

Eric J. Branfman  
Direct Phone: +1.202.373.6553  
Direct Fax: +1.202.373.6415  
eric.branfman@bingham.com

November 14, 2014

**Via ECFS**

**EX PARTE**

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

***Re: Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch A Proceeding Concerning the TDM-IP Transition, GN Docket No. 12-353; United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations, WC Docket No. 14-192***

Dear Ms. Dortch:

This letter is submitted on behalf of the Wholesale DS-0 Coalition,<sup>1</sup> a group of competitive local exchange carriers, all of which provide competitive services to business customers through the use of DS-0 wholesale agreements with ILECs, such as AT&T's Local Wholesale Complete and Verizon's Wholesale Advantage. Such agreements provide POTS service and enable the members of the Wholesale DS-0 Coalition to serve multi-location businesses that only need a few lines at each location. In many cases, the locations are in areas where the only facilities based provider is the ILEC, and it is not economical for a facilities-based CLEC or cable company to extend facilities to the location for such a small volume of business. For those businesses, reasonably priced wholesale agreements between CLECs and the ILEC are the only vehicle by which the business customer can obtain any of the benefits of competition. The provisions of these wholesale agreements typically permit the members of the Wholesale DS-0 Coalition to purchase this service only when the ILEC uses circuit switching and copper loops. Thus, by their terms, these agreements will not permit CLECs to provide their customers with the benefits of competition after the transitions to packet switching and fiber loops.

To preserve the availability of competitive options, the Wholesale DS-0 Coalition urges that the Commission require that ILECs that are currently offering a legacy service, including but not limited to a commercial UNE-P replacement service, to wholesale customers must offer equivalent wholesale service post transition on

---

<sup>1</sup> The members of the Wholesale DS-0 Coalition are: Access Point Inc., Birch Communications Inc., BullsEye Telecom, Inc., Matrix Telecom, Inc., New Horizon Communications Corp., Sage Telecom Communications, LLC, Telscape Communications, Inc., and Xchange Telecom.

Beijing  
Boston  
Frankfurt  
Hartford  
Hong Kong  
Lexington (GSC)  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
**Washington**

Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC  
20006-1806  
**T** +1.202.373.6000  
**F** +1.202.373.6001  
bingham.com

Ms. Marlene H. Dortch  
November 14, 2014  
Page 2

equivalent rates, terms, and conditions. Bell Operating Companies are currently required by Section 271 to offer this type of wholesale DS-0 service. *See BellSouth Telecommunications Co. v Kentucky Public Service Commission*, 669 F.3d 704, 712-714 (6th Cir. 2012). Relying on the Commission's rules in 47 C.F.R. § 51.309 (e) and (f), the Sixth Circuit held that ILECs must, "upon request, 'commingle'—package together—unbundled network elements provided under § 251 with elements mandated only by § 271." *Id.* at 712. The Sixth Circuit also noted that this Commission filed an amicus brief supporting this interpretation of its rules. *Id.*

Thus, any argument by BOCs that they are offering a UNE-P replacement service such as AT&T's LWC or Verizon's Wholesale Advantage voluntarily is in outright conflict with controlling law, unless the Commission were to grant forbearance from the Section 271 obligation to offer unbundled switching, as recently requested by USTelecom.<sup>2</sup> The Commission should continue to require that such services be offered during and after the IP transition and should deny the U.S. Telecom Petition seeking forbearance from the requirement to offer unbundled switching pursuant to Section 271. BOCs, which are dominant carriers — and will continue to be long after the transition to IP-based networks — should not be granted permission to discontinue their DS-0 wholesale services that rely upon TDM circuit switching absent a showing that they will seamlessly transition the offering to a functionally equivalent service at the same rates.

The Commission should also make clear in this proceeding that Section 214 discontinuance requirements apply to DS-0 wholesale services. Neither Section 214 nor the Commission's rules exempt wholesale offerings from Section 214's requirements. The elimination of DS-0 wholesale services would have a seriously adverse effect on competition, particularly competition to serve multi-location businesses that need only a few circuits at each location and lack alternative sources of supply. Moreover, even if DS-0 wholesale services are offered on a voluntary basis, which, as shown by the above analysis, they are not, Section 214 contains no exemption for services that are offered voluntarily. The Commission should not create one in this proceeding.

Sincerely,

/s/

Eric J. Branfman  
Counsel for the Wholesale DS-0 Coalition

---

<sup>2</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192 (filed Oct. 6, 2014). Members of the Wholesale DS-0 Coalition expect to file detailed comments opposing the grant of forbearance from offering unbundled switching under Section 271 in that docket.