section 214 discontinuance of TDM special access services is replacing them with functionally comparable IP services at equivalent rates.¹ We stated that the Commission should require companies seeking Section 214 discontinuance of TDM special access services to continue provide functionally comparable IP services at equivalent rates as a condition of the grant of discontinuance authority. We noted that several of these principles (the second, fourth and sixth in Windstream’s September 26, 2014 Letter) follow from, and are entirely consistent with, a common carrier’s duty pursuant to Section 202(a) not to engage in unreasonable discrimination, and the Commission’s longstanding determination that a carrier may not exclude wholesale customers from purchasing the same services as retail customers, or provide lower quality services to wholesale customers than to retail users.²

In addition, we noted that when the Commission, in the *Triennial Review Remand Order*, adopted the current rules regarding unbundled network element facilities, it assigned unbundling obligations with respect to “DS1 capacity” and “DS3 capacity” loops without limiting this access to instances where the loop facilities are being used for TDM services and/or are comprised of

¹ See Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-5, *et al.*, at 5 (filed September 26, 2014).

² See *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Report and Order, 60 FCC2d 261 (1976), *modified*, 62 FCC2d 588 (1977), *aff’d*, AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978); *MCI Telecommunications Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990); *National Communications Ass’n v. AT&T Corp.*, 238 F.3d 124, 129-130 (2d Cir. 2001). The same is true for measures to ensure special construction charges are not a means for back-door price increases (consistent with the fifth principle in Windstream’s letter).

copper.³ As Windstream has previously explained, these rules followed and were consistent with the *Triennial Review Order*, in which the Commission expressly stated, “DS1 loops will be available to requesting carriers, without limitation, regardless of the technology used to provide such loops. . . .”⁴ Furthermore, as documented in Windstream’s ex parte of October 9, 2014, if the large ILECs are able to discontinue UNEs through the IP transition, the transition would effect a significant price increase to purchase last-mile connectivity from the ILEC for a significant number of smaller and multilocation customers—even if that connectivity is being offered at rates comparable to the former DS1 and DS3 TDM services, as under the 214 discontinuance principles Windstream proposed.⁵

Please contact me if you have any questions.

Sincerely,



John T. Nakahata
Counsel to Windstream Communications, Inc.

cc: Matthew DelNero
Daniel Kahn

³ See *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533, 2629-33 ¶¶ 174-181 (2005) (“*Triennial Review Remand Order*” or “*TRRO*”). Compare 47 C.F.R. § 51.319(a)(4), (5) (requiring unbundling of DS1 and DS3 capacity loops without any reference to technology) with 47 C.F.R. § 51.319(a)(2) (for mass-market hybrid loops, exempting packet switching facilities, features, functions and capabilities) and 47 C.F.R. § 51.319(a)(3) (excluding from unbundling fiber-to-the-curb and fiber-to-the-home loops, except in limited circumstances).

⁴ *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*, Report and Order and Order on Remand And Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd. 16,978, 17,173 ¶ 325 n.956 (2003) (“*Triennial Review Order*” or “*TRO*”) (also stating that limits to obligations attached to facilities typically used to serve mass-market customers “in no way” limit the unbundling obligation associated with these loops) (citations and cross-references omitted).

⁵ Letter from Malena F. Barzalai, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-5 *et al.* (filed October 9, 2014). See also Letter from Jodie Griffin, Public Knowledge to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-5 *et al.*, 2 (filed Oct. 27, 2014) (“[T]he Commission should protect competition in the network by confirming that the existing rules continue to enable competitive access to unbundled network elements even after the transition to IP. Ensuring the continued effectiveness of these rules is particularly critical to preserving and promoting choice for many small businesses, government entities, and nonprofit organizations across the country.”)