

June 29, 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; Policies and Rules Governing the Retirement of Copper Loops by Incumbent Local Exchange Carriers, RM-11358; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593***

Dear Ms. Dortch,

On June 25, 2015 Eric Einhorn of Windstream, Paula Foley of Granite Telecommunications, Susan Butler of Capitol Resources LLC on behalf of Granite, Pat Thompson of XO Communications, Chip Yorkgitis of Kelley Drye and Warren (by phone) on behalf of XO, Norina Moy of Sprint Corporation, Roger Fleming of Northfork Strategies on behalf of Integra Telecom, Joe Cavender of Level 3 Communications, Thomas Jones of Willkie Farr and Gallagher on behalf of Level 3, Birch and COMPTTEL, Tamar Finn of Morgan Lewis on behalf of U.S. TelePacific Corp., and Angie Kronenberg and the undersigned from COMPTTEL met with Nick Degani of Commissioner Pai's office.

During the meeting we expressed our support for the Commission's bipartisan unanimous determination that the technology transition proceeding should ensure that the network values of competition, consumer protection, universal service and public safety should continue. We discussed the fact that if incumbent LECs were allowed to discontinue legacy services without preserving the availability of affordable last-mile connections to non-profits, anchor institutions, and business customers, then competition to these end users would be harmed.

Indeed, as discussed in the meeting, there are more than 200 letters in the docket from end-user customers asking the Commission to preserve competitive choice. They are a diverse representation of education centers, health care providers, school districts, fire fighters, financial institutions, and "mom & pop" companies. The letters from these end-users discuss the importance of the customized and affordable service – and the good customer service – they receive from competitive carriers.<sup>1</sup> Recognizing these concerns, the Office of Advocacy - U.S. Small Business Administration filed a letter stating:

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<sup>1</sup> For example, Century 21 MarketLink Realty states: "Thus far we have selected TDS Metrocom (TDS) as our preferred provider that delivers not only reliable technology, but also at the level of quality and flexibility we require. In addition, TDS stays in touch with us to ensure they are satisfying our business needs. Without these important factors our business cannot

“Competitive carriers have made a strong case that their ability to purchase wholesale access to incumbent networks is necessary to provide small business consumers with meaningful choices among various service providers for their broadband and voice needs. Competitive carriers offer services and products to small businesses that incumbent providers do not offer, and may lack the incentive to offer without any competitive pressure to do so. Current data shows that competitive carriers provide nearly one-third of the wireline services consumed by small businesses. Incumbent carriers should not be allowed to remove these choices from small business consumers by charging competitive carriers higher wholesale rates or demanding more onerous contract terms when modernizing their network technology. Competitive carriers and small business consumers have supported the continued investments of incumbents in our nation’s telecommunications infrastructure, and they should not be left behind as that infrastructure evolves. The FCC should ensure that small businesses will not lose access to affordable, tailored products that meet their unique needs.”<sup>2</sup>

We expressed support for adoption of the tentative conclusion, which the Commission reached on a bipartisan basis,<sup>3</sup> that an incumbent LEC must offer a replacement product that provides at least equivalent wholesale access on equivalent rates, terms, and conditions in order to be granted a discontinuance application for a wholesale input service offering. The adoption of this standard is needed so that business end-users (particularly smaller businesses) can continue to receive the tailored, innovative and affordable service they need to operate their businesses. We expressed the importance of the Commission’s taking action now to establish a clear standard for discontinuance of TDM services, at least on an interim basis, so as not to hold up the transition from TDM to IP technology and ensure that competitors can plan the availability of their services and own investments to serve customers, many of whom demand multi-year commitments of three to five years. In particular, we urged the Commission to adopt Windstream’s proposed six principles, as modified by COMPTEL,<sup>4</sup> in rules clarifying application of the standard.

We also discussed two cost studies prepared by CostQuest, which were filed in these dockets on June 8, 2015, by Windstream. Consistent with the prior filing we explained that one study demonstrates that competition for most business customer locations likely will continue to depend on competitive providers being able to lease ILEC last-mile inputs with reasonable rates,

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remain successful.” Letter of Martin De Witt, Owner, to Chairman Wheeler, dated June 18, 2015.

<sup>2</sup> Letter from Jamie Belcore Saloom, SBA Office of Advocacy, to Chairman Wheeler, dated June 23, 2015.

<sup>3</sup> Notice of Proposed Rulemaking and Declaratory Ruling, *Technology Transitions et al*, GN Docket No. 13-5, FCC 14-185 (2014) (“NPRM”) at ¶ 110. [The Commission tentatively concludes that it “require an incumbent LECs that seek Section 214 authority to discontinue, reduce, or impair a legacy service used as a wholesale input by competitive providers to commit to providing equivalent wholesale access on equivalent rates, terms, and conditions.”]

<sup>4</sup> See Letter of Karen Reidy to Marlene Dortch, date June 11, 2105.

terms, and conditions so that they can connect their CLEC fiber backbone to individual customer locations. The other study shows that overall costs for building, operating, and maintain fiber/IP-based services generally are less than those for legacy services. This suggests that all carriers, including ILECs, will continue to have their own significant business reasons for migrating from TDM to IP and from copper to fiber networks. We added that ILECs, under a regime merely requiring equivalent wholesale pricing, would attain a windfall as they transition to lower cost networks but still charge wholesale rates based on more expensive legacy cost conditions.

Finally, the meeting participants wish to emphasize here that it is critical that the Commission improve the “copper retirement process to better promote competition and protect consumers.”<sup>5</sup> In particular, the Commission should adopt revisions to improve the notification and procedural rules for copper retirement so that wholesale and end-users consumers are informed of their options and have sufficient notice of retirements (i.e., at least one year) to allow them to consider fully alternatives and can take informed steps to mitigate the impact without retail customers suffering undue disruption. The ILECs should be required to incorporate their retirement notices into their existing processes for responding to competitor inquiries about the availability of copper facilities, so as to minimize the potential for situations that threaten continuity of service for retail customers which can arise (and have arisen) when retirement notices are not incorporated. Requiring that the retirement notices be incorporated would not impose any new data collection requirement on the ILECs.

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

Respectfully submitted,

*/s/ Karen Reidy*

cc: Nick Degani

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<sup>5</sup> Notice of Proposed Rulemaking and Declaratory Ruling, *Technology Transitions et al*, GN Docket No. 13-5, FCC 14-185 (2014) at ¶ 49.