

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

In the Matter of)	
)	
Petition for Declaratory Ruling to Clarify That)	WC Docket No. 15-1
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

REPLY COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION

I. INTRODUCTION

Frontier Communications Corporation (“Frontier”) submits the following reply comments to the Federal Communications Commission’s (“Commission”) Public Notice¹ requesting comment on a petition for declaratory ruling (“Petition”) filed by Windstream Corporation (“Windstream”).² Windstream has requested that the Commission find that an incumbent local exchange carrier (“ILEC”) continues to have an obligation to provide DS1 and DS3 loops on an unbundled basis after a copper loop is replaced with fiber or after the conversion of transmission from Time-Division Multiplexing (“TDM”) to Internet Protocol (“IP”) format.³

¹ Wireline Competition Bureau Seeks Comment on Windstream’s Petition for Declaratory Ruling Seeking to Confirm ILECs’ Continued Obligation to Provide DS1s and DS3s on an Unbundled Basis After Technology Transitions, Public Notice, WC Docket No. 15-1, GN Docket No. 13-5, DA 15-4 (Jan. 6, 2015).

² Petition of Windstream Corporation for a Declaratory Ruling, WC Docket No. 15-1, GN Docket No. 13-5 (Dec. 29, 2014).

³ See *id.* at 1.

The Commission should deny Windstream’s Petition. In particular, Frontier supports the oppositions filed by AT&T Services, Inc. (“AT&T”)⁴ and Verizon⁵ and the comments filed by ITTA – The Voice of Mid-Size Communications Companies (“ITTA”).⁶ As those parties explain, Windstream’s Petition is contrary to established Commission rules and precedent, and such changes cannot be undertaken in the context of a petition for declaratory ruling. Moreover, Windstream’s proposal would hamper investment in broadband and slow broadband deployment by reducing incentives for carriers to invest in infrastructure.

II. WINDSTREAM’S PROPOSED DS1/DS3 UNBUNDLING IS CONTRARY TO COMMISSION PRECEDENT AND WOULD HARM THE PUBLIC INTEREST

As Verizon, AT&T, and ITTA explain, there is nothing in the Commission’s rules or underlying statutory authority that requires ILECs to provide access to DS1 and DS3 loops when TDM capabilities no longer exist.⁷ As, for example, ITTA explains, more than a decade ago, the Commission established that once an ILEC retires TDM facilities and equipment, it has no obligation to unbundle packetized loop transmission facilities, with limited exceptions not applicable here.⁸

⁴ See Opposition of AT&T Services, Inc., WC Docket No. 15-1, GN Docket No. 13-5 (Feb. 5, 2015) (“AT&T Opposition”).

⁵ See Opposition of Verizon, WC Docket No. 15-1, GN Docket No. 13-5 (Feb. 5, 2015) (“Verizon”).

⁶ See Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 15-1, GN Docket No. 13-5 (Feb. 5, 2015) (“ITTA Comments”).

⁷ AT&T Opposition at 4-12; Verizon Opposition at 2-4; ITTA Comments at 3.

⁸ ITTA Comments at 3-4 (citing *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, 18 FCC Rcd. 16978 (2003) (“*Triennial Review Order*”).

AT&T provides an extensive analysis of Commission precedent underlying the relevant rules and shows that the unbundling obligations do not apply to next-generation technology.⁹ As AT&T discusses, the Commission’s *Triennial Review Order* based its unbundling rules on a “bright line . . . drawn between legacy technology and newer technology.”¹⁰ The Commission ultimately “adopted a rule denying unbundled access to next generation, packet switched technologies, including packet switching itself, fiber loops . . . and the packet-switched features, functions and capabilities of hybrid loops.”¹¹ In doing so, the Commission required ILECs to continue unbundling TDM capabilities of hybrid loops and of DS1 and DS3 loops, which the Commission directly described as “TDM-based services.”¹² In other words, the Commission found no obligation to unbundle network elements once ILECs transition from TDM technology or from copper to fiber.

As Verizon further explains, if there were any outstanding ambiguity regarding the Commission’s intent in the *Triennial Review Order*, the Commission settled the issue in the *Triennial Review Reconsideration Order*.¹³ As Verizon shows, “the Commission held in 2004 that its unbundling rules do not require ILECs to build TDM capabilities into their packet-switched networks or to add those capabilities into their networks that do not already have them in order to satisfy a CLEC’s request for unbundled network elements.”¹⁴ Based on the clarity of

⁹ See AT&T Opposition at 4-12.

¹⁰ *Id.* at 2 (*Triennial Review Order* ¶ 293).

¹¹ *Id.* (citing 47 C.F.R. § 51.319(a)(2) - (3); *Triennial Review Order* ¶¶ 7, 537).

¹² See AT&T Opposition at 2 (citing *Triennial Review Order* ¶ 294); see also ITTA Comments at 2.

¹³ See Verizon Opposition at 1 (citing *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*, Order on Reconsideration, 19 FCC Rcd 20293 ¶¶ 20-21 (2004) (“*Triennial Review Reconsideration Order*”).

¹⁴ Verizon Opposition at 1.

the Commission's decisions on this topic, it is unsurprising two federal appeals courts have essentially found that the Commission's rules should not be interpreted to require the unbundling that Windstream requests.¹⁵

In any event, as both ITTA and AT&T recognize, the relief that Windstream requests would require a rulemaking.¹⁶ Because the Commission's rules do not require the unbundling that Windstream asks for, the Administrative Procedures Act requires the Commission to undertake a notice and comment rulemaking.¹⁷ The Commission cannot adopt a new rule or overturn an existing rule in the context of a petition for declaratory ruling.

Even if the Commission could grant the relief Windstream requests (it cannot), Windstream's proposal contravenes the public interest and would discourage broadband deployment. As the Commission stated in 2003 – and as is just as applicable today – “applying section 251(c) unbundling obligations to . . . next-generation network elements would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities, in direct opposition to the express statutory goals authorized in section 706.”¹⁸ Indeed, the D.C. Circuit directly agreed with this reasoning – “[a]n unbundling requirement under these circumstances seems likely to delay infrastructure investment, with CLECs tempted to wait for ILECs to deploy FTTH and ILECs fearful that CLEC access would undermine the investments' potential return.”¹⁹

¹⁵ See *id.* at 3 n.4 (citing *Illinois Bell Tel. Co. v. Box*, 526 F.3d 1069, 1073 (7th Cir. 2008); *BellSouth Telecomms., Inc. v. Kentucky Pub. Serv. Comm'n*, 669 F.3d 704, 710-12 (6th Cir. 2012)); AT&T Opposition at 11 (same).

¹⁶ See AT&T Opposition at 12-15; ITTA Comments at 6.

¹⁷ See 5 U.S.C. § 553.

¹⁸ *Triennial Review Order* ¶ 288.

¹⁹ *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 584 (D.C. Cir. 2004).

Far from a theoretical problem, AT&T provides extensive details and empirical evidence regarding how the current rule promotes broadband deployment.²⁰ In particular, AT&T explains that “[i]nvestment in communications equipment in the United States increased by more than 40 percent after the Commission’s decision not to require unbundling for broadband infrastructure.”²¹ Granting a right to unbundled access as ILECs transition from copper TDM networks to next-generation all-IP networks would undercut the deployment of broadband the Commission has worked so hard to promote.

III. CONCLUSION

For the foregoing reasons, the Commission should deny Windstream’s petition for a declaratory ruling.

Respectfully submitted,

/s/ AJ Burton

AJ Burton

Director of Federal Regulatory Affairs

Frontier Communications Corporation

2300 N St. NW, Suite 710

Washington, DC 20037

Telephone: (202) 223-6807

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²⁰ See AT&T Opposition at 26-29 (detailing the harms to broadband investment posed by Windstream’s proposed rule changes).

²¹ AT&T Opposition at 22 (citing Jeffrey A. Eisenach, *The Progress & Freedom Foundation, Broadband Policy: Does the U.S. Have It Right After All?* 9-10 & Fig. 2 (Sept. 2008)).