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June 29, 2015

**Via ECFS**

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

**Re:   *Technology Transitions*, GN Docket No. 13-5; GN Docket No. 12-353**

Dear Ms. Dortch:

On June 25, 2015, Joseph Farano of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), and the undersigned met with Nicholas Degani, Legal Advisor to Commissioner Pai.

We explained that MetTel relies largely on the use of a voice-grade product purchased from ILECs to serve multi-location businesses that have relatively modest needs for voice communications at each location (most frequently 1-10 lines). The locations are widely dispersed, and often in suburban, exurban and rural areas where no competitive carrier has facilities and it is not economical for a CLEC to construct facilities duplicating the ILEC’s, given the very limited demand at each location. Moreover, the local cable company usually cannot construct facilities to reach these businesses on an economical basis. MetTel has received quotes to build ranging to the hundreds of thousands of dollars in special construction costs. Only infrequently are such construction costs low enough to make use of cable facilities economically viable.

We pointed out that absent a requirement that ILECs continue to provide facilities to CLECs on comparable terms to those they currently provide, the customers will not have any competitive choice. MetTel has an average of approximately 3.57 lines per location. The cost of constructing competitive facilities (or extending cable facilities) to serve such small customers could not be recovered in any commercially realistic time frame. It is inevitable that in a post-transition world in which ILECs had no obligation to provide service at wholesale, the ILECs would face no competition. Thus, these small business customers would be at the mercy of an

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unregulated monopolist, which would not be in the interest of the small business customers or in the public interest.

We also discussed the availability of resale post-transition. The Commission has never resolved the question of whether VoIP service is a telecommunications service that is subject to the resale requirement of Sections 251 and 252. If it is found not to be subject to Sections 251 and 252, then obviously resale would not provide a competitive alternative. But even if VoIP service is subject to the resale requirements of Sections 251 and 252, we pointed out that the resale discounts under those sections generally range from 10-15% and do not permit competition by a CLEC that relies exclusively on such discounts. MetTel uses resale for a very small fraction of its lines, to provide service to customers that want a single carrier for all their locations, although a commercial voice agreement is not available in some of their locations. A resale arrangement would not, however, be economically viable for a CLEC that relied solely on resale.

We also discussed whether it would be appropriate to defer issuing an order of general applicability until the Commission issues an order regarding Special Access in WC Docket No. 05-25. Apart from the fact that the Special Access docket will not generate the data necessary to gauge the competitive impact of eliminating the type of commercial agreement through which MetTel and other carriers currently purchase wholesale service, this deferral would leave the Commission and the public without comprehensive guidance as to Section 214 applications for what might be a substantial period of time. The Reply Comment date is October 16, 2015. This docket has been open for more than 10 years. There is no reason to believe that its completion is imminent. In contrast, AT&T has stated in filings in the instant docket that it expects to begin submitting Section 214 notices over the next six months.<sup>1</sup> Overall guidance on a comprehensive basis is needed, rather than one-off consideration of individual applications. Even US Telecom agrees, stating recently that “having ground rules to facilitate the transition from TDM to IP is sound policy.”<sup>2</sup> If the Commission deems it appropriate to postpone a comprehensive order until the Special Access docket is completed, then it should also defer consideration of Section 214 applications that are part of the technology transition until the same time.

We urged the Commission to move forward with an order that would establish that post-transition, ILECs are required to continue to offer wholesale inputs, including those found in commercial agreements, on rates, terms and conditions equivalent to those they offer today.

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<sup>1</sup> See *Ex Parte* Letter of Frank S. Simone, AT&T to Ms. Marlene Dortch, June 6, 2014, GN Docket No. 13-5, WC Docket No. 12-353, at 2.

<sup>2</sup> *Ex Parte* Letter of Diane Griffin Holland, U.S. Telecom, to Ms. Marlene Dortch, June 24, 2015, GN Docket No. 13-5, WC Docket No. 05-25, at 2.

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Respectfully submitted,

*/s/ Eric J. Branfman*

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cc: Nicholas Degani (Via E-Mail)