

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Ensuring Customer Premises Equipment Backup Power for Continuity of Communications	)	PS Docket No. 14-174
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers	)	RM-11358
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access	)	RM-10593
	)	

**COMMENTS OF THE WHOLESALE DS-0 COALITION**

Eric J. Branfman  
Jeffrey R. Strenkowski  
Morgan Lewis & Bockius LLP  
2020 K Street, N.W.  
Washington, DC 20006  
(202) 373-6000 (Tel.)  
(202) 373-6001 (Fax)  
[eric.branfman@morganlewis.com](mailto:eric.branfman@morganlewis.com)  
[jeffrey.strenkowski@morganlewis.com](mailto:jeffrey.strenkowski@morganlewis.com)

Dated: February 5, 2015

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. THE COMMISSION MUST PRESERVE CLEC ACCESS TO CRITICAL LAST-MILE INPUTS .....	3
A. Customers in Suburban and Rural Locations Face Limited Options for Service Alternatives .....	3
B. CLEC’s Need Access to Functionally Equivalent Wholesale Products .....	4
C. The Commission Should Adopt Windstream’s Six Guiding Principles, With Minor Modifications .....	6
III. CONTINUED ACCESS TO FUNCTIONALLY EQUIVALENT SERVICES IS NECESSARILY TIED TO THE SECTION 214 DISCONTINUANCE APPROVAL PROCESS .....	8
A. The FCC’s Section 214 Discontinuance Requirements Should Require Functionally Equivalent Replacement Services.....	8
B. The Functionality of the Discontinued Service to Both Residential and Business Customers Should Guide the FCC’s Section 214 Discontinuance Evaluation Process .....	9
C. ILECs Should Bear the Burden of Proof that Proposed Replacement Ser- vices are Functionally Equivalent.....	10
D. Administration of the Section 214 Discontinuance Process Must Recogn- ize the Potential for Significant Disruption, and Provide for Adequate Time and Information to Address Functional Equivalency Matters.....	11
IV. CONCLUSION.....	12

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Ensuring Customer Premises Equipment Backup Power for Continuity of Communications	)	PS Docket No. 14-174
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers	)	RM-11358
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access	)	RM-10593
	)	

**COMMENTS OF THE WHOLESALE DS-0 COALITION**

**I. INTRODUCTION**

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 (together, the “Wholesale DS-0 Coalition” or “Commenters”), by their undersigned counsel, submit these comments in response to the Notice of Proposed Rulemaking released November 25, 2014, by the Federal Communications Commission (“Commission”) in the above-referenced proceedings.<sup>1</sup> The members of the Wholesale

---

<sup>1</sup> *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, et al.*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593,

DS-0 Coalition are competitive local exchange carriers (“CLECs”), providing competitive services to business customers through DS-0 wholesale agreements with ILECs, such as AT&T’s Local Wholesale Complete and Verizon’s Wholesale Advantage. Such agreements provide plain old telephone service (“POTS”) and enable the Commenters to serve multi-location businesses that only need several lines at each location. In many cases, the locations served by the Wholesale DS-0 Coalition members 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.

The NPRM seeks to advance the Commission’s public safety, pro-consumer, and pro-competition goals by proposing and seeking comment on revisions to rules and policies concerning continuity of power, copper retirement, and service discontinuances governed by Section 214.<sup>2</sup> The Wholesale DS-0 Coalition supports these objectives and agrees that new Commission rules are needed to protect consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities and seek to discontinue legacy services.<sup>3</sup> The Commission must protect competition where it exists today, and ensure that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized businesses and other entities of the ability to choose the kinds of innovative services that best suit their needs.

As the Commission considers the transition of narrowband TDM networks to broadband IP-based networks, the Commenters urge the Commission to ensure that its competition frame-

---

Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185 (rel. Nov. 25, 2014) (“NPRM” or “Declaratory Ruling”).

<sup>2</sup> See NPRM, ¶ 10.

<sup>3</sup> NPRM, ¶ 2.

work remains technology neutral. When ILECs transition away from legacy services, competitive carriers face the prospect of losing access to critical inputs on reasonable terms and conditions, which in turn may prevent them from continuing to provide competitive alternatives to small- and medium-sized businesses and other institutions like schools, libraries, and health care facilities.<sup>4</sup> As such, the Commission must ensure that section 214 rules define an “adequate substitute” for the critical wholesale input services that the Commenters and other CLECs need in order to continue to provide services to these markets, and to preserve competition in the telecommunications space generally. The Commission must require ILECs that request 214 discontinuance authority to commit to providing functionally equivalent wholesale products, similar to AT&T’s Local Wholesale Complete and Verizon’s Wholesale Advantage, at rates, terms and conditions equivalent to those tariffed and non-tariffed legacy services they seek to discontinue.

## **II. THE COMMISSION MUST PRESERVE CLEC ACCESS TO CRITICAL LAST-MILE INPUTS**

### **A. Customers in Suburban and Rural Locations Face Limited Options for Service Alternatives**

The members of the Wholesale DS-0 Coalition serve customers across the United States. Their customers include national companies and other entities that need a small number of voice lines at a large number of disparate, often suburban, rural and remote, locations where facilities-based competition with the ILEC is uneconomical. These customers benefit from the efficiency of having one service supplier that can arrange for their communications needs across the country, rather than contracting with multiple telecommunications companies to provide services on a location-by-location basis.

---

<sup>4</sup> See NPRM, ¶ 6.

Given the limited demand for services in many of the areas where the Commenters' customers are located, there is often limited demand for competitive fiber deployment. All competitive carriers, including cable companies, "face extensive economic barriers" to the deployment of competitive facilities where they lack existing facilities needed to serve the customer.<sup>5</sup>

Further, many of the businesses that the Commenters serve are not in residential areas where cable companies often focus deployments, and wireless-based services lack the features and reliability necessary for business operations in many locations. As a result, many business customers are dependent on CLECs, like the Commenters, to provide multi-location telecommunications services, often on a nationwide basis. And in turn, the Commenters are dependent on the ILEC for reasonably-priced wholesale inputs necessary to serve these customers, which often do not require high-capacity network services.

**B. CLEC's Need Access to Functionally Equivalent Wholesale Products**

To meet their customers' needs, the Wholesale DS-0 Coalition members obtain DS-0 wholesale services through agreements with the ILECs. To preserve competition through technology transitions, the Commission's section 214 rules must ensure that CLECs, including the members of the Wholesale DS-0 Coalition, are able to continue to obtain functionally equivalent wholesale products on the same rates, terms and conditions that they are currently guaranteed under the Commission's rules and the Act.

The Commission must define what constitutes an "adequate substitute" for the critical wholesale input services that the Commenters and others need to continue to provide services to their customers. The Commission is "guided by the mantra that technology transitions should not

---

<sup>5</sup> See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8670 ¶ 90 (2010) *aff'd* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

be used as an excuse to limit competition that exists.”<sup>6</sup> This means that CLECs, which are the currently the primary competitive choice to non-residential customers in the United States,<sup>7</sup> must retain access to functionally equivalent wholesale services on reasonable rates, terms and conditions as those service offerings currently available to them.

In the NPRM, the Commission tentatively concluded that it should require ILECs that seek section 214 authority to discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive carriers to commit to providing competitive carriers equivalent wholesale access on equivalent rates, terms, and conditions.<sup>8</sup> The Wholesale DS-0 Coalition strongly supports this proposal. As part of the *prima facie* case associated with their section 214 filings (outlined further below), the ILECs should be required to confirm this commitment and provide substantive, detailed information on the proposed functionally equivalent wholesale service substitute. That information should contain, among other things, the rates, terms and conditions of that substitute service. And, the Commission’s rules must make clear that these requirements apply to all wholesale input services, including DS-0 services sold under commercial agreements, whether or not they are tariffed.

Finally, the Commission should confirm that the Section 214 discontinuance process does not eliminate the ILEC’s additional obligation to provide UNEs under Section 251 and, for RBOCs, Section 271 requirements. Sections 251 and 271 are technology neutral, and such neutrality demands that the Section 251 and 271 framework not be supplanted by the Section 214 discontinuance framework.

---

<sup>6</sup> NPRM, ¶ 6.

<sup>7</sup> *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, et al, (Aug. 7, 2014).

<sup>8</sup> NPRM, ¶ 110.

**C. The Commission Should Adopt Windstream’s Six Guiding Principles, With Minor Modifications**

As set forth in the NPRM, Windstream has suggested that when an ILEC is discontinuing legacy services offered at speeds of 50 Mbps or less, the Commission should apply six principles to evaluate replacement offerings, as follows:

(1) *Price per Mbps Shall Not Increase.* The price per Mbps of the IP replacement product shall not exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below.

(2) *A Provider’s Wholesale Rates Shall Not Exceed Its Retail Rates.* An incumbent’s wholesale charges for the IP replacement product shall not exceed its retail rates for the equivalent offering.

(3) *Basic Service Pricing Shall Not Increase.* The wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase (e.g., 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest Ethernet option available).

(4) *Bandwidth Options Shall Not Be Reduced:* Wholesale bandwidth options must, at a minimum, include the options that the incumbent offers to its retail business service customers.

(5) *No Backdoor Price Increases:* Price hikes shall not be effectuated via significant changes to charges for NNI or any other rate elements, lock-up provisions, ETFs, special construction charges, or any other measure.

(6) *No Impairment of Service Delivery or Quality:* Service functionality and quality, OSS efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today. Installation intervals and other elements affecting service delivery shall be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates’ operations.<sup>9</sup>

The Commenters support these principles, and believe that the Commission should incorporate them into its Section 214 discontinuance process, with minor modifications.

---

<sup>9</sup> NPRM, at ¶ 111; *Ex Parte Letter* of J. Chandra, Windstream Communications, Inc. to Marlene H. Dortch, FCC, GN Docket No. 13-5, *et al.*, at 5 (Sep. 26, 2014) (“Chandra Letter”).

First, the first principle should be extended to apply to wholesale DS-0 services such as AT&T's Local Wholesale Complete, Verizon's Wholesale Advantage, and other similar wholesale products, not just to special access services. It is important that on a per-line basis, wholesale rates for any replacement product not exceed the legacy per-line rate.

Second, the second principle should be modified to make clear that ILECs must provide a replacement service *at the same rates* (including volume discounts) as the legacy product being replaced. Not only should wholesale rates not exceed retail rates, but that they need to be adequately below retail to allow for a sufficient business margin under wholesale when matching retail market pricing. Merely requiring that the wholesale rate match the retail rate will eliminate the competition that exists today. Absent this modification, the Commission will create a sizable gap in competitive access that will inevitably be exploited by the ILECs.

Finally, the third principle should likewise be modified and extended so that the price of wholesale DS-0 level services should not increase, not just the wholesale price for special access service at or above the DS1 level.

With these minor modifications, the Commenters otherwise support the proposed principles, and believes that they should be incorporated into the Commission's Section 214 discontinuance rules.

### III. CONTINUED ACCESS TO FUNCTIONALLY EQUIVALENT SERVICES IS NECESSARILY TIED TO THE SECTION 214 DISCONTINUANCE APPROVAL PROCESS

#### A. The FCC's Section 214 Discontinuance Requirements Should Require Functionally Equivalent Replacement Services

As the NPRM states, the Commission's fundamental values and statutory obligations are not lost or mooted merely because legacy services are discontinued. Therefore, it is critical to define carriers' responsibilities when discontinuing legacy services to ensure that the Commission carries forward fundamental values, regardless of the particular technology used.<sup>10</sup> The 214 discontinuance process is where technology transitions intersect regulatory policy. It is at this critical juncture, and in the critical Section 214 discontinuance rules, where the Commission must ensure that the Commission's pro-competitive policy is maintained as transitions occur.

Specifically, the Commission requests comment on "what constitutes an adequate substitute for a retail service being discontinued, reduced, or impaired,"<sup>11</sup> tentatively concluding that it "should require incumbent LECs that seek section 214 authority to discontinue, reduce, or impair a legacy service used as a wholesale input by competitive providers to commit to providing equivalent wholesale access on equivalent rates, terms, and conditions."<sup>12</sup>

Importantly, and consistent with the Commission's decision in the Declaratory Ruling, the services that the Commission should address in its Section 214 discontinuance process should be defined in a "functional manner," and not exclusively by reference to how the service is described in the carrier's tariff.<sup>13</sup> As such, the Commission's Section 214 discontinuance process should apply even where access to third-party services and devices are not defined by the

---

<sup>10</sup> See NPRM, ¶ 92.

<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> *Id.* (emphasis added).

<sup>13</sup> See NPRM, at ¶ 5.

tariff as a part of the service offering.<sup>14</sup> Further, the Commission’s analysis should consider what a community or part of a community would “reasonably view as the service provided by the carrier” in functional terms.<sup>15</sup> Therefore, AT&T’s Local Wholesale Complete, Verizon’s Wholesale Advantage, and other functionally similar services should be included within the framework of the Section 214 discontinuance process and subject to an “adequate substitute” requirement.

**B. The Functionality of the Discontinued Service to Both Residential and Business Customers Should Guide the FCC’s Section 214 Discontinuance Evaluation Process**

The Commission requests comment on the factors it should consider when evaluating Section 214 discontinuance filings and what constitutes an “adequate substitute” for a service being discontinued, reduced, or impaired.<sup>16</sup> The Wholesale DS-0 Coalition respectfully asserts that the functionality of the discontinued retail or wholesale service for both residential and business customers should be the primary factor considered in these cases. Such functionality assessments should include, among other things, functions relating to voice calls such as caller ID, call waiting, voicemail and other similar services, and also the replacement service’s compatibility with non-call functionality of third-party customer premises equipment, fax machines, alarm systems, DSL and other high capacity Internet access services, credit card and other payment processing systems, etc. All of these functions are currently supported by the public switched telephone network, and are critical to the operations of many small and medium-sized businesses, so they should be continued to be supported even as technology transitions from TDM to IP-based networks. The loss of these and other similar functions can be significant to

---

<sup>14</sup> See *id.*

<sup>15</sup> Declaratory Ruling, at ¶ 114.

<sup>16</sup> NPRM, at ¶¶ 94, 97.

many businesses, and may disproportionately affect those entities located in small and remote communities.<sup>17</sup>

Given the potential for significant operational disruption when ILECs discontinue legacy network service arrangements, ILECs proposing to offer an “adequate substitute” for existing PSTN-based services, including non-tariffed services, must address and resolve such functional and reliability issues prior to the proposed transition, and offer a seamless conversion to functionally equivalent services on reasonable rates, terms and conditions.<sup>18</sup>

**C. ILECs Should Bear the Burden of Proof that Proposed Replacement Services are Functionally Equivalent**

The NPRM seeks comment on “adopting a rebuttable presumption that where a carrier seeks to discontinue, reduce, or impair a wholesale service, that action will discontinue, reduce, or impair service to a community or part of a community such that approval is necessary pursuant to section 214(a).”<sup>19</sup> The Wholesale DS-0 Coalition strongly supports this rebuttable presumption. Moreover, the Commission should require ILECs to file *prima facie* evidence demonstrating any assertion that the ILEC has rebutted this presumption.

The required *prima facie* case should include evidence, not mere assertions, that the replacement service is functionally equivalent to the service to be discontinued for both calling and non-calling functionality. It should likewise contain substantive and specific detail regarding any

---

<sup>17</sup> See, e.g., Letter from Harold Feld et al., Public Knowledge, to Tom Wheeler, Chairman FCC, GN Docket Nos. 12-353 and 13-5, at 2-3 (Jan. 13, 2014) (“Public Knowledge Letter”); Candice Ruud, Verizon offers alternative to Voice Link on Fire Island, Long Island Newsday (Sept. 10, 2013) (concerning significant loss of functionality of many services, and significant public safety concerns, when Verizon deployed its Voice Link service on Fire Island).

<sup>18</sup> Public Knowledge Letter, at 5 (“many small and midsize businesses (such as pharmacies, real estate agents, and banks) as well as government agencies rely on fax machines and other legacy technologies that do not work with IP-based or wireless equipment.”).

<sup>19</sup> NPRM, at ¶ 103 (emphasis added).

wholesale or retail replacement services affected, including service descriptions, rates, terms and conditions, timing of availability, and the relevant geographic areas. Only upon meeting this *prima facie* requirement should an ILEC filing or certification be deemed complete. CLECs and other interested parties must also be provided an opportunity to address issues of functionality, terms, rates and conditions of the proposed replacement services.

**D. Administration of the Section 214 Discontinuance Process Must Recognize the Potential for Significant Disruption, and Provide for Adequate Time and Information to Address Functional Equivalency Matters**

Given the potential for significant consumer disruption during the phase out and of legacy networks and services, the Commission must be cognizant of the timeframes that are needed in order to adequately ensure that such disruptions are minimized. To that end, there are a number of administrative steps that the Commission should consider as it establishes the Section 214 discontinuance application administration rules.

First, the Commission should require the ILEC to send to affected CLEC wholesale customers a copy of any *prima facie* certification and/or supporting case information required to be filed under the Commission's rules. That information should also be made public, either on a specially-created Commission online portal or another centralized online location where it can be viewed by CLECs, end-users, consumer groups, and other interested parties. And, interested parties must have an opportunity to raise concerns with the ILEC concerning the functionality, rates, terms and/or conditions of the proposed replacement service.

Second, the 30 and 60 day timeframes currently provided under the Commission's Section 214 discontinuance rules<sup>20</sup> are insufficient for dealing with the wide range of issues likely to be involved in as ILECs transition from TDM to IP-based networks and services. The identifica-

---

<sup>20</sup> 47 C.F.R. § 63.71.

tion of an adequate, functional equivalent, substitute wholesale service, including disclosure of the rates, terms and conditions of that substitute service, should be required well in advance of an ILEC's section 214 filing so that CLECs and the public can have adequate time to plan for the needed for the transitions, and to negotiate and enter into the necessary multi-year contracts that such shifts will necessitate. The Commission should consider how much time is reasonably required in order to provide CLECs and other interested parties, including consumers, adequate notice of a proposed transition, including how long it should reasonably take for the affected parties to satisfactorily address any and all substitute service functionality issues raised by the proposed transition. This reasonable timing requirement established by the Commission should override any preexisting contractual obligations if the time requirement under any contractual obligations is shorter.

Finally, the ILEC should be required to address and resolve all issues raised by CLECs and other interest parties concerning the functions and attributes of the purported replacement service raised during the certification stage of the transition as a condition to proceeding with a section 214 discontinuance, reduction or impairment application. The ILEC should be responsible for logging all such issues raised through the initial informational public notice and filing process outlined above, and for reporting how it has addressed each of the functionality issues raised during that process as part of its FCC application. Such information, or a certification that no such issues were raised, should be an obligatory part of any Section 214 discontinuance application filed by an ILEC.

#### **IV. CONCLUSION**

The Commenters thank the Commission for the opportunity to provide feedback on the issues raised in the NPRM, and look forward to working with the Commission to ensure that the

technology transition process is undertaken in a fair a transparent manner, and that the interests of CLECs are addressed during the rulemaking process.

Respectfully submitted,

Eric J. Branfman  
Jeffrey R. Strenkowski  
Morgan Lewis & Bockius LLP  
2020 K Street, N.W.  
Washington, DC 20006  
(202) 373-6000 (Tel.)  
(202) 373-6001 (Fax)  
[eric.branfman@morganlewis.com](mailto:eric.branfman@morganlewis.com)  
[jeffrey.strenkowski@morganlewis.com](mailto:jeffrey.strenkowski@morganlewis.com)

By: \_\_\_\_\_ */electronically signed/*

*Counsel for 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*

Dated: February 5, 2015