

**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)	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

REPLY COMMENTS OF CALTEL

Pursuant to the Commission’s Public Notice establishing dates for comments on the Emerging Wireline Networks and Services Notice of Proposed Rulemaking (NPRM),¹ the California Association of Competitive Telecommunications Companies² (“CALTEL”) files the following reply comments on behalf of its members.³

¹ *Wireline Competition Bureau Announces Comment and Reply Comment Dates for the Emerging Wireline Networks and Services Notice of Proposed Rulemaking*, DA 15-5, January 6, 2015.

² CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are entrepreneurial companies building and deploying networks to provide competitive voice, broadband, and video services. The majority of CALTEL members are small businesses who help to fuel the California economy through technological innovation, new services, affordable prices and customer choice.

³ See www.caltel.org for a list of CALTEL member companies.

I. Introduction and Summary

In these reply comments, CALTEL responds to the opening comments of several parties as they bear on the continued availability of last-mile access used by competitive local exchange carriers (CLECs) to provide competitive options to residential and business customers. CALTEL supports the Commission's goal of protecting these competitive options from harm as the industry undergoes technology transitions.

First, CALTEL agrees with many commenters that describe disconnects between the Commission's objectives and the proposed changes to the Section 214 service discontinuance process, including the related rebuttable presumption and tentative conclusion. Other commenters appear to agree with CALTEL that this process will be ineffective in dealing with the diminished access that will result from retirement of home run bare copper loops, and is better suited to address discontinuance of services such as DS_n special access, high-capacity unbundled loops (such as DS1s and DS3s), and DS0 wholesale products like AT&T's Local Wholesale Complete (LWC) and Verizon's Wholesale Advantage. CALTEL endorses a number of recommendations in opening comments, as described below, which address how the NPRM's proposed changes to the Section 214 discontinuance process should be applied to these types of services.

Second, CALTEL also supports commenters who describe updates that are needed to modernize the Commission's copper retirement rules and processes. Third, CALTEL discusses a number of recommendations made by commenters that would protect access to the transmission medium provided today by home run bare copper loops when any portion of those loops are replaced or retired. As noted by COMPTTEL and

other commenters, this transmission medium is used by CLECs to provide business customers with high-capacity broadband services like Ethernet over Copper (EoC).

Level 3 et al.'s recommendations specifically support the Commission's objective of "ensur(ing) on an interim basis the availability of last-mile services to competitive LECs" while the Commission's special access data collection and analysis is pending.⁴ CALTEL summarizes these recommendations and endorses adoption of one or more of them.

Finally, CALTEL notes the starkly contrasting opening comments of ILECs and CLECs regarding how well the current copper retirement rules and processes are working. In addition, commenters cite other aspects of the Commission's rules and processes which together serve to limit access to last-mile wholesale inputs, and are fraught with similar obstacles, delays, red-tape and confusion. Therefore, CALTEL makes an additional recommendation that should be adopted to supplement the special access data collection and analysis that is currently underway: the Commission should appoint an ombudsman to monitor and gather information about the real-world operation and impact of the Commission's current wholesale access rules and processes.

II. Discussion

- A. CALTEL Supports Proposed Changes to the Section 214 Process For Services Like DS_n Special Access, High-Capacity Unbundled Loops , and DS₀ Wholesale Arrangements

⁴ NPRM at ¶ 110.

In its opening comments, CALTEL described its concerns that the NPRM's proposed use of two admittedly "separate, but often related"⁵ sets of rules (i.e. the copper retirement notices process and the Section 214(a) service discontinuance process) was unlikely to achieve the desired outcomes. CALTEL noted that "in particular, the triggers and timelines are not integrated and information about equivalent wholesale inputs will not be available when CLECs need to make decisions about whether or not to enter into negotiations for continued lease or purchase of soon-to-be-retired copper facilities."⁶

Other commenters expressed similar concerns. XO, for example, explains that network changes are "triggered when and where an ILEC plans to retire copper facilities and move to fiber-based infrastructure" and that when "the retirement does not also constitute a Section 214 discontinuance of service, the ILEC need only provide notice of its intent to retire copper facilities."⁷

The opening comments of other CLECs show that most addressed the proposed changes to the Section 214 process in the context of DSn special access services, high-capacity unbundled loops (such as DS1s and DS3s), and DS0 wholesale products like AT&T's Local Wholesale Complete (LWC) and Verizon's Wholesale Advantage.⁸ CALTEL endorses adoption of these recommendations.

⁵ *Id.* at ¶ 5.

⁶ Comments of CALTEL at pp. 15-16.

⁷ Comments of XO Communications at p. 7.

⁸ *See, e.g.* Comments of Birch, Integra and Level 3 at pp. 5-28, Comments of the Wholesale DS-0 Coalition at pp. 8-12.

B. CALTEL Supports Proposed Changes to the Commission's Copper Retirement Rules and Processes

In its opening comments, CALTEL described its advocacy before the California Public Utilities Commission (CPUC) which resulted in a state-specific copper retirement notice-and-negotiations process. CALTEL also discussed the issues associated with the potential sale or auction of copper facilities, and the related issue of *de facto* retirement of copper facilities due to failure or refusal by major ILECs to maintain it.

Other commenters expressed similar concerns. XO, for example, described updates needed to modernize the current rules including a more comprehensive and flexible definition of copper retirement, consistency of content in network change notices, a publicly-available and searchable database, increased advance notice, availability of periodic, non-binding forecasts, a collaborative planning process, and a regulatory framework that applies in the wake of natural disasters and emergencies.⁹

Level 3 et al. proposed many of these same updates, including changes to definitions, 12-month advanced notices of planned copper retirements, and uniform formats for copper retirement notifications.¹⁰

CALTEL endorses adoption of these recommendations.

C. CALTEL Supports Proposed Recommendations to Provide Continued Access to the Transmission Medium Currently Available to CLECs Through Lease of Home Run Bare Copper Loops

⁹ Comments of XO Communications at p. 7-22.

¹⁰ Comments of Birch, Integra and Level 3 at pp. 34-39.

Other CLECs made additional recommendations that would protect access to the transmission medium provided today by home run bare copper loops when any portion of those loops are replaced or retired. As noted by COMPTTEL and other commenters, this transmission medium is used by CLECs to provide business customers with high-capacity broadband services like Ethernet over Copper (EoC).

Level 3 et al included a list of measures that the Commission could adopt on an interim basis, i.e. while the Commission's special access data collection and analysis is pending. These measures include: 1) a moratorium on the retirement of copper loops that are or could be used to serve business customer locations; 2) access to substitutes for unbundled copper loops used to provide Ethernet service as a precondition for retiring copper loops; and 3) access to home run dark fiber loops where they have been deployed.¹¹ COMPTTEL also proposed access to dark fiber, or alternatively to a wavelength of an optical fiber's transmission capacity.¹²

With regards to a moratorium on the retirement of copper loops, if such a measure were to be adopted, it should not be restricted to loops that are or could be used to serve business customer locations. Although there are fewer CLECs serving the residential market, they primarily do so through lease of DS0-level home run copper loops and have no current substitutes available to serve customers if these loops are retired.

Furthermore, CALTEL realizes that a moratorium on copper retirements may have the perverse result of an increase in *de facto* copper loop retirements. This is why,

¹¹ Comments of Birch, Integra and Level 3 at pp. 32-34.

¹² Comments of COMPTTEL at pp. 30-34.

as CALTEL has advocated previously in the Commission's Form 477 and Service Quality proceedings, the Commission must gather and monitor service quality data in order to gain insight into where ILECs are failing to maintain copper facilities.¹³ CALTEL reiterates its recommendation that the Commission require carriers who file retail and/or wholesale service quality data with state public utility commissions to file those same reports with the Commission.

The ILECs appear to agree that service quality is squarely within the purview of state commissions.¹⁴ In California, the CPUC requires carriers to file service quality data based on a number of measures on a quarterly basis, including the 24-hour repair standard that was cited in CALTEL's opening comments.¹⁵ However, as the NPRM notes,¹⁶ CALTEL is also aware that not all state commissions retain the necessary jurisdiction or otherwise do not require the large ILECs to file similar service quality data. Where that is the case, the Commission may have to reinstate ARMIS Reports 43-05 and 43-06 for price cap carriers, at least on an interim basis, in order to gather the data needed to monitor and enforce prohibitions against *de facto* copper retirements.

¹³ See Comments of CALTEL, In the Matter of Modernizing the FCC Form 477 Data Program, WC Docket No. 11-10, et al, dated March 30, 2011.

¹⁴ See Comments of Verizon at p. 12 ("The Commission should not encroach onto traditional state jurisdiction regarding ongoing maintenance obligations by imposing new requirements relating to 'de facto' retirement) and Comments of ITTA at p. 18 ("State and local governments continue to play a vital role in overseeing carriers' service quality and network maintenance").

¹⁵ See, e.g., the 2014 service quality reports of Verizon California at <http://ftp.cpuc.ca.gov/Telco/ServiceQualityReports/2014/4th%20Quarter/URF%20ILECs/Verizon%204th%20Quarter%202014.pdf> .

¹⁶ NPRM at ¶ 54.

CALTEL therefore endorses adoption of one or more of Level 3 et al's recommendations if revised as follows:

- 1) a moratorium on the retirement of home run copper loops, coupled with monitoring and enforcement against *de facto* copper retirements;
 - 2) access to substitutes for unbundled copper loops as a precondition for retiring copper loops; and
 - 3) access to home run dark fiber loops where they have been deployed.
- D. CALTEL Recommends That the Commission Appoint an Ombudsman to Monitor and Oversee Real-World Operation of Its Current Copper Retirement and Wholesale Access Policies in Order to Supplement Data Collection in the Special Access Rulemaking

Finally, CALTEL notes the significant discrepancies in the opening comments of ILECs on the one hand, and CLECs on the other, with regard to how well the current copper retirement rules and processes are actually working.

The ILECs uniformly argue that the status quo is just fine:

The record does not support the Commission's proposal to impose new obligations on ILECs retiring copper. The current rules are working. Those rules already address several of the Commission's cited concerns, such as the retirement of copper feeder and the maintenance of copper loops provided to CLECs as UNEs. Additionally, there is no merit to some competitors' suggestions of inappropriate behavior on the part of the ILECs.¹⁷

As the Commission considers new notices or paperwork to add to the existing process, it should ensure that any revisions, such as to expand the notice requirements, do not create confusion or disrupt the process that to date has been remarkably uncontroversial and reasonably streamlined.¹⁸

However, commenting CLECs emphatically disagree with this assessment:

The copper retirement process has been plagued by uncertainty and a lack of transparency and, as originally drafted, unilaterally favors the incumbents.¹⁹

¹⁷ Comments of AT&T at pp. 1-2.

¹⁸ Comments of Verizon at p. 12.

¹⁹ Comments of XO Communications at p. 9.

Where copper is not the subject of a notice, CLECs should be allowed to presume that the copper will be available for orders and not allowed to slide into an uncertain status somewhere between still available and retired. Certainty is vital for competitive carriers to be able to plan properly. Similarly, where copper has suffered damage or has become defective, outside of emergency situations which are addressed below, ILECs should be required to repair or replace it in a timely fashion, until such time that it is retired. Again, CLECs should be entitled and able to rely upon the lack of a retirement notice as much as to respond where there is a notice. Finally, the Commission should make clear that, absent a retirement properly noticed, ILECs must provision copper loops upon request if they have not removed, disabled, or physically replaced (them) with non-copper facilities. In recent years, in Verizon territory for example, XO has experienced situations where copper is reported, upon request for loops, as “no longer available” for new orders even though the copper has not been the subject of a network change notice. Specifically, where Verizon brings FiOS to a building previously served by copper, Verizon has apparently adopted a policy of no longer supporting new orders for copper loops to the building, even if the loop facilities are still in place and not defective or degraded. In such cases, XO typically learns that copper is no longer being offered at the building only when it seeks to place an order.²⁰

Competitive LECs are increasingly observing the imposition of unwarranted and/or excessive special construction arrangements on the basis that the copper facilities are not available, even though it appears that the retail customer requesting service is currently using the copper facilities (through service from the incumbent) to which the competitive LEC seeks wholesale access to replace the incumbent. In other cases, competitive LECs—on the alleged grounds that their orders trigger a new build-out—have been charged special construction for network delivery infrastructure that are engineered to support capacity for multiple carriers.²¹

For example, Level 3 et al. list a number of other wholesale policies, rules and processes which limit access to last-mile high-cap UNE inputs, and are fraught with similar obstacles, delays, red-tape and confusion:

UNEs are unavailable in a number of circumstances, including the following: (1) in wire centers where the non-impairment triggers established in the *TRRO* are satisfied; (2) in areas where the Commission has granted forbearance from

²⁰ *Id.* at p. 11.

²¹ Comments of COMPTEL at p35-36.

Section 251 unbundling obligations; (3) in buildings where the caps established in the *TRRO* have been exceeded; and (4) where competitors seek to provide certain downstream retail services (e.g. standalone long distance services) for which UNEs are unavailable. Where UNEs are available, the terms and conditions in incumbent LEC special access volume/term discount plans (e.g. volume shortfall penalties and UNE/special access ratio provisions) often effectively increase the cost of purchasing UNEs and thereby preclude their use as a substitute for DS_n special access. Furthermore, competitive carriers may be unable to rely on UNEs in lieu of DS_n special access because the process of converting circuits from special access to UNEs is often costly and slow, and may result in disruptions (e.g. outages) to the business customer's service.²²

And CLECs that rely on access to DS₀-level wholesale inputs face different but similar obstacles. For example, it is an everyday challenge to obtain sufficient "good pairs" out of many central offices where copper plant has been allowed to degrade or facilities are being reserved for the ILEC's own use in deploying high-speed broadband products such as AT&T U-Verse.

Given this level of controversy, CALTEL believes that the Commission would be well-served to supplement its current data collection effort with real-world, on-the-ground information about how these rules and processes are actually working. CALTEL recommends that the Commission consider appointing an ombudsman whose only job would be to monitor and gather information about the day-to-day operation of these rules and processes, and the resulting impact on the actual availability of last-mile wholesale inputs.

III. Conclusion

CALTEL appreciates this opportunity to respond to the opening comments of other parties, and to provide additional recommendations that will assist the Commission

²² Comments of Birch, Integra and Level 3 at pp. 6-7.

in meeting its objectives with regards to protecting competition, and competitive choice for residential and business customers, as the industry undergoes a number of technology transitions.

CALTEL supports proposals to enhance the Section 214 discontinuance process for wholesale services like DS_n special access, high-capacity unbundled loops (such as DS1s and DS3s), and DS0 wholesale products like AT&T's Local Wholesale Complete (LWC) and Verizon's Wholesale Advantage.

CALTEL also supports proposed changes to the copper retirement rules and processes, and recommendations that would ensure interim access to the transmission medium provided today by home run bare copper loops. If the Commission adopts an interim moratorium on copper loop retirements, the Commission must also gather and monitor service quality data in order to deter *de facto* retirement of copper facilities, either through access to off-the-shelf data already being reported to state commissions, or by interim reinstatement of ARMIS 43-05 and 43-06 reports for price cap companies.

Finally, based on the opening comments of ILECs and CLECs, CALTEL also recommends that the Commission supplement its data-gathering undertaking in the special access rulemaking by appointing an ombudsman to oversee and gather information about the real-world challenges posed by the Commission's current copper retirement and other wholesale access policies.

Respectfully submitted,

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