



February 25, 2015

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

Re: Petition for Declaratory Ruling to Clarify that Technology
Transitions Do Not Alter the Obligation of Incumbent Local
Exchange Carriers to Provide DS1 and DS3 Unbundled Loops
Pursuant to 47 U.S.C. § 251(c)(3), WC Docket No. 15-1;
Technology Transitions, GN Docket No. 13-5

Dear Ms. Dortch:

Enclosed please find a corrected version of the comments submitted by the United States Telecom Association on February 5, 2015 in the above-referenced dockets. This version corrects footnotes 10, 11, and 12 of the submitted version. We request that you replace the original comments with this corrected version.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "DGH", with a long horizontal flourish extending to the right.

Diane Griffin Holland
Vice President, Law & Policy

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Petition for Declaratory Ruling to Clarify)	WC Docket No. 15-1
That Technology Transitions Do Not)	
Alter the Obligation of Incumbent Local)	
Exchange Carriers to Provide DS1 and)	
DS3 Unbundled Loops Pursuant to 47)	
U.S.C. § 251(c)(3))	
Technology Transitions)	GN Docket No. 13-5

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ submits these comments in response to the Wireline Competition Bureau’s Public Notice² (Notice) seeking comment on Windstream Corporation’s Petition for Declaratory Ruling submitted in the above-referenced proceedings.³ The Petition raises important and complex issues about how the ongoing transition from legacy communications networks that still may largely rely on copper using TDM-based technology to state-of-the-art, “all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure” will be accomplished.⁴

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Public Notice, *Wireline Competition Bureau Seeks Comment on Windstream’s Petition for Declaratory Ruling Seeking to Confirm ILEC’s Continued Obligation to Provide DS1s and DS3s on Unbundled Basis After Technology Transitions*, DA 15-4 (rel. Jan. 6, 2015) (“Notice”).

³ Petition for Declaratory Ruling of Windstream Corporation, WC Docket No. 15-1, GN Docket No. 13-5 (filed Dec. 29, 2014) (“*Windstream Petition*”).

⁴ *Technology Transitions, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, FCC 14-185 (rel. Nov. 25, 2014) at ¶ 1 (“*NPRM*” and “*Declaratory Ruling*”).

The Federal Communications Commission (Commission) recognizes that the technological revolution involving these transitions is already bringing innovation and better services to the marketplace,⁵ and thus the public interest is well served by the industry's efforts to accelerate investment in upgraded and new networks. Moreover, the Commission's recent announcement regarding the state of broadband deployment in the United States and adoption of a more aggressive definition of broadband confirms its expectation that providers continue to invest in broadband deployment.⁶ We therefore encourage the Commission to stay focused on ensuring that it imposes only those regulations necessary to create the right incentives, in a minimally regulatory environment, that will allow providers to help achieve the nation's reasonable broadband deployment goals.

More than a decade ago, the Commission recognized the need to lay groundwork for this inevitable technology revolution. In the *Triennial Review Proceeding*,⁷ the Commission discussed the need to encourage and provide incentives for companies to invest in new equipment and facilities to meet the growing consumer demand for high-speed services, which in turn would accelerate broadband deployment. It also identified broadband deployment as "a critical domestic policy objective" with importance beyond the communications context, and

⁵ *Id.*

⁶ *See, e.g.*, News Release, FCC, FCC Finds U.S. Broadband Deployment Not Keeping Pace (Jan. 29, 2015) (announcing the updated speed benchmark of 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads in the 2015 Broadband Progress Report), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0129/DOC-331760A1.pdf.

⁷ *See generally* *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 (2003) ("TRO"); *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 (2005) ("TRRO"). These and other Commission orders (collectively, the "*Triennial Review Proceeding*") set forth the Commission's implementation of the unbundling provisions of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. *See* 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.319.

described its own challenge as figuring out how to “help drive the enormous infrastructure investment required to turn the broadband promise into a reality.”⁸ Thus, in developing and implementing its policies and regulations governing incumbent LEC (ILEC) unbundling obligations, the Commission rightly focused on making sure that its implementation of the unbundling provisions did not “undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”⁹ It drew those lines by adopting an unbundling approach that allows for “greater unbundling for legacy copper facilities and more limited unbundling for next-generation network facilities [to] appropriately balance [the] goals of promoting facilities-based investment and innovation against [the] goal of stimulating competition.”¹⁰

Moreover, the Commission specifically designed its unbundling rules “to remove unbundling obligations over time as carriers deploy their own networks and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets.”¹¹ Thus, the natural progression (and presumably the end game) is that, at some point in the future, unbundling obligations would go away – in essence, the Commission set the stage for providers to be able to invest their way out of unbundling obligations. This is particularly true in the case of “next-generation network facilities and equipment,” described as “fiber optic cables and equipment used to provide packet-based services.”¹² The Commission made its policy goals with regard to fiber and broadband deployment clear:

⁸ *TRO*, 18 FCC Rcd. at 17,110, ¶ 212.

⁹ *TRO*, 18 FCC Rcd. at 16,984, ¶ 3.

¹⁰ *Id.* at ¶ 200; *see also TRRO*, 20 FCC Rcd. at 2535, ¶ 2 (noting the additional steps it was taking “to encourage the innovation and investment that come from facilities-based competition”).

¹¹ *TRRO*, 20 FCC Rcd. at 2536, ¶ 3.

¹² *TRO*, 18 FCC Rcd. at 17,124, ¶ 240.

In particular, we seek to encourage investment in next-generation network architecture suitable for delivering advanced telecommunications capability throughout the nation. We also look to promote the potential of broadband in a minimally regulated environment in accordance with the deregulatory intent of the 1996 Act. Finally, we seek to unleash the innovation that has been characteristic of the computer and software industries.¹³

We implore the Commission not to lose sight of these goals, which remain relevant and key to ensuring that the technology transitions stay on course.

A broad declaration that would purport to establish unbundling requirements on next-generation facilities after certain technology transitions have occurred would have wide-ranging effects on that transition and the ILEC investment necessary to accomplish it. It certainly should not occur without benefit of a thorough rulemaking proceeding. Consider, for example, the unbundling requirements for hybrid loops. To avoid “blunt[ing] the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities,” the Commission declined to order unbundling of the packetized capabilities of hybrid loops.¹⁴ In doing so, it expressly limited unbundling obligations to the TDM-based portion of hybrid loops.¹⁵ That is, the Commission drew a line “based on technological boundaries rather than transmission speeds, bandwidth, or some other factor,” explaining that the characteristics of packet-switched equipment versus TDM-based equipment are well-known by the industry.¹⁶ The Commission further noted that preserving unbundled access to the TDM features, functions, and capabilities of ILEC hybrid loops would

¹³ *Id.* at ¶ 241.

¹⁴ *Id.* at ¶ 288 (including any transmission path over fiber used to transmit packetized information, and any electronics or other equipment used to transmit packetized information over hybrid loops).

¹⁵ *Id.* at ¶ 289 (explaining that only those features, functions and capabilities of hybrid loops that are not used to transmit packetized information are subject to unbundling).

¹⁶ *Id.* at ¶ 293.

allow competitive LECS “to continue providing both traditional narrowband services (*e.g.*, voice, fax, dial-up Internet access) and high-capacity services like DS1 and DS3 circuits.”¹⁷

Fast forward to today. Providers are retiring their copper plant, in many cases along with the TDM-based capabilities, and replacing them with fiber plant and IP-based technology. This is precisely what the Commission sought to achieve.¹⁸ And the existing rules already prescribe the ILECs’ unbundling obligations – or lack thereof – in that circumstance.

We do not here opine on whether the Commission’s impairment analyses and unbundling decisions with regard to “DS1 and DS3 capacity loops”¹⁹ are ripe for revisiting at this time. We note, however, that the Commission’s rules addressing ILEC unbundling obligations for these so-called “high capacity” loops presume that at least some copper and TDM-based networks are still being used to provide last mile access for competing providers.²⁰ To the extent the Commission chooses not to undertake a reexamination of its unbundling decisions in the near future, it must refrain from adopting any new unbundling requirements in the context of a declaratory ruling.

I. THE COMMISSION MUST NOT UNREASONABLY RESTRICT PROVIDERS’ ABILITY TO RETIRE LEGACY SERVICES AND FACILITIES.

Recent actions taken by the Commission have threatened to make it more difficult for providers seeking to retire legacy services and facilities than in the past. For example, the Commission, without seeking comment, has determined that it will look beyond what service a

¹⁷ *TRO*, 18 FCC Rcd. at 17,103 n.627.

¹⁸ *See, e.g., TRO*, 18 FCC Rcd. at 17,153 n.847 (stating that ILECs may remove copper loops from their plant so long as they comply with network notification and other requirements and citing to the Part 51 rules); *Id.* at 17,154 n.850 (ILECs need not maintain or retain copper loops if they replace them with fiber).

¹⁹ *Windstream Petition* at 1.

²⁰ *See* 47 C.F.R. § 51.319(a)(4)-(5).

provider offers to define “service” under section 214,²¹ instead relying on “the perspective of the relevant community or part of a community” to decide whether the provider’s service offering is being discontinued.²² The implications of this new standard are potentially game-changing. In particular, for providers seeking to retire copper facilities (who may do so under the Commission’s current rules only with proper notice),²³ this added uncertainty about what network changes may be accomplished without seeking section 214 authority will deter them from making network upgrades designed to benefit consumers.

Moreover, since TDM is traditionally used in conjunction with copper networks, as more copper is retired, some providers may decide that their TDM offerings have outlived their practical usefulness and they likewise will be retired. Although some providers may retain some TDM capabilities for use with hybrid or fiber facilities, we are confident that achieving the desired advances in broadband deployment and capabilities will rely on IP technology, not TDM.

The Commission must consider the implications of these anticipated (and ongoing) network upgrades to ILEC unbundling obligations. We encourage the Commission to refrain from unreasonably restricting providers’ ability to retire legacy services and facilities in order to facilitate the transition to modern IP networks, and otherwise to provide clarity and regulatory predictability to ensure consistent treatment of all providers.

II. THE COMMISSION NEED NOT DELAY OR PROLONG TECHNOLOGY TRANSITIONS TO PRESERVE ACCESS TO LAST MILE FACILITIES.

As noted earlier, technology transitions are well underway. The number and scope of fiber deployments continue to grow thanks to investment by ILECs in particular, but also other competitive providers. Where providers are merely replacing legacy copper facilities with fiber

²¹ 47 C.F.R. § 214(a).

²² See *Declaratory Ruling*, *supra* note 4, at ¶ 117.

²³ See generally 47 C.F.R. § 51.333.

but will provide the same service to its customers over fiber,²⁴ there is no need to encumber that process with additional notice requirements. Even where facilities are being replaced and customers may experience some changes in the features and functionality they get with their legacy services, the Commission should not unreasonably delay such transitions under the guise of consumer protection. New service offerings made possible because of fiber and IP technologies will offer many more enhanced features and functionality than legacy services are capable of providing. The Commission should therefore increase its education efforts so consumers are not blindsided, rather than raise additional barriers to progress.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Jonathan Banks
Diane Griffin Holland

607 14th Street, NW
Suite 400
Washington, D.C. 20005
(202) 326-7300

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²⁴ See, e.g., Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon, to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 13-5, at 2, 4 (filed June 2, 2014).