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July 10, 2015

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

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

Dear Ms. Dortch:

On July 8, 2015, Eric Einhorn and Jennie Chandra, of Windstream Services, LLC ("Windstream"), and I, on behalf of Windstream, spoke with Matthew DelNero, Chief, Wireline Competition Bureau, and Daniel Kahn, Deputy Chief, Competition Policy Division, Wireline Competition Bureau, regarding the above-referenced proceeding. We urged the Commission to take care to ensure that large ILECs could not easily evade the Section 214 process, and that it can do so by making clear that a discontinuance of a TDM special access connection to an end user location triggers Section 214 review, regardless of whether that connection is provided on a retail or a wholesale basis. Precedent cited by both ILECs and CLECs in this proceeding establishes that when a discontinuance affects service to end users, a Section 214 review is required regardless of whether the end users are customers of the ILEC or a CLEC.[1] ILECs cannot escape Section 214 discontinuance review simply by claiming that a service to a particular building or set of buildings is not currently being taken by one of its own retail end users. ILECs know when a wholesale service terminates at an end user location, even though the end user is not the ILEC's retail customer.[2] Furthermore, the 1996 Act's market-opening provisions and long-standing Commission precedent recognize that a CLEC's retail offering to an end user relies on ILEC wholesale access. If ILECs could eliminate all rate regulation simply by discontinuing the only remaining form of rate-regulated last-mile connectivity to an end user,

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1 *See BellSouth Tel. Companies Revisions to Tariff F.C.C. No. 4*, Memorandum Opinion and Order, FCC 92-384, 7 FCC Rcd. 6322, 6322-23 ¶ 5 (1992) ("If, for example, a discontinuance, reduction, or impairment of service to the carrier-customer ultimately discontinues service to an end user, the Commission has found that § 214(a) requires the Commission to authorize such a discontinuance."); *W. Union Tel. Co. Petition for Order to Require the Bell Sys. to Continue to Provide Grp./Supergroup Facilities*, Memorandum Opinion and Order, FCC 79-726, 74 F.C.C.2d 293, 296 ¶ 7 (1979) ("If there has been a discontinuance, reduction or impairment of service to the carrier's customer, we would then need to determine whether it violated Section 214(a)."); *see also* Comments of AT&T Services, Inc., on Notice of Proposed Rulemaking at 44-46, PS Docket No. 14-174, GN Docket No. 13-5,WC Docket No. 05-25, RM-11358, and RM-10593 (filed Feb. 5, 2015).

2 *See* Letter from Malena F. Barzilai, Senior Government Affairs Counsel, Windstream, to Marlene H. Dortch, Secretary, FCC, at 4, GN Docket Nos. 13-5 & 12-353, WC Docket No. 05-25, and RM-10593 (filed June 12, 2015) ("Windstream Letter").

that would be inconsistent with the checks that Congress placed in Section 10 to ensure that regulatory oversight was not eliminated when doing so would lead to unreasonable rates, or would inadequately protect consumers or the public interest, including competition. When such action would lead to an end to regulatory oversight, the Commission has correctly outlined a rigorous review anchored in an antitrust-type competitive analysis. It would be ironic if it became easier to eliminate that last rate-regulated service option than to eliminate regulatory oversight of one of multiple rate-regulated alternatives for last-mile access, when other rate-regulated alternatives would remain.[3] If the ILEC wants to challenge this policy determination, it can do so in a petition requesting forbearance or waiver of the rules – as is the case for any time it wants less rate regulation.

We also observed that Windstream's six principles for implementing equivalent access on functionally equivalent rates, terms, and conditions were targeted to prevent the ILEC from using the IP transition as an unjustified excuse to increase charges for baseline connections to small businesses, nonprofits, and government entities – which would be a departure from the current regime whereby regulated last-mile inputs anchor the rates for packet services subject to forbearance. As the Commission evaluates how best to implement these principles, it is critical that each potential avenue for increasing the baseline rates be foreclosed unless specific, good cause can be shown for a departure. In particular, an ILEC action that would have the effect of increasing total charges to the wholesale purchaser in the absence of demonstrable increases in underlying costs should not be permitted. This is necessary to preserve still-needed constraints on ILECs' ability to raise rivals' costs by exercising market power.

Sincerely,

John T. Nakahata
Counsel to Windstream

cc: Matthew DelNero
Daniel Kahn

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3 *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd. 8622, 8660 ¶ 71 (2010) ("In light of the limited state of competitive loop deployment and the even more limited availability of alternative wholesale loop facilities, we need not analyze in detail all the specific product and geographic markets defined above."); *id.* at 8666-67 ¶ 84 ("[T]he Commission, in the *Triennial Review Order*, found that competitive carriers face extensive economic barriers to the construction of last-mile facilities. . . . We see nothing in the record to indicate that, in the years since the passage of the 1996 Act, these barriers have been lowered for competitive LECs that do not already have an extensive local network used to provide other services today."); *see also* Windstream Letter.