Morgan, Lewis & Bockius LLP
2020 K Street, NW
Washington, District of Columbia 20006-1806
Tel. 202.373.6000
Fax: 202.373.6001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

Eric J. Branfman
Partner
+1.202.373.6553
eric.branfman@morganlewis.com

July 31, 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 July 30, 2015, Mordy Gross of Xchange Telecom LLC ("Xchange") and the undersigned met in person with Daniel Alvarez, Advisor to Chairman Wheeler, and Daniel Kahn of the Wireline. We stated that Xchange serves business and residential customers in New York, New Jersey and Maryland, using unbundled copper loops, where available, and Verizon's Wholesale Advantage service provided under a commercial agreement, where unbundled copper loops are unavailable. We expressed support for the Chairman's proposal, but indicated that we had two concerns.

1. Our first concern was that as a result of the transition, unbundled voice loops may no longer be available to competitive carriers such as Xchange. We noted that unbundled voice loops were the foundation of competitive at the inception of the 1996 Act, and have been important to competition ever since. Today, although many customers desire special access and Ethernet service, there are still many business and residential customers that one require only one or a few voice lines, and do not want to pay the much higher cost for DS1 and DS3, Ethernet and more advanced services. For example, Xchange's average business customer purchases approximately 3.8 voice lines. For such customers, the added expense of Ethernet is undesirable.

We stated that Xchange's preference is to use unbundled copper loops, but noted that even prior to formal, large scale replace of copper with fiber, Xchange has been having great difficulty getting Verizon to provide copper loops, apparently as the result of Verizon having allowed its network to deteriorate so that copper loops are unavailable, as set forth in Xchange's July 21 ex parte letter. Xchange was shocked to see Verizon's repeated statements in ex partes that this is not taking place. Xchange has found that it is unable to get working copper loops in hundreds of locations. In Xchange's experience, *de facto* copper retirement by Verizon is a reality.

Xchange objected to the proposal in Verizon's July 28, 2015 ex parte that "The Commission should create a safe harbor in which an incumbent LEC will not be considered to have engaged in *de facto* copper retirement in areas where it has deployed a fiber network and service is available to customers over fiber facilities." This approach, when applied to wholesale customers such as Xchange, is unworkable. When an unbundled copper loop is unavailable, and Verizon provides a fiber alternative through Wholesale Advantage, the cost to Xchange increases dramatically. If CLECs such as Xchange have to pay this higher price, retail customers will lose the benefit of the competitive pressure they provide. The Chairman's Fact Sheet references the replacement service being offered under rates, terms and conditions that are "reasonably comparable" to the service being replaced. That is not what happens when Verizon offers Wholesale Advantage in place of a copper loop.

We also discussed Verizon's failure, when copper loops have been replaced with fiber, to provide a 64 kbps channel, as required by 47 CFR § 319(a)(3)(iii)(C). We noted that in April 2013, many years after this requirement was imposed, Verizon stated that it had not developed a support system to provide the 64 kbps channel. Verizon's Industry Letter, attached hereto, stated:

> Verizon is developing the capability to provide a U64K without using the above-referenced Wholesale Advantage arrangement. Providing such access requires extensive changes in various ordering, provisioning, and billing systems, and related CLEC Business Rules. Verizon will notify CLECs when it has completed those changes.

To the best of Xchange's knowledge, Verizon has never notified Xchange that it has completed those changes. Instead, Verizon's practice is to flatly without further explanation reject orders, when Xchange orders hotcuts either individually or a as a project, and a line is already on fiber. Xchange recommends that the Commission restate and emphasize that current rules require the ILEC to provide a 64 kbps channel on the fiber loop should it retire the copper loop, and that this obligation is not affected by the Order to be issued.

Xchange also suggests that discontinuance review process outlined in the Chairman's Fact Sheet applies to copper retirement because unavailability of the tariffed UNE-L service will negatively affect retail users served by carriers purchasing tariffed unbundled loops. Paragraph 109 of NPRM in this docket recognizes that even if the FCC expressly allows discontinuance pursuant to § 214, the requirement to provide unbundled loops remains. Elimination of unbundled loops adversely affects the service that CLEC can provide to retail customers, creating impairment. Even though a UNE loop is a facility, it is also a service, as it is tariffed, and provided subject to quality standards, such as the PAPs to which Verizon has agreed with state commissions.

2. Xchange's second concern relates to the prospective loss of Wholesale Advantage service. Where UNE loops are not available, which Verizon already claims is the case in hundreds of locations, Xchange uses Wholesale Advantage, which is a voice line service offered by Verizon pursuant to commercial contracts. In many of these locations, there is no facilities based competition to Verizon. Moreover, the local cable company usually cannot construct facilities to reach these businesses on an economical basis. Thus, competition from Xchange and other CLECs using Wholesale Advantage service is often the only source of pricing pressure on Verizon.

As the FCC recognized in ¶ 110 of the NPRM, the tech transition should not be used to eliminate current competition. This applies to voice, as well as to data. Competition brings consumer benefits, including lower prices and better service. This is true of competition using voice line commercial agreements such as Wholesale Advantage.

We expressed concern that the Chairman's Fact Sheet emphasizes that the rules to preserve competitive choices are designed "to preserve competition in the enterprise market." The Fact Sheet's reference to the special access docket suggests that the only competition of concern is DS1 and above. Xchange believes the rules are needed to preserve competition even for businesses requiring a few voice lines (for which a DS1 is more than they need), and for residential customers. Xchange noted that it provides Lifeline service using Wholesale Advantage lines, and that many cable companies do not provide Lifeline service. As an example, in the New York City metro portion of New York State, only one of the three incumbent cable companies are ETCs receiving ETC funding. In the territory Xchange serves in New Jersey, no incumbent cable company is an ETC. Moreover, Xchange offers Lifeline packages that include unlimited long distance usage, or are bundled data, which Verizon does not do. In fact, to Xchange's knowledge, lifeline service is not available where a customer is on Verizon FIOS.

Xchange noted that it is not alone in expressing concern over ILEC discontinuance of voice grade circuits. Xchange pointed out that NTIA filed an ex parte on July 29 pointing out that "for many deployments, federal agencies need only voice grade or 64 kilobits per second digital service." NTIA went on to express concern that a large change in service options, accompanied by a change in price, raises discontinuance concerns and calls into question a LEC's compliance with its Section 201 obligation to provide service upon reasonable request and on just and reasonable terms. Xchange agrees.

Xchange also noted that according to the Fact Sheet, the draft Order requires ILEC discontinuing a wholesale-only service (such as Wholesale Advantage) to conduct a "meaningful evaluation" to determine whether 214 discontinuance process is triggered because the discontinuance would negatively impact retail customers. Xchange agrees that a negative impact on retail customers that results from discontinuance of a wholesale service is likely to require a 214 discontinuance. Xchange recommends that the Order define or at least suggest what factors should be included in the ILEC's evaluation. Moreover, under proper circumstances, the Order should require consultation with wholesale customers. There should also be a process for a wholesale customer to challenge an ILEC's decision that a 214 application is not required.

Finally, Xchange discussed the issue of duration of the requirements in the Order. Xchange noted that the focus has apparently been on the special access docket. Xchange stated its belief that the data gathered in this docket will not provide information sufficient to determine whether CLECs have the ability to compete for small business customers needing only a few voice lines. The data being collected focuses on where competitive carriers have fiber or might be willing to extend fiber. While Xchange believes that this data will show that in a large percentage of locations of its customers, there is no fiber and the economics does not warrant building fiber, even where competitive carriers have fiber, they may not find it economical to serve customers needing only a few voice lines. The data being collected in the special access docket does not enable the FCC or the parties to determine whether a fiber provider could economically serve customers needing only a few lines where the fiber provider already has fiber.

Xchange also noted that some parties suggested that the requirements in the order sunset after a fixed time, regardless of the completion of the special access docket or any other investigation as to whether competitive alternative exist. Xchange expressed the view that this approach is dangerous. The special access docket has been open since 2005. There is no reason to believe it will be completed in the near future or in any fixed period of time. There should not be a presumption that after a specified period of time has passed, the customers served by Xchange and other CLECs will have competitive options other than the ILEC. If there is a presumption, it should run the other way. The burden should be on the ILEC to show that other competitive options are available before the Commission eliminates the responsibility to provide reasonably comparable service. It is important that these rules remain in place until the Commission completes a comprehensive market analysis for the relevant market and ensures that consumers, both business and residential, do not lose their choice in service or service provider.

We urged that the Commission 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.

Respectfully submitted,

/s/ Eric J. Branfman

Eric J. Branfman

cc: (Via E-Mail)
Daniel Alvarez
Daniel Kahn

April 25 , 2013

Audience: CLEC,Resellers

Subject : Verizon Industry Letter: Information Relating to Notices of Network Changes for Locations Where Copper Network Facilities Rendered Inoperable by Hurricane Sandy

As indicated in notices of network changes that Verizon is posting on its website today,[1] Hurricane Sandy destroyed copper network facilities in certain parts of New York and New Jersey. As part of its rebuilding effort Verizon has installed (and continues to install) state-of-the-art fiber facilities at many locations where copper facilities are no longer available. Verizon has been working closely with its Wholesale customers to move their end users to available replacement services on fiber and to identify fiber-ready buildings as they become available.

As Verizon has previously communicated to Wholesale customers, CLECs that serve their end users via Wholesale Advantage or Resale may continue to do so where fiber has been installed or becomes available at the affected locations. Where the available fiber facility is fiber-to-the-premises (FTTP, as opposed to fiber digital loop carrier systems), the end user need not change any terminal equipment, but a Verizon technician will install other necessary equipment at the customer premises, including an Optical Network Terminal (ONT) and a battery back-up unit.[2]

CLECs eligible to order UNEs[3] that wish to obtain a unbundled access to a 64 Kbps transmission path capable of voice grade service (U64K) to a location where a copper loop has been replaced with a fiber loop may, on an interim basis, obtain a Wholesale Advantage line at a discounted rate equal to the rate Verizon would otherwise charge for a voice grade analog copper loop (circuit service code modifier TXNU) as an unbundled network element (UNE). CLECs that wish to take advantage of this offer should contact Verizons Contract Management group at contract.management@verizon.com to request an amendment to their Wholesale Advantage agreement for this purpose. The amendment will contain further details regarding this offer. Verizon is developing the capability to provide a U64K without using the above-referenced Wholesale Advantage arrangement. Providing such access requires extensive changes in various ordering, provisioning, and billing systems, and related CLEC Business Rules. Verizon will notify CLECs when it has completed those changes.

Verizon is also in the process of updating its Pre Order Address Validation applications (Fiber Availability Inquiry) with information regarding the type of facility used to replace copper loops at particular locations where copper is no longer available. We will notify CLECs when such updates are complete. In the meantime, CLECs that wish to order Wholesale Advantage, Resale, or DS0/voice grade UNEs to locations where copper is no longer available may contact the National Marketing Center (NMC) at 800-888-8100 (at the Product prompt, select the Platform Center, which is option 2) to validate availability of appropriate facilities and to obtain any special ordering instructions that may be necessary. The affected locations are listed in the above-referenced Notices of Network Changes.

Thank you for your continued understanding as we build an even stronger, better network in areas damaged by Hurricane Sandy. If you have questions regarding this notice, please contact your Verizon account manager.

VERIZON GLOBAL WHOLESALE

---

[1] See <http://www22.verizon.com/regulatory/reg_ntw_dscl2013.html>.

[2] Due to network and systems compatibility limitations, certain Wholesale Advantage and Resale line types or services may not be available on fiber. Please note that although particular Wholesale Advantage agreements may not currently contemplate the provision of Wholesale Advantage on fiber facilities, Verizon has nonetheless proceeded in good faith under the exigent circumstances relating to Hurricane Sandy -- to provision Wholesale Advantage on fiber even under such agreements. Verizon expects that customers with such agreements will promptly execute any amendments that may be appropriate. Verizon reserves any rights it has (including termination of service) if such amendments are not executed. If your company wishes to cease receiving any such arrangements under the terms of your Wholesale Advantage agreement (and any amendment) as described above, then your company should promptly request disconnection of any such arrangements.

[3] CLECs must have the necessary collocation arrangement, applicable interconnection agreement, etc.