



The voice of mid-size communications companies

June 16, 2015

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

Re: *Ex Parte* Communication: WC Docket Nos. 15-1 and 05-25, GN Docket No. 13-5, PS Docket No. 14-174, RM-11358, RM-10593

Dear Ms. Dortch:

On June 12, 2015, Jeff Lanning of CenturyLink, Pat Rupich of Cincinnati Bell (by phone), Douglas Hart, counsel for Cincinnati Bell (by phone), and Genny Morelli and the undersigned of ITTA met with Daniel Kahn, Madeleine Findley, Michele Berlove (by phone), Heather Hendrickson (by phone), and Bakari Middleton (by phone) of the Wireline Competition Bureau to discuss Windstream's petition requesting that the Commission issue a declaratory ruling finding that an ILEC's obligation to provide DS1 and DS3 loops on an unbundled basis is not altered or eliminated either by replacement of copper with fiber or by the conversion of transmission from TDM to IP format.¹

We urged the Commission to deny the petition. Windstream's assertion that ILECs are obligated to offer DS1 and DS3 loops on an unbundled basis when they have converted from copper to fiber networks or have transitioned from TDM to IP transmission has no basis in the statute or the Commission's unbundling rules. As ITTA explained in its comments, the unbundling obligations in Section 251 apply only to TDM-based services.² Any obligation to provide unbundled access to DS1 and DS3 loops is limited to those situations where TDM-based transmission remains in place. No high-capacity loop unbundling obligations would survive the complete transition to IP technology.

Adopting Windstream's interpretation would require the Commission to reverse its well-founded determination more than a decade ago (and subsequently upheld by the courts) that declining to impose such obligations would fuel deployment of broadband infrastructure. Given that the Commission's decision has led to massive investment in next-generation networks and vibrant competition in the market for broadband services, there is no valid justification for the Commission to depart from precedent. Moreover, for the Commission to reverse course on this

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

² See Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 15-1, GN Docket No. 13-5 (filed Feb. 5, 2015).

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issue, it would have to conduct a formal rulemaking proceeding and reach a conclusion based on a complete record (as opposed to unsubstantiated claims) that CLECs are impaired without access to DS1s and DS3s.³

The core issue of this and certain other IP transition-related proceedings pending before the Commission is whether the Commission should mandate competitive access to incumbent networks going forward. The appropriate way to determine this issue is within the context of a rulemaking proceeding. In the pending special access proceeding, the Commission sought and obtained a vast amount of information on dedicated services that will enable a robust analysis and evaluation of competition in the market for special access services. Any actions of the nature proposed in Windstream's petition or relating to wholesale access more generally are at best premature. The Commission should complete a comprehensive analysis of the wholesale marketplace and determine based on that analysis what additional steps may or may not be necessary.⁴

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Micah M. Caldwell

Vice President, Regulatory Affairs

cc: Madeleine Findley Heather Hendrickson
Daniel Kahn Bakari Middleton
Michele Berlove

³ It is important to note that the lack of any obligation for ILECs to provide unbundled access to DS1 and DS3 loops as a result of the IP transition does not mean that CLECs will be left without any means to provide high-capacity services to their customers. CLECs will continue to have access to an ILEC's copper facilities as UNEs to the extent the ILEC continues to operate its copper facilities, and CLECs will have access to high-capacity loops as a commercial offering if the ILEC has retired those facilities. CLECs also will continue to have access to ILEC poles, conduit, and rights of way to deploy their own transmission facilities.

⁴ Given that the Commission's analysis will likely show sufficient competition in the market for special access services, additional regulations relating to wholesale access likely will not be necessary. Indeed, it is likely the FCC's examination will lead the Commission to identify areas where regulation should be removed to encourage innovation.