

April 23, 2015

**VIA ECFS**

***EX PARTE NOTICE***

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

**Re: *Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25***

Dear Ms. Dortch,

On April 22, 2015, Lisa Youngers of XO Communications, Thomas Cohen and Chip Yorkgitis of Kelley Drye & Warren LLP representing XO, Joe Cavender of Level 3 Communications, Thomas Jones of Willkie Farr & Gallagher LLP representing Level 3, Jennie Chandra of Windstream Communications, John Nakahata of Harris Wiltshire & Grannis LLP representing Windstream, and Angie Kronenberg and the undersigned from COMPTTEL, met with Deena Shetler, Pamela Arluk, William Layton, Jim Lichford, Vienna Jordan, Richard Kwiatkowski, David Zesiger, Doug Slotten, Robin Cohn, Daniel Kahn and Eric Ralph (by phone), of the Wireline Competition Bureau and Virginia Metallo of the Office of General Counsel. In the meeting, participants raised concerns about the negative impact of unwarranted and excessive special construction charges on competition for business communications services, particularly and increasingly for Ethernet services.

In the meeting, XO explained that Verizon has been greatly increasing the frequency of special construction charges for its Ethernet services and, based on fourth quarter 2014 numbers, the percentage of cases where special construction is imposed is more than *80 times* higher for Verizon than AT&T. Moreover, XO explained that, over the past several years, the incidence of Verizon special construction charges for TDM special access service orders has been substantially higher than in the period prior to 2012, when special construction charges were very rarely imposed by Verizon. Further, XO noted that the incidence of special construction for TDM services in the case of Verizon is markedly higher than for AT&T.

XO described some of the situations where Verizon seeks to impose special construction charges and that XO believes are inconsistent with the Verizon tariff. For example, in response to XO orders for DS1 special access at certain locations where copper is not exhausted, Verizon has informed XO that fulfilling the orders will require special construction charges because the building is converting to fiber-based service or will be FiOS-only going forward. Similarly, XO noted that Verizon, on some occasions where XO seeks to access new buildings, has purported to justify its special construction charges for TDM services on the basis that Verizon is only offering FiOS to such buildings. Through imposition of special construction charges in these

and other situations not permitted under its tariffs, Verizon is improperly shifting its fiber construction costs to XO and raising its rates for DS1 and DS3 services.

Windstream also expressed special construction concerns that were consistent with those described in its ex parte filing with the Commission last week.<sup>1</sup>

In light of special construction concerns, the meeting participants urged the Commission to take action to ensure that the incumbent LECs (1) consistently make capacity available to a requesting a wholesale customer without assessing a special construction charge if it would do the same for a retail customer requesting the same level of capacity and (2) only assess special construction for network facilities when there is no reasonably foreseeable possibility that the network facilities will be used by the incumbent to offer its own services in the future. We emphasized that the default grant of forbearance from Title II regulation of certain specified Verizon broadband services does not limit the Commission's jurisdiction to address Verizon's unreasonable special construction practices in connection with a request for Ethernet service.

Please do not hesitate to contact us if you have any questions about this submission.

Respectfully submitted,

*/s/ Karen Reidy*

cc: Meeting participants

---

<sup>1</sup> Letter of Malena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, FCC, GN Docket Nos. 13-5 and 12-353, WC Docket No. 05-25 and RM-10593, filed Apr. 17, 2015.