

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

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

REPLY COMMENTS OF VERIZON

Kathleen M. Grillo
Of Counsel

William H. Johnson
Curtis L. Groves
Katharine R. Saunders
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, VA 22201

Attorneys for Verizon

March 9, 2015

TABLE OF CONTENTS

I. Providers who deploy new networks must be able to retire old ones. 2

II. The competitive marketplace will ensure that wholesale customers will continue to have reasonable access to services. 7

III. The Commission should not impose mandatory backup power requirements that customers do not want or need..... 10

IV. Section 214 already backstops market forces and ensures that customers have notice of potential changes to the network..... 12

 a. Existing processes give customers an opportunity to comment on proposed discontinuances. 12

 b. The Commission should not require providers to offer a replacement service at equivalent rates, terms, and conditions when they discontinue TDM-based services. 15

V. The Commission should not expand unbundling requirements to next-generation facilities..... 19

CONCLUSION 21

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

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

REPLY COMMENTS OF VERIZON

The transition to new networks and technologies is already well underway and is delivering tremendous benefits to customers. To further its progress, the Commission should embrace policies that encourage the deployment of and migration to advanced fiber networks; give providers certainty about the regulatory process and timeline as they migrate to new networks; give customers appropriate notice of network changes and service discontinuances; and ensure that providers will not be required to maintain and operate a redundant network where they deploy advanced new facilities. On the other hand, introducing new delays into the process will slow deployment of next generation facilities and services.

The Commission’s current processes related to technology transitions — including the network change process for copper retirements, the discontinuance process for services that are discontinued or impaired, and the tariff revision process — already provide an adequate regulatory framework. Just as the Commission predicted, companies have invested heavily in fiber and next generation technologies under these policies, and this investment has increased consumers’ access to more advanced services and more competitive options. Additional processes and rules are not necessary. If anything, the Commission should streamline the existing ones by improving their efficiency and avoiding delay. If the Commission does decide to adopt new rules, they should be designed to encourage investment and facilitate — not delay or undermine — the orderly transition to advanced facilities and services.

I. Providers who deploy new networks must be able to retire old ones.

The policies the Commission adopts in this proceeding should be structured to streamline existing processes and procedures to help accelerate delivery of the many benefits that technology transitions promise consumers. Their main focus should be to provide the industry with reasonable certainty that providers will be able to retire older facilities when they invest in newer, more advanced broadband networks.

Under the Commission’s existing policies and rules, companies have deployed fiber to millions of homes and businesses with the understanding that they could retire redundant and less efficient legacy networks and transition away from legacy services when it made sense to do so. As Corning correctly notes, the successful regulatory model under which providers invested in new networks “rested on the understanding that once new networks were deployed, old ones could be retired, yielding cost savings and other efficiencies.”¹ “The assurance to service

¹ Corning Comments at 2.

providers that they could invest in new technology free of the burdensome requirements applicable to legacy networks drove deployment and innovation.”² The results of that investment were successful: today “millions of American consumers are now relying on new technology,” a successful outcome of the investment incentives produced by the current framework.³ Companies like Corning, the D.C. Circuit has recognized, that “sell goods and services that are inputs to the production and use” of services like those at issue here have “the incentive to make a completely unbiased judgment” on the merits of regulatory proposals regarding those services.⁴ The Commission should give substantial weight to Corning’s judgment.

Making the decision to invest in new fiber-based networks requires a careful assessment of risks and costs, including, as the Fiber to the Home Council explains, an assessment of the costs of maintaining and operating their existing copper facilities and the limitations on the services those facilities can support, as well as the anticipated savings from retiring old copper facilities that are no longer needed to serve customers.⁵ For example, where Verizon has deployed its all-fiber network, it costs Verizon more than \$200 million per year to maintain copper facilities in those areas even if there are no customers using those facilities.⁶ These include maintenance and other costs including local property taxes and private rental fees. Being able to rely on the ability

² *Id.* at 2.

³ *Id.*

⁴ *United States v. Western Elec. Co.*, 993 F.2d 1572, 1582 (D.C. Cir. 1993) (emphasis omitted).

⁵ See Fiber to the Home Council Comments at 15 (“FTTH Comments”); see also GVTC Declaration at 8 (*attached to FTTH Comments*).

⁶ See Verizon Comments, *Technological Transition of the Nation’s Communications Infrastructure*, WC Docket No. 12-353; *Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper Subloops*, RM-11358, at Attachment A: Declaration of Claire Beth Nogay, ¶ 19.

to retire that copper once it is no longer needed is a necessary part of assessing the costs of deployment, and companies need to know that they will not be compelled by regulation to maintain two networks indefinitely.⁷

The transition to date has taken place under these existing rules, with providers giving notice of copper retirements and working with competitors and regulators to address the very few objections that have been filed. But new policies that would reduce the likelihood that providers will be able to retire legacy networks will increase the already “significant risks associated with deploying all-fiber networks.”⁸ Regulatory obligations that would require ILECs (and only ILECs) to maintain copper networks even after they have deployed new fiber or other networks to serve customers, as ITTA explains, will create “disproportionate burdens” and “reduce[s] their incentives to invest” in new networks.⁹ ITTA correctly notes that the Commission reached the same conclusion in the National Broadband Plan.¹⁰ Regulatory obligations like these would jeopardize the cost savings that factor into the business case for deploying new networks and would alter the calculation that providers make for future investment and that investors make when they decide whether to make capital available for those investments.

The Commission should be careful to set policy that will maintain the efficient parts of the existing copper retirement policies, rather than yield to requests that it delay the transition or add additional impediments, uncertainty, or delay. For example, the Commission should adopt its own recommendation — widely supported in this proceeding — to maintain the notice-based copper retirement and network change process. It should maintain the existing wholesale

⁷ *Id.*

⁸ FTTH Comments at 15.

⁹ ITTA Comments at 8.

¹⁰ *See id.*

notification process, and it should not extend the time period contemplated in the rules as some have suggested.¹¹ Nor, as CenturyLink explained,¹² should the Commission impose new obligations on providers to offer particular services following copper retirement. Further, the Commission should continue to permit providers flexibility in providing notices to their customers and other relevant third parties.

The Commission should not introduce uncertainty by extending its copper retirement requirements to so-called “de facto” retirements, as some argue.¹³ As AT&T notes, the allegations by some commenters on network maintenance do not point to any effect on competitors or their service quality.¹⁴ Rather than encroach upon traditional state jurisdiction regarding ongoing maintenance obligations, the Commission instead should focus on improving customer service by encouraging the move to more reliable fiber. That some commenters¹⁵ may object to the way certain states (such as Delaware or New York) oversee maintenance and service obligations does not justify a wholesale replacement of those obligations with an FCC requirement, even if doing so were within the Commission’s jurisdiction — which it is not.¹⁶ Similarly, these commenters’ confusion of network change and section 214 proceedings should not be the basis for blurring the lines between these two types of actions. A “de-facto” retirement rule would require the highly inefficient process of essentially loop-by-loop “copper retirement” as copper facilities fail or have an issue — even those not currently in use. Such a

¹¹ *See, e.g.*, Comments of Birch, Integra, and Level 3 at 10-11 (“Joint Commenters”).

¹² CenturyLink Comments at 6.

¹³ Communication Workers of America Comments at 13, 20 (“CWA Comments”).

¹⁴ *See* AT&T Comments at 30.

¹⁵ CWA Comments at 20.

¹⁶ *See, e.g.*, 47 U.S.C. §152(b)(providing that the Telecommunications Act does not give the Commission jurisdiction over intrastate communication services).

use of resources would necessarily divert both Commission and provider resources to paperwork instead of focusing on making necessary repairs, maintenance or upgrades.

Finally, while some commenters have raised understandable concerns for the continued availability of 911 services as networks transition to IP and fiber,¹⁷ it is unnecessary to interject that issue here. Wireline service providers have longstanding obligations and relationships with state and local government stakeholders in that area, and there is no reason to believe that underlying state and local tariff and contractual provisions are inadequate. In any event, the Commission has separately requested comment on the implications of network and technology changes for state, local, and federal 911 governance in a separate rulemaking proceeding, and relevant issues concerning 911 services are planned for consideration in the forthcoming CSRIC V and the ongoing Task Force on optimal PSAP architecture.¹⁸ As with network maintenance obligations, Commission action concerning local 911 networks raises significant jurisdictional and technical issues that are more appropriately addressed in those venues.

¹⁷ See APCO Comments at 4-5; Michigan Public Service Commission Comments at 6-7; National Association of State 911 Administrators Comments at 3-4 (“NASNA Comments”); Texas 911 Alliance, *et al.* Comments at 2-5.

¹⁸ See *911 Governance and Accountability; Improving 911 Reliability*, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208, ¶ 20 (2014); *FCC Intends to Recharter the Communications Security, Reliability and Interoperability Council for a Fifth Two-Year Term; Seeks Nominations by March 31, 2015 for Membership*, Public Notice, DA 15-203 (PSHSB rel. Feb. 12, 2015) (tasked with “[d]eveloping and recommending to the FCC best practices and actions it could take that promote reliable communications services, including 911, Enhanced 911, and Next Generation 911 service.”); *FCC Seeks Nominations by November 7, 2014 For Membership on New Task Force on Optimal Public Safety Answering Point Architecture*, Public Notice, 29 FCC Rcd 12038 (2014) (Task Force’s duties include findings and recommendations on “[o]ptimal PSAP system and network configuration in terms of emergency communications efficiency, performance, and operations functionality....”).

II. The competitive marketplace will ensure that wholesale customers will continue to have reasonable access to services.

Today's competitive marketplace provides competitors with access to wholesale services that they use to serve their customers. Additional regulatory intervention is not needed. Existing regulations combined with market forces will ensure continued access. The Commission once assumed that ILECs were universally market leaders, today nothing could be further from the truth. "ILECs are no longer the market leaders in the provision of residential or business voice services," ITTA correctly explains,¹⁹ and the marketplace for both DS-1 and DS-3 special access and higher-capacity services like Ethernet — which are "economical substitutes for DS1 and DS3 facilities"²⁰ — is highly competitive.²¹ For example, in 2014, Level 3 finished the year as the second largest Ethernet provider in the U.S., surpassing Verizon.²² The U.S. cable industry overall eclipsed \$10 billion in business services revenue.²³ And CLECs like XO, Windstream, and others are expanding their network footprints to compete for business customers' high-capacity services.²⁴

Many of the commenters who seek to impose additional regulatory burdens on ILECs ignore these facts.²⁵ Some commenters rely on no data at all; others, like the Joint Commenters,

¹⁹ ITTA Comments at 6.

²⁰ CenturyLink Comments at 12.

²¹ AT&T Comments at 61.

²² See 2014 U.S. Carrier Ethernet LEADERBOARD, <http://www.verticalsystems.com/vsglb/2014-u-s-carrier-ethernet-leaderboard/> (Feb. 19, 2015).

²³ Carol Wilson, *US Cable Nears \$10B in Business Service Revenues*, Light Reading (Dec. 2, 2014), [http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-\\$10b-in-businessservice-revenues/d/d-id/712347](http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-$10b-in-businessservice-revenues/d/d-id/712347).

²⁴ Sean Buckley, *Comcast, Level 3's mega-mergers could shake up the Ethernet market, says VSG*, Fierce Telecom (Aug. 20, 2014), <http://www.fiercetelecom.com/story/comcast-level-3s-megamergers-could-shake-ethernet-market-says-vsg/2014-08-20>.

²⁵ See, e.g., Joint Commenters at 3; Sprint Comments at 5.

point to stale data that by now is five to ten years old.²⁶ But the place for the Commission to conduct a comprehensive analysis of the state of competition for special access and high-capacity services is in the special access proceeding, where it finally has collected data. That is the docket in which the Commission can and should reach a data-driven decision about these generalized claims about special access rates, terms, and conditions. We expect that decision will confirm what the players in the marketplace already know: the marketplace is highly competitive. The Commission should not allow those grievances to impede the technology transition, and it should not jump the gun and make decisions that assume a certain outcome in that proceeding.²⁷

Market forces will continue to ensure commercially reasonable wholesale services are available, including services for customers that rely on DS-1 and DS-3 special access. Retail and wholesale customers have choices. Case in point — despite some commenters’ suggestions —²⁸ Verizon currently voluntarily provides DS1s and DS3s over fiber in wire centers that both satisfy the Commission’s impairment triggers and that already have the necessary TDM equipment to provide DS1 or DS3 over fiber loops.

Marketplace incentives also will drive continued availability of some slower, DS-0 level services to wholesale customers. As ITTA explained, “ILEC-provided services are one of many communications service options available to today’s consumers” in a marketplace for voice

²⁶ See Joint Commenters at 5.

²⁷ See, e.g., *id.* at 3.

²⁸ See, e.g., Ad Hoc Telecommunications Users Committee Comments at 20 (“Ad Hoc Comments”); XO Comments at 28.

services where demand is shifting from legacy PSTN-based wireline services to IP-enabled services offered by many companies including cable and wireless providers.²⁹

The pervasive voluntary offering of relevant DS-0 level services to wholesale customers who buy them as part of commercial substitutes for the Unbundled Network Element Platform (UNE-P) is the best evidence these customers will continue to have options. For voice service, companies buy unbundled DS-0 loops as part of those commercial packages, which replaced UNE-P, after the *Triennial Review Remand Order*. Despite what some commenters suggest, there is no current regulatory obligation to provide these UNE-P commercial substitutes.³⁰ Yet AT&T, CenturyLink, and Verizon have voluntarily offered commercial products that offer the same functionality as UNE-P on commercially reasonable market-based terms and conditions since the *Triennial Review Remand Order*, and they continue to offer these products today. There is no need for new regulation to ensure continued access for wholesale customers to these services.

²⁹ See ITTA Comments at 6-8.

³⁰ See Brief for Amicus Curiae Federal Communications Commission in Support of Defendants-Appellants, Cross –Appellees and Partial Reversal of the District Court, *BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky v. Kentucky Public Service Commission*, Case No. 10-5310/10-5311, at 17 (6th Cir. filed Dec. 6, 2011) (“No BOC is under an obligation to recreate the UNE-Platform by application of the commingling rule, for two independent reasons. First, as explained above, the FCC has delisted unbundled local circuit switching and shared transport as UNEs that must be offered under section 251(c)(3); those elements are now offered strictly pursuant to the section 271 competitive checklist. And the FCC has determined that BOCs are not required to combine section 271 checklist items with one another. *Triennial Review Order*, 18 FCC Rcd at 17386 (¶ 655, n.1990); see also *Nuvox*, 530 F.3d at 1334. Thus, no BOC is obligated under the FCC’s rules — and, as a consequence, no state commission may order a BOC — to combine the unbundled local circuit switching and shared transport pieces of what used to comprise the now-defunct UNE-Platform to satisfy its commingling duties.”)

III. The Commission should not impose mandatory back-up power requirements that customers do not want or need.

Much like the Commission should not adopt new copper retirement or other regulations regarding wholesale access, it also should not impose unnecessary mandatory back-up power requirements. As the record here confirms, customers today have a wide variety of back-up power options to support commercial voice services during commercial power outages. Customers who wish to have battery back-up today have a range of options, from cable providers' 8 hour offerings to Verizon's new D-Cell approach that offers customers back-up power up to 24 hours, and which customers can easily extend.³¹ Customers who prioritize battery back-up may choose one of these options and the traditional, non-cordless handsets necessary to make use of them.

But other customers, as Corning and others have noted, voluntarily choose to have no back-up battery at all even when one is available to them, preferring instead to use wireless products.³² Customers who use handsets that themselves require commercial power to operate may also choose not to have back-up batteries.³³ Given this variety in preferences and options, the Commission should continue to allow customers flexibility in choosing back-up power options so that they can pick which option best fits their needs. The Commission could work with providers to help develop information that would help educate customers on the variety of battery back-up options available, while continuing to permit customers to make their own decisions as to what option, if any, is optimal for them.

The Commission should not, however, impose mandatory requirements that customers do not want or need. For example, alarm companies urge that providers be required to provide

³¹ See Verizon Comments.

³² Corning Comments at 4-5.

³³ *Id.*

customers with rechargeable batteries that the providers continuously monitor.³⁴ These suggestions are unnecessary and impractical. First, commonly used smoke detectors and carbon monoxide detectors regularly rely on off-the-shelf double AA or D Cell batteries (similar to those used in Verizon's D-Cell back-up option). These batteries are easily obtainable by customers even in bulk, and they are reliable and affordable. Thus, if a customer desired seven days' worth of battery back-up, as Public Knowledge advocates,³⁵ she could easily purchase multiple sets of batteries under this option. Similarly, the 12-volt batteries used in other back-up options have been installed in millions of homes around the country. Customers who want additional batteries may purchase them online, at local automotive or hardware stores, or from their provider. With these options, requiring rechargeable batteries is unnecessary. Finally, calibrating a carrier's battery back-up obligations and capabilities based on essential versus non-essential calls, as some commenters suggest,³⁶ would be inconsistent with consumers' expectations and unnecessarily complex. Sound carrier policies and practices, including battery back-up availability and customer education, will necessarily account for 911 dialing and availability. Moreover, consumers will often have access to wireless service for 911 access as a complement to wireline service.

Second, monitoring may not be feasible under systems as currently designed, and requiring such monitoring will require substantial and costly shifts in technology. Providers may need to create new systems to monitor battery status and to track associated customer notifications which, as AT&T notes,³⁷ would increase the costs of service overall and could delay

³⁴ See, e.g., ADT Comments; AICC comments.

³⁵ Public Knowledge Comments at 24.

³⁶ See APCO Comments at 3; NASNA Comments at 2.

³⁷ AT&T Comments at 10.

implementation of new devices and technologies. Given that the majority of voice customers have already migrated from line-powered TDM services and traditional handsets to wireless and VoIP options, customers are already familiar with relying on self-monitored, consumer-provided power options.

IV. Section 214 already backstops market forces and provides customers with notice of service discontinuances.

a. Existing processes give customers an opportunity to comment on proposed discontinuances.

The Commission issues a Public Notice for every 214 discontinuance application that it receives. The Commission also has an established process for providers to seek authority to remove services from tariffs and for competitors to contest those changes. In both cases, customers are put on notice and have the opportunity to comment or object. And they have, as Verizon’s experience discontinuing a non-ILEC enterprise service³⁸ and AT&T’s experience with its special access tariffed discount plans demonstrate.³⁹ The suggestion that the tariff review process “puts incumbent LECs in the driver’s seat” and that the Commission has little time to evaluate proposed tariff changes is baseless.⁴⁰ The Commission has suspended tariffs and designated issues for investigation when it has had concerns.⁴¹

Nevertheless commenters incorrectly assert that without burdensome new regulatory requirements, ILECs would be free to discontinue service at the drop of a hat, positing a fictitious world in which ILECs would have an “unchecked” “right to unilaterally discontinue

³⁸ Verizon Comments 25-26.

³⁹ See *Suspension & Investigation of AT&T Special Access Tariffs, et al.*, Order, 28 FCC Rcd 16525 (2013).

⁴⁰ Joint Commenters at 21.

⁴¹ See *Investigation of Certain 2012 Annual Access Tariffs*, Order Designating Issues for Investigation, 27 FCC Rcd 10311 (2012).

wholesale services.”⁴² That is incorrect. If any provider, including an ILEC, wanted to “discontinue, reduce, or impair” DS0, DS1, or DS3 service to a community, Section 214 *already* requires that provider to seek Commission certification that “neither the present, nor future public convenience and necessity will be adversely affected.”⁴³

If anything, the Commission should streamline its rules to eliminate unnecessary delays in the process, since the existing rules under Section 214 already create potential for inefficiency and delay and can make it more difficult for providers to plan for an efficient transition or to assess product lifecycles.⁴⁴ That in turn can hamper providers’ ability to respond to consumer demand and slow the transition to newer products and services.⁴⁵ The Commission therefore should adopt a requirement that it will issue a public notice within 30 days after a provider files a discontinuance application, and it should adopt procedures to ensure that applications taken off the automatic-grant track have a path to decision without unreasonable delay.

Even if it does not streamline its procedures, the FCC should not adopt the proposed new rebuttable presumption that presumes that discontinuances of wholesale services also result in the discontinuance to service to end-user customers. By definition, ILECs sell their wholesale services so that they can be resold to end user customers. There is no need to add new requirements or rebuttable presumptions regarding wholesale services to ensure that Section 214 will apply.

Furthermore, many commenters would attach new procedural requirements that would prolong the Section 214 process and increase the associated burdens. For example, some CLECs

⁴² *See, e.g.*, Joint Commenters at 8-9.

⁴³ 47 USC § 214(a).

⁴⁴ *See, e.g.*, AT&T Comments at 55.

⁴⁵ *See* NTCA Comments at 3, 10-11.

propose to require ILECs to present a *prima facie* evidentiary case up to 60 days in advance of their Section 214 filing, and they propose a process after the *prima facie* filing and before the actual discontinuance application in which interested parties could rebut the *prima facie* filing.⁴⁶ This would be in addition to their proposal that wholesale providers receive 12 months' notice of discontinuances and *36 months' notice* of grandfathering.⁴⁷

The Commission already has in place a policy that ensures that interested parties, including wholesale customers, have notice of proposed service discontinuances and an opportunity to comment. Elongating this process and interjecting substantial new uncertainties would further decrease providers' certainty that they can discontinue the old when they deploy the new. Some commenters claim that their proposals if adopted would provide certainty.⁴⁸ In truth they would do the opposite, since these same commenters also argue that the wish lists they pitch as "guiding principles" should constitute a floor and not a ceiling as to what should be expected of ILECs that seek to discontinue service and transition to new networks.⁴⁹ None of this is necessary.

Finally, as it considers these issues, it is important that the Commission continue to keep separate the concepts of copper retirement and section 214 discontinuance and reject the efforts of some commenters to conflate the two.⁵⁰ A change in an underlying technology or facility does not necessarily cause a discontinuance or impairment in service. For example, Verizon offers the same legacy POTS service — at the same price, terms, and conditions — over fiber

⁴⁶ See XO Comments at 23; Access Point, Birch Communications, BullsEye Telecom, Matrix Telecom, *et al.* Comments at 10-11 ("Wholesale DS-0 Coalition Comments").

⁴⁷ See, e.g., Joint Commenters at 10-11.

⁴⁸ See, e.g., Windstream Comments at 28.

⁴⁹ See, e.g., Windstream Comments at 23; Sprint Comments at 3.

⁵⁰ See, e.g., CWA Comments at 21.

facilities as it does over copper facilities. Changing out these legacy copper facilities for fiber and retiring the copper in these circumstances requires a network change notice and related filings. It does not and should not require a 214 application absent a separate discontinuation or impairment of a telecommunications service.

b. The Commission should not require providers to offer a replacement service at equivalent rates, terms, and conditions when they discontinue TDM-based services.

Even as network technology transitions, wholesale customers will continue to have the ability to get wholesale inputs at reasonable terms and conditions. Market forces ensure that, and existing regulations provide a more than adequate process to address the concern. But as the New York Public Service Commission commented, it may not always be possible to maintain equivalent rates, terms, and conditions when providers transition to new networks.⁵¹ Setting the bar unnecessarily high heightens the risk that providers will be unable to discontinue old services even when adequate substitutes are available.

The Commission should maintain its existing policy that considers whether an adequate substitute is available in the marketplace and reject a prescriptive approach that decides who must offer the substitute service or on what precise terms. Many commenters assume that the ILEC that seeks to discontinue service must be the company in the marketplace that provides the substitute service. But in most places, today's marketplace is competitive, and many other companies may provide an adequate substitute. As long as there is some adequate substitute in the marketplace, it does not and should not matter whether the ILEC is providing it or someone

⁵¹ New York State Public Service Commission Comments at 13.

else.⁵² The Commission should not adopt the premise that an ILEC that discontinues a TDM-based service always must provide an IP replacement — and at the same price.

If nevertheless it were to adopt such a requirement, the Commission should stop there and should not adopt the even more burdensome proposals that some commenters offer. The Joint Commenters, for example, would create a new regulatory framework to cover the replacement service that ILECs would offer, including posted terms and prohibitions on changes in terms and conditions without at least six months' notice.⁵³ That would lock in place particular technologies instead of promoting transitions.

For example, Windstream presented a set of six principles that it suggests should apply to ILECs that seek to discontinue TDM-based wholesale inputs and purportedly ensure that they provide an equivalent replacement service.⁵⁴ Windstream's principles — under which the ILEC would have to commit itself to provide an IP-based replacement that meets each of the six — largely amount to an effort to convert Section 214 into a source for regulating special access and Ethernet rates.⁵⁵ The Commission should reject Windstream's proposal. As ITTA explains, "IT is established law that the Section 214 discontinuance process cannot be used to challenge changes in rates, terms, and conditions of service."⁵⁶ With respect to special access there is an

⁵² See, e.g., CenturyLink Comments at 20-21 ("ILECs and other carriers should be permitted to discontinue declining end user services for which any competitive alternatives are available.")

⁵³ Joint Commenters at 13.

⁵⁴ Windstream Comments at 27.

⁵⁵ See *id.* at 27.

⁵⁶ ITTA Comments at 10. See *Western Union Telegraph Company Petition for Order to Require the Bell System to Continue to Provide Group/Supergroup Facilities*, Memorandum Opinion and Order, 74 F.C.C. 2d 293, 295, ¶ 6 (1979). See also *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221, 1233 (D.C. Cir. 1980) (affirming the Commission's ruling that § 214(a) did not apply because the elimination of a rate discount was not a discontinuance or impairment of any service).

entire regulatory regime that already governs its pricing. The Commission has adequate authority to ensure just and reasonable rates without dramatically expanding the scope of Section 214. And with respect to Ethernet, the Commission has to varying degrees forbore from regulating how ILECs provide those services, in order to promote the deployment of broadband facilities and broadband services.⁵⁷

Windstream's specific proposals — and the proposed additions and interpretations that many commenters offer — would further complicate and impede the current transition from copper to fiber networks.

For example, Windstream's proposal that the price per Mbps of an IP replacement service should not exceed the price per Mbps of a discontinued TDM special access service is rife for abuse. The Wholesale DS-0 Coalition, for one, proposes to extend this principle to UNE-P replacement products, which would regulate for the first time a commercial product offered at market-based rates.⁵⁸ Similarly, the proposal that a provider's wholesale rates cannot exceed its retail rates can also be distorted. Sprint, for example, proposes that Verizon's residential

⁵⁷ See *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*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (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 Section 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).

⁵⁸ See Wholesale DS-0 Coalition Comments at 4-5.

broadband service is an appropriate retail benchmark for wholesale DS3 service.⁵⁹ But as even Sprint concedes,⁶⁰ residential broadband service and a DS-3 circuit are fundamentally different services. Residential service is a best-efforts broadband service, whereas DS-3 special access service includes a dedicated circuit and tariffed service-quality terms. And while business-class Ethernet or best-efforts broadband may discipline special access prices and compete in the same marketplace, comparing one to the other is like comparing apples to oranges.

Windstream also proposes a prohibition against “backdoor price increases,” which turns out to be a laundry list of grievances Windstream has raised elsewhere and which are being considered in other proceedings. Several of the supposed “increases” relate to the voluntary special access discount plans that ILECs offer customers. These plans are efficient, pro-customer, and already the subject of much debate in the special access proceeding, where Windstream and other companies seek to get the benefits of those voluntary plans without making the commitments that make those plans economic. This proceeding is not the place to resolve those issues.

Similarly, commenters here raise concerns with special construction practices, which they have also raised in the special access proceeding. Again, that proceeding and not this one is the appropriate place for the Commission to address those claims. And regardless, in their discussion here of special construction commenters make several errors. Ad Hoc, for example, alleges that ILECs have charged special construction when any new construction occurs.⁶¹ But Ad Hoc does not provide an example, and ILEC tariffs specifically limit special construction to specific situations, including when no facilities are available to meet a customer’s order and

⁵⁹ Sprint Comments at 3.

⁶⁰ Sprint Comments at 4, fn. 7.

⁶¹ Ad Hoc Comments at 19.

when the ILEC has no other requirement for the facilities that the customer requests.⁶² Similarly, XO incorrectly asserts that in buildings now served by Verizon's fiber network, Verizon will not support orders for new copper loops even if the facilities are in place and working.⁶³ That is not Verizon's policy. If Verizon has working facilities in a building that will support the service that customer's request, it is Verizon's policy to use those facilities to provision the requested service.

Other commenters, meanwhile, argue that special construction should not apply even when there are no available facilities on which to provide requested service, because new construction when facilities are exhausted should be presumed to be normal construction that the ILEC will use.⁶⁴ But the fundamental flaw underlying that argument is the assumption that in 2015 and beyond, there will be subsequent demand for new construction of copper facilities for which the ILEC has no other requirement. The marketplace has shifted, and with the intermodal competitive alternatives that cable companies and other providers offer, there may never be another use for those facilities. When there are no facilities available to meet a customer request and no other requirement for those facilities, the construction necessary to fulfill the customer request is special construction, as defined across the board in providers' tariffs.

V. The Commission should not expand unbundling requirements to next-generation facilities.

The Commission previously rejected broad unbundling obligations on next-generation fiber facilities, and the Commission cannot and should not expand the Section 251(c) unbundling duties to those facilities now. Contrary to some suggestions, unbundling obligations are not technology neutral, but instead apply differently to legacy facilities than to newer fiber

⁶² See, e.g., Verizon Tariff FCC No. 21 Sec. 2.6.2.

⁶³ XO Comments at 11.

⁶⁴ See, e.g., Joint Commenters at 15-16; Comptel Comments at 22.

facilities.⁶⁵ Cognizant of the effects on both CLEC and ILEC investment that its unbundling decisions would have, the Commission in the *Triennial Review Order* adopted an unbundling regime that differentiated between copper and fiber loops and between TDM and packet-switched IP networks. The Commission “decline[d] to attach unbundling requirements to the next-generation network capabilities of fiber-based local loops.”⁶⁶ The Commission predicted that its non-technology-neutral policy would “stimulate facilities-based deployment” and that “relieving incumbent LECs from unbundling requirements for these networks will promote investment in, and deployment of, next-generation networks.”⁶⁷ And the Commission later clarified that “incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability.”⁶⁸

Commenters who today claim that the technology transitions cannot extinguish ILEC unbundling obligations miss the point and misstate the law. The technology transitions do not affect ILEC unbundling obligations. Those obligations have not changed since the 2003 – 2005 orders that ended years of litigation, and the ongoing transition should not be used as a pretense to add new unbundling obligations, either in the context of copper retirement or otherwise. Section 51.319(a)(3) of the Commission’s rules excludes all-fiber loops from the loop-unbundling requirements.⁶⁹ As two courts of appeals have held, that rule applies to all customers.⁷⁰

⁶⁵ See, e.g., Wholesale DS-O Coalition Comments at 2-3; Comptel Comments at 38.

⁶⁶ *Triennial Review Order*, ¶ 272.

⁶⁷ *Id.*

⁶⁸ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; et al.*, Order on Reconsideration, 19 FCC Rcd 20293, ¶¶ 20-21 (2004).

⁶⁹ See 47 CFR 51.319(a)(3).

⁷⁰ *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).

Furthermore the Commission could not extend unbundling obligations for fiber loops serving an end user's premises or for the packet-switched capabilities of loops without a dramatic change to its rules and its unbundling policies. At a minimum, the parties seeking this rule change would bear the burden of showing that additional unbundling is necessary and they would be impaired without it. The commenters favoring new unbundling requirements could not make such a showing, and they have not even attempted to here.

CONCLUSION

For these reasons, the Commission should adopt policies that encourage the technology transition and assure providers that they will be able to retire old networks and discontinue outdated services when they invest in and deploy new networks.

Respectfully submitted,

/s/ Curtis L. Groves

Kathleen M. Grillo
Of Counsel

William H. Johnson
Curtis L. Groves
Katharine R. Saunders
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, VA 22201
(703) 351-3084
Attorneys for Verizon

March 9, 2015