

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

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

**REPLY COMMENTS OF
BT AMERICAS INC. ON BEHALF OF ITSELF AND OTHER BT SUBSIDIARIES IN THE US**

BT Americas Inc., a wholly owned indirect subsidiary of BT Group plc (“BT plc”), respectfully submits these reply comments on behalf of itself and other BT operating entities in the US (collectively referred to herein as “BT”). BT is a UK-headquartered provider of managed network services and solutions to global enterprises in the UK, USA, Europe and rest of world. BT is extremely interested in the technology transition taking place in the USA because the migration to all-IP networks holds tremendous potential for the offering of better, more innovative and efficient network services. However, a transition that lacks transparency and information, and that takes place on dominant suppliers’ timetables at rates, terms and conditions set unilaterally by dominant suppliers, could have

devastating consequences for consumers and competition. In this comment, BT only addresses issues that potentially arise from the technology transition affecting large enterprise consumers.

I. Technology Transition on Dominant Suppliers' Terms Could Harm Consumers

Large global enterprises are very dependent on US access services to connect their US sites and operations to their global networks. However, last mile access in the US is still controlled by US incumbents regardless of whether the access is TDM or Ethernet-based. This is BT's own experience with seeking suppliers to provide access connectivity between its large enterprise customers' premises (existing and target) and BT's Points of Presence in the US. BT has conducted repeated RFP exercises over the last decade to find alternate and cheaper access suppliers for thousands of enterprise locations across the US. Each time BT has matched access suppliers against its customers' locations, BT has found that there is only one supplier with facilities into a customer location in the majority of cases—namely the incumbent.

The dynamic that BT observes playing out with the technology transition in the US market is that dominant US incumbents are unilaterally setting high rates for IP-based equivalent wholesale access alternatives because they can -- their profit motives are largely unconstrained by competition or regulation. Meanwhile, retail customers are not rapidly migrating over to Ethernet access services at the rate BT would expect based on BT's experience with customers' migration from TDM to Ethernet access services globally. Large enterprises may be slow to migrate over to replacement services in the US because they still rely heavily on low bandwidth DS-1 services and are reluctant to pay significantly higher prices for IP replacement services when their cheaper legacy TDM access services work just as well for now. The following hypothetical illustrates the disincentives for a large enterprise customer.

Assume a large enterprise customer has two hundred DS-1 access lines connecting its US sites to its global VPN and that the customer pays \$200 per month per DS-1 access line. Assume that the

Ethernet alternative to which the customer can migrate is a 2Mbps metro Ethernet service which costs \$400 per month per line if the service is purchased from an ILEC and \$300 per month from a CLEC. Assume there are no competitive Ethernet access alternatives for seventy five percent of the customer's US locations. If the customer were to migrate its access connections from TDM to Ethernet services, the customer would pay \$30,000 more per month for the one hundred and fifty circuits migrated to an ILEC and \$5000 more per month for the fifty circuits migrated to a CLEC. That would amount to \$420,000 per year of additional cost that the large enterprise could avoid incurring if it simply holds on to its existing legacy DS-1 access arrangements. This hypothetical demonstrates why retail customers would hold off migrating until they need much higher bandwidth access services.

To avoid sticker shock for consumers and to incentivize retail customers to naturally migrate to Ethernet access services, the Commission should reverse the forbearance from regulation of Ethernet access services achieved by Verizon, AT&T and Centurylink¹ wherever dominance is established and set price caps for Ethernet access services that are cost-oriented and competitive. Furthermore, the Commission should not allow the discontinuance, impairment or withdrawal of a legacy access service unless the replacement offering meets the requirements of the six principles that Windstream articulated for wholesale equivalent access services; namely that:

- 1. Price per Mbps Shall Not Increase.** The price per Mbps of the IP replacement product shall not exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable service at 50 Mbps or below.
- 2. A Provider's Wholesale Rates Shall Not Exceed Its Retail Rates.** An incumbent's wholesale rates for the IP replacement product shall not exceed its retail rates for the equivalent offering.
- 3. Basic Service Pricing Shall Not Increase.** The wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase. For example,

¹ See FCC News Release, Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is Granted by Operation of Law (20 March 2006); 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 (rel. Oct. 12, 2007) ("AT&T Broadband Forbearance Order"); 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 (rel. Aug. 5, 2008) ("Qwest Broadband Forbearance Order").

a 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest bandwidth Ethernet option available.

4. Bandwidth Options Shall Not Be Reduced: Wholesale bandwidth options shall not be reduced relative to what the incumbent is offering in the retail market. In other words, wholesale bandwidth options must include, at a minimum, the options that the incumbent offers to its retail business services customers.

5. No Backdoor Price Increases: The incumbent cannot engage in backdoor price increases (e.g., via network-to-network interface (“NNI”) charges, lock-up provisions, early termination fees, special construction charges) to circumvent the comparable rates at equivalent prices requirement.

6. No Impairment of Service Delivery or Quality: Service functionality and quality, operational support systems (“OSS”) efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today. Installation intervals and other elements affecting service delivery shall be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates’ operations.²

II. Technology Transition on Dominant Suppliers’ Terms Could Harm Competition

BT is also very concerned about discrimination by incumbents in the supply of wholesale Ethernet access inputs in an all-IP environment because incumbents will have every opportunity and incentive to discriminate against competitors and few if any constraints to stop them from doing so. This is a recipe for disaster as far as competition is concerned.

Today, Verizon can lawfully offer a large enterprise whose two or three hundred US offices need access connections to global voice and data platforms, a lower retail price for Ethernet access services than the wholesale price Verizon charges BT for the same Ethernet access connections. Verizon can lawfully offer to provision Ethernet access services to a target customer’s sites faster than it has contracted to provision the same Ethernet access services to BT or refuse to supply altogether. Verizon can charge BT special construction, expedite and other fees to connect a target customer’s sites to a global network, but not charge its own affiliate such fees. Even in the case of AT&T, which is still statutorily prohibited from engaging in such unjust price and non-price discrimination, there is no mechanism that would allow the Commission or competitors to detect such discrimination because only

² Letter from Jennie B. Chandra, Windstream Commc’ns, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5 and 12-353, WC Docket No. 05-25, RM-10593, at 10 (filed Sept. 26, 2014).

light, nondominance regulation applies to AT&T's Ethernet access services. For this reason, transitioning to an all-IP access environment where BT would continue to be dependent on dominant incumbent suppliers for US access services, but where US access would be so unregulated that incumbents could lawfully discriminate or discriminate without fear of detection, would sound a death knell for competition.

While incumbents would argue discrimination of this sort does not and would not happen, BT is of the opposite view. In such an environment where bid teams from BT, Verizon and AT&T compete fiercely to win the managed network service business of a large enterprise (including its Ethernet access connectivity) and each team spends many months and a few hundred thousand dollars pursuing the opportunity, it is naïve to imagine that an affiliate of an unregulated dominant supplier would not convert on its advantageous position by offering a target customer access incentives that are unavailable to competitors in the wholesale access market.

III. The Commission Should Proceed Slowly and Cautiously in Permitting the Discontinuance, Impairment or Withdrawal of a Legacy Access Service Because the Commission has Insufficient Information Regarding the Impact of the Technology Transition on Competition

BT applauds the Commission's commitment to protect competition as networks transition to all-IP technology. Wherever the Commission comes out on the issue of copper retirement, the fact of copper retirement will affect the viability of Ethernet over Copper ("EoC") access services. Today EoC-based access services offer some competition (albeit limited amounts) in the lower bandwidth Ethernet access service product market in certain US geographies. With the retirement of copper, this limited source of competition would be eliminated and the dominance of incumbent suppliers in certain markets increased. The Commission must factor this into its evaluation of market power in the Ethernet access services market, and ensure that wherever it finds dominance, the Commission offsets the effects

of this loss of competition by creating a wholesale Ethernet access regime that has robust protections against anti-competitive behaviour.

The Commission also needs to factor in the potential loss of competition in the wholesale equivalent access market that could result from rules that limit the availability of UNEs in an all-IP environment. BT does not express a view as to whether the unbundling obligations of Section 251(c)(3) should apply in their entirety. However, unless incumbents are required to offer at least virtual unbundled access services to competitors, this would be another nail in the coffin of retail access service competition and ultimately harm consumers and competition.

The Commission asks if incumbents' incentives to upgrade their facilities will be adversely affected if the Commission were to require incumbents to provide equivalent wholesale access on equivalent rates, terms and conditions. In BT's view, the US incumbents have huge opportunities to achieve cost savings and efficiencies by upgrading their networks irrespective of whether they are required to provide equivalent wholesale access services. If the upgrade is more than a simple migration to all-IP that also entails cleaning up a legacy, spaghetti-like environment of multiple networks and platforms and collapsing all networks, platforms and services onto a unified network architecture, such activity should yield benefits that far outweigh any disincentives for an incumbent stemming from having to offer equivalent wholesale access services. There is also the possibility that such rationalization and changes to network architecture could affect competitors' own network investments and further extend an incumbent's monopoly power over local loops. This is an area about which the Commission should seek more information and transparency from incumbents given the potential impact on competition in last mile services.

CONCLUSION

For the foregoing reasons, the Commission should adopt the proposals discussed herein.

Respectfully submitted,

BT AMERICAS INC.



By: _____

Sheba Chacko
Senior Counsel and Head, Americas Regulation &
Global Telecom Policy
BT AMERICAS INC.
11440 Commerce Park Drive
Reston, Virginia 20191

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