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**EX PARTE**

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

**Re: Technology Transitions, GN Docket No. 13-5; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers (RM-11358)**

Dear Ms. Dortch:

As the Commission has recognized, America's communications networks are rapidly evolving. Consumers continue to demand ever faster and more reliable options, and providers like Verizon have invested tens of billions of dollars to deploy the broadband networks necessary to meet these demands. Customers have abandoned legacy POTS services in substantial numbers in favor of newer technologies. And overall, the transition has been uneventful and non-controversial: consumers relish the increased options they now have available. In the areas where legacy copper facilities have been retired, the public has benefited from associated reductions in the overall power consumption and from the reduced risk of copper thefts that could interfere with customers' service or create public safety issues. The sooner the transition happens, the sooner consumers and the public more fully realize these benefits.

Under the current framework, private investment in new broadband networks has continued to flow, with corresponding public benefits. And other providers have received notice of upcoming changes and have ample opportunity to accommodate upcoming network changes. Despite any basis for doing so, some parties now urge the Commission to impose additional, unnecessary obligations by introducing new delays into the process that will only slow deployment of next generation facilities and services and delay the consumer and public benefits that follow from the transition from older facilities and services to more modern ones. XO, for example, continues to push for changes to the copper retirement notice procedures, including a new requirement that incumbents provide notice of retirement at least one year in advance of retirement, create costly new databases of their facilities, and provide as much as two-year forecasts of their planned copper retirements.<sup>1</sup> The Commission should decline those requests.

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<sup>1</sup> Letter from T. Cohen, counsel for XO Communications, to M. Dortch, Secretary, FCC, GN Docket No. 13-15 (filed June 5, 2015).

Prolonging the copper retirement process for an artificially long period only introduces needless delay and burdens without providing any true benefit to competition, consumers, or the public.

As commenters in this proceeding have established, investing in new fiber-based networks requires careful assessment of risks and costs, including assessing the costs of maintaining and operating existing copper facilities and the anticipated savings from retiring old copper facilities no longer needed to serve customers.<sup>2</sup> New regulations that would require ILECs (and only ILECs) to maintain copper networks long after they have deployed new fiber to serve customers will only reduce incentives to invest in new networks, as the Commission recognized in the National Broadband Plan.<sup>3</sup>

Competitors have not shown any evidence to the contrary, or any particular need for new regulatory restrictions. Indeed, parties for the most part have not availed themselves of the existing opportunities to discuss ongoing copper retirements with incumbents or to raise sincere concerns about specific projects that have involved retiring copper facilities. And the current rules already provide a detailed procedure to ensure that wholesale customers that use ILECs' networks have advanced notice before copper is retired and ample time to accommodate those changes.<sup>4</sup> The Commission, in establishing these requirements, specifically sought a balance between accommodating wholesale customers' need for time to accommodate a network change and encouraging ongoing copper retirement and fiber deployment. And the Commission limited this process to a reasonable timeframe not to exceed six months from the date the filer submitted its original notice, as a way to give filers certainty that their network upgrades could not be delayed indefinitely while giving competitors time to adjust.<sup>5</sup>

These existing procedures provide more than enough protections to wholesale customers. They should not be changed now to countenance an extended period of delay just for the sake of delay, as some are seeking here. Nor is there any reason to make the existing process more burdensome by requiring the creation of new databases or risk the anticompetitive consequences of requiring providers to publish new forecasts of network plans for an extended period of time. First, the existing process gives competitors detailed lists of locations where a provider intends to retire copper, both in hard copy pre-filing notifications and in easily accessible online postings. Second, requiring providers to forecast their copper retirement plans as many as two years out could have a detrimental effect on competition. By requiring providers to disclose this competitive information about where they plan to deploy fiber or retire copper, competitors such as cable companies could gain an unfair competitive advantage and target their marketing efforts and other

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<sup>2</sup> Fiber to the Home Council Comments at 15; *see also id.*, Declaration of George O'Neal, GVTC ; Verizon Reply Comments at 3; Corning Comments at 3-4.

<sup>3</sup> *See* ITTA Comments at 8 (citing National Broadband Plan, "Connecting America: The National Broadband Plan" (2010), *available at* <http://www.broadband.gov/>).

<sup>4</sup> 47 C.F.R. §51.333(c).

<sup>5</sup> 47 C.F.R. §51.333(c)(3).

Ms. Marlene H. Dortch

June 25, 2015

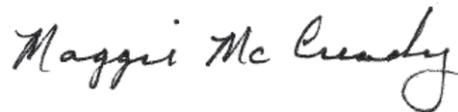
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activities in response to the protracted, advanced notice of their competitors' plans. Alternately, competitors with such early information could decide they have no need to upgrade their own offerings because an incumbent has not disclosed a planned deployment. In both cases, consumers would have fewer and less robust options from which to choose. Instead, the Commission should maintain the existing copper retirement and network change notice-based process and timeline.

Finally, the existing wholesale customer notification process allows competitors to raise valid and timely concerns, while not permitting self-serving delay that harms consumers and the public. And since providers already need to communicate directly with their retail customers during any copper to fiber transition, the Commission should not modify the existing rules to require specific messaging in customer communications.<sup>6</sup> Providers need the flexibility to provide customers with the relevant information about what the transition means, what alternative services are available, and what steps the customer needs to take to ensure the customer has a seamless transition—something all parties want.

Please let me know if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Maggie McCreedy".

cc: Matthew DelNero  
Carol Matthey  
Randy Clarke  
Daniel Kahn

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<sup>6</sup> *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014), at Appendix A: Proposed Rules, 51.332(c)(2)(iv) and 51.332(c)(4).