

**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 Services	)	RM-10593

**COMMENTS OF SPRINT CORPORATION**

The ongoing technology transition has the power to dramatically improve our nation’s communications networks, but it also has the power to entrench the dominance of the Incumbent Local Exchange Carriers (“ILEC”s). As regulated services are replaced by technologically superior—but less regulated— alternative services, incumbents have the opportunity to leverage their market power, once again, to suppress competition and restrict innovation. The Commission must ensure that the dominant carriers do not use their existing market power over current infrastructure to deny competitive carriers access to the inputs necessary to provide alternative telecommunications and broadband services in the future. The Commission also must

ensure that the ILEC migration path provides sufficient time and notice for customers and carriers to adjust their business plans to accommodate the ILECs' service discontinuations.

## **I. Product Discontinuance Standards Under 47 U.S.C. § 214**

Wholesale products sold primarily by incumbents are an essential input into many services provided by other carriers. CLECs use unbundled network elements and special access circuits to enable them to provide local voice and data services. Wireless carriers use special access circuits to connect towers to their backbone networks. Interexchange carriers use special access circuits to deliver traffic and provide transport services. The Commission recognizes that technology transitions “must not harm or undermine competition.”<sup>1</sup> Last-mile (and often times middle-mile) facilities remain a bottleneck, and incumbents have a decided advantage in parlaying their old TDM monopolies to current and future last-mile IP dominance.

### **A. Technology Transitions Cannot Be An Excuse to Raise Rates or Decrease Service**

Years ago, Verizon, AT&T, and other ILECs argued that IP/fiber services should not be regulated because of the continued existence of copper-based TDM services as a viable substitute.<sup>2</sup> The FCC's decision to grant the ILECs' forbearance from dominant carrier

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<sup>1</sup> Notice of Proposed Rulemaking and Declaratory Ruling, *Technology Transitions et al*, GN Docket No. 13-5, FCC 14-185 (2014) at ¶ 110 (“NPRM”).

<sup>2</sup> Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services et al., Memorandum Opinion and Order, 22 FCC Rcd. 18705 (2007); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, Memorandum Opinion and Order, 22 FCC Rcd. 19478 (2007); Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services, Memorandum Opinion and Order, 23 FCC Rcd. 12260 (2008); Verizon Telephone Companies' Petition for Forbearance from Title II and Computer

regulation of their non-TDM services was based, at least in part, on the fact that the ILECs pricing would be constrained by the regulated prices for TDM-based special access services. Once those services are discontinued, the FCC must reconsider allowing the current forbearance orders to remain in effect.<sup>3</sup>

The Commission correctly recognizes that replacement services must be on equivalent rates, terms and conditions.<sup>4</sup> Of course, the devil is in the details. Sprint supports the six criteria that Windstream documented last spring and that the Commission noted in the NPRM,<sup>5</sup> as a floor, rather than the limit on what ILECs must do.

- **Price Per Megabit Shall not Increase:** The cost of any IP service per megabit shall not exceed the cost per megabit of the cheapest equivalent TDM service up to 50 Mbps. For example, if a 45 Mbps DS-3 circuit costs \$1000/month, that carrier's IP-based offerings will not exceed \$1000/45, or \$22.22 per month per Mbps for the same route and contract duration.
- **A Provider's Wholesale Rates Shall Not Exceed Its Retail Rates:** Sprint's experience has shown that ILECs often price wholesale services above retail rates for similar services. For example, Verizon sells symmetrical 50/50 Mbps broadband to residential customers for \$59.95,<sup>6</sup>

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Inquiry Rules with Respect to their Broadband Services is Granted by Operation of Law, WC Dkt. No. 04-440, News Release (Mar. 20, 2006).

<sup>3</sup> One additional constraint on ILEC pricing the Commission should consider is whether an unbundling obligation with respect to dark fiber would allow other entities to offer competitively priced advanced services, thereby constraining ILEC pricing without additional cost-based regulation.

<sup>4</sup> NPRM ¶¶ 6, 92, 110.

<sup>5</sup> NPRM ¶ 111.

<sup>6</sup> <http://www.verizon.com/home/MLP/OnlineCS1.html>

while selling DS-3 circuits of similar speed for \$3,755 per month, or 62 times the price of the retail service.<sup>7</sup>

- **Basic Service Pricing Shall Not Increase:** This principle works hand-in-glove with the first principle. Continuing the above example, if a DS-1 circuit that costs \$150 per month for the same route as the \$1000 DS-3, the IP DS-1 replacement will cost no more than the lesser of \$150 or \$33.33 ( $\$1000 \div \text{by } 45 \times 1.5$ ), which in this case is \$33.33.
- **Bandwidth Options Shall Not Be Reduced:** Sprint understands this principle to show that the ILEC will continue to offer, at a minimum, the same variety of speed offerings that it currently offers in TDM or the speed offerings of its retail IP services, whichever is greater.
- **No Backdoor Price Increases:** Sprint has previously commented at length about the pernicious manner in which ILEC volume shortfall commitments, early termination charges, and long-term rate plans act to restrain competition and raise prices.<sup>8</sup> The Commission should act, at a minimum, to ensure that the IP replacement offerings are no worse. Sprint urges the Commission to also ensure that the ILECs do not limit choice by use of supposed discounts to lock carrier customers into pricing that limits

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<sup>7</sup> The lowest priced 10-mile DS3 circuit (2 channel terminations plus fixed and per mile channel charges) price for Verizon is \$3755.19 for a 5-year term plan rate. *See Verizon Tariff FCC 11 NY/MA – Verizon #11 Sections 25, 30 and 31.* Sprint recognizes that the DS-3 class has service quality terms exceeding those of residential services, but those differences certainly cannot justify a price 62 times higher, especially given the lower marketing and billing costs of wholesale services compared to retail. Verizon's business-class Ethernet services are also priced many multiples higher than its residential retail offerings on a per-megabit basis.

<sup>8</sup> *See, e.g.,* Comments of Sprint Nextel Corp., WC Docket No. 05-25 (Feb. 11, 2013).

flexibility, puts CLECs, wireless carriers, and interexchange carriers at a competitive disadvantage, and foreclose the development of more competitive wholesale last-mile markets.

Existing special access rates are excessive— matching rates, speeds, and services with IP based products will only perpetuate those excessive rates. While Windstream’s proposal is designed to prevent the current competitive harms from worsening with the IP transition, Sprint calls on the Commission to address the current market failure in special access. Sprint and other competing carriers, as well as large business users and consumer groups, have consistently demonstrated that the special access market is broken and concrete regulatory action is needed. Sprint is confident that the special access data collection will confirm that the ILECs continue to dominate the last mile wholesale market.

In the meantime, however, Windstream’s proposal, if properly understood and implemented, will prevent the special-access market from becoming even more disjointed in the short term as the technology transition continues. The conditions should remain in place at least through the conclusion of the special access proceeding. After that concludes, the limitations should not be removed absent a petition from the ILECs demonstrating that adequate competition exists in the market and the conditions are no longer needed to protect competition.

IP services are less costly and more efficient than the TDM services they are replacing. Thus, matching rates isn’t sufficient. The Commission should not countenance the ILECS taking advantage of their monopoly status over TDM services to perpetuate the extraordinary profits they make and continue to make from special access services.

Finally, detariffing should not end the Commission’s Title II oversight of ILEC wholesale access services. ILECs cannot be permitted to take advantage of the TDM to IP

transition to escape dominant carrier regulation. Any IP service that functionally replaces a Title II TDM service should be subject to Title II regulation. Nothing in Title II is limited to a particular technology.

### **B. ILEC Use of “Discount” Plans to Limit Choice Must End**

ILECs use wholesale “discount” plans to lock-in revenue commitments that deter other carriers from entering markets and providing viable competition.<sup>9</sup> Although Sprint has shown these plans are anti-competitive, it faces a Hobson’s choice because eliminating the “discounts” before the FCC addresses unjust and unreasonable rates would trigger an immediate price increase, as the Commission notes in the NPRM.<sup>10</sup> The dilemma that the Commission noted—the discontinuance of discounts beginning with the longest and progressing to the shortest—has already been attempted by at least one ILEC.<sup>11</sup> The decision by an ILEC--or any other dominant carrier—to end a discount plan constitutes a “discontinuance” that requires FCC approval.<sup>12</sup>

Similarly, an ILEC should be required to receive approval before it can detariff a service offering.<sup>13</sup> The judgment of whether the non-tariffed replacement service is an adequate replacement for the discontinued tariff service should not be left to the judgment of the discontinuing carrier. The Commission already noted in the Declaratory Ruling that a carrier’s view of its services may differ from that of its customers.<sup>14</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> NPRM ¶ 105

<sup>11</sup> *Order, In the Matter of Suspension and Investigation of AT&T Special Access Tariffs*, WC Docket No. 13-299 (Dec. 9, 2013).

<sup>12</sup> NPRM ¶ 104.

<sup>13</sup> NPRM ¶ 105.

<sup>14</sup> NPRM ¶¶ 114-19.

### **C. Transition Schedules Should Not Revolve Around the ILEC's Timetable Preferences**

Competitive carriers need adequate time to transition their networks and the networks and equipment of their customers. AT&T's own proposed transition experiments contemplated a multi-year process, and that was for just two wire centers.<sup>15</sup> CLECs, wireless carriers, and other users of ILEC wholesale services should not be forced into a short transition period for a previously tariffed service when the ILEC providing the service takes years to do its part of the transition. All carriers should have an incentive to transition to lower cost IP based services. It should not be left to the incumbent, however, to dictate that schedule.

Rather than deferring to the ILECs to dictate a technology transition, the FCC should take steps to incent a natural transition to new services. This can be done by ensuring that Ethernet and other IP based services are being made available at rates that reflect their lower cost and eliminating the pricing umbrella being created by the current TDM special access market. If, however, ILECs are permitted to dictate the timing of particular market conversions, they will have both the incentive and opportunity to impose inflated rates on these new services.

### **D. Retail Product Discontinuance**

Some retail product discontinuances demand more scrutiny than others. For instance, in certain market segments, the ILECs retain their dominance dating back to pre-divestiture and before the 1996 Act. In other segments, the ILECs face genuine competition, such as their foray into long-distance services. The FCC's approach to discontinuance applications under Section 214 should take this into account: where market dominance is present and a carrier seeks to

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<sup>15</sup> See Letter from Christopher M. Heimann, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 13-5, 12-353, (filed Feb. 27, 2014) (AT&T Proposal for Wire Center Trials).

replace a retail TDM-based product with an IP-based replacement, a more in-depth investigation into the discontinuance is warranted. Likewise, the Commission need not use the same level of scrutiny to assess the discontinuance of products by carriers that clearly lack market power, such as inter-exchange carriers or CLECs.

## **II. Backup Power**

Sprint supports efforts the Commission's efforts to make the nation's communications network more robust. As consumers migrate from the POTS network that has historically had power and backup power supplied by the phone company's central office infrastructure to newer technologies, many may expect that they will still be able to make calls and otherwise communicate during commercial power outages.

Whatever standard the commission adopts should extend only to products intended to replace traditional POTS, where customers have come to rely on centralized backup power, and not to femtocells and other devices intended to augment a wireless network. Wireless carriers, including Sprint, have already deployed hundreds of thousands of picocells and femtocells to cover small gaps in their networks and to boost in-building signal strength. The Commission already has an ongoing proceeding into wireless network backup power requirements, and the backup power elements of this NPRM should not extend to intrude upon that existing inquiry.<sup>16</sup>

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<sup>16</sup> Comments of Sprint Corp., In the Matter of Improving the Resiliency of Mobile Wireless Communications Networks, PS Docket No. 13-239 (Jan. 17, 2014). Sprint noted in comments in that proceeding that whatever backup power requirements the Commission adopts for macro-cell network architecture should not be applied to small-cell architecture because of the unique operational constraints of small cells, which are designed to augment rather than replace large-cell coverage. *Id.* at 6-7.

### **III. Copper Retirement**

ILECs do not want to continue operating parallel copper and fiber-optic networks and are seeking the ability to turn down the older copper facilities. While carriers must have freedom to make basic cost/benefit determinations to modernize their networks, it is appropriate for the Commission to ensure that these facilities that were largely constructed under a monopoly rate of return structure, are put to appropriate use. Customers have relied on the basic capabilities of that network for more than a century, and the transition to other technologies should be orderly and fair.

The nation's copper phone network is a valuable asset that should not be abandoned if there is a company willing to assume operation and maintenance. New technologies, such as Ethernet over Copper, could provide competitive service offerings for CLECs even as the ILECs move to other technologies.<sup>17</sup> Sprint does not support a Commission mandate that the ILECs and other owners of copper networks be forced to operate them indefinitely; rather, the Commission should oversee an orderly process whereby competing carriers have an opportunity to purchase ILEC copper facilities rather than allowing the ILECs to allow them to decay until they are otherwise worthless. The guiding principle of the retirement must be pro-consumer competition.

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<sup>17</sup> NPRM ¶ 22.

Respectfully submitted,

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