

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Technology Transitions)	GN Docket No. 13-5
)	
Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers)	RM-11358
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

**COMMENTS OF ACCESS POINT INC., BIRCH COMMUNICATIONS INC., MATRIX
TELECOM, INC., MANHATTAN TELECOMMUNICATIONS CORPORATION D/B/A
METROPOLITAN TELECOMMUNICATIONS, NEW HORIZON
COMMUNICATIONS CORP., AND XCHANGE TELECOM LLC
—THE WHOLESALE VOICE LINE COALITION**

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Telecom LLC (“Wholesale Voice Line
Coalition”)*

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TABLE OF CONTENTS

I. Introduction and Summary	2
II. The Commission should not establish a sunset date at this time for the requirement that ILECs provide reasonably comparable wholesale voice platform services to CLECs.....	4
A. There are no alternatives to wholesale voice platform service	5
1. Competitive facilities do not and will not exist at most locations served by the platform.....	6
2. The resale requirement under Sections 251(c)(4) and 252(c)(3) does not generate effective competition	8
B. Absent a regulatory requirement ILECs currently have little if any incentive to offer a platform at a price that would generate competition	9
C. Current BOC offerings of wholesale platform are not voluntary.....	11
D. Compelling ILECs to offer wholesale platform promotes innovation in customer service and does not deter investment in facilities	14
III. It would be inappropriate to use the end of Special Access proceeding as the sunset date for the obligation to provide reasonably comparable wholesale voice platform services	15
IV. The Commission Should Mandate IP Interconnection	17
V. Conclusion	17

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Telecommunications Corporation d/b/a Metropolitan Telecommunications, New Horizon
Communications Corp. and Xchange Telecom LLC, collectively the “Wholesale Voice Line
Coalition” or “Coalition,” provide these comments in response to the Federal Communications
Commission’s (“Commission” or “FCC”) Further Notice of Proposed Rulemaking (“FNPRM”)
in the recent *Technology Transitions Order*.¹

¹ *Technology Transitions et al.*, GN Docket No. 13-5 et al., Report and Order, Order on
Reconsideration and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015)
(“*Technology Transitions Order and FNPRM*”).

I. Introduction and Summary

The members of the Wholesale Voice Line Coalition serve business customers across the United States, primarily focusing on providing voice lines to national companies and other entities that need a small number of voice lines at a large number of disparate, often suburban, rural and remote locations where facilities-based competition with the ILEC is uneconomical. These customers seek the efficiency of having a single supplier that can arrange for their communications needs across the country, rather than contracting with multiple telecommunications companies to provide services on a location-by-location basis.

In order to provide these services, coalition members typically lease from the ILEC a combined package of a DS0 loop, local switching and shared transport, referred to as Commercial Wholesale Platform service.²

The Coalition's members and companies providing similar services, such as Granite Telecommunications LLC ("Granite"), serve customers that typically only have limited demand for communications service at a particular location where they request service (such as a gas station or convenience store). The *Technology Transitions Order* acknowledged that over three quarters of the locations served by providers of voice service in this sector have four or fewer lines, and that these locations are typically single-customer buildings, such as a gas station or retail location.³ The locations of business customers of the members of the Coalition that are served by Commercial Wholesale Platform service have a similar profile. The customer demand at such locations is ill-suited for competitive fiber deployment. As a result, absent competition from companies providing platform-based voice service, these customers have no alternative but

² *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9443-44 ¶ 132.

³ *Id.* at 9454 ¶ 148 n. 507 citing *Ex Parte* Letter from T. Jones, Counsel for Granite Telecommunications, LLC to M. Dortch, FCC, GN Docket No. 13-5 et al., Attachment at 4 (filed June 3, 2015) ("Granite June 3 Ex Parte").

to rely on the ILEC for service and will lose the service consolidation benefits that the wholesale voice coalition members provide. If these customers are to continue to enjoy the benefits of competition, they must be able to choose service from competitors who can obtain, from the ILEC, reasonably-priced wholesale inputs necessary to provide service. The ongoing evolution from TDM to IP networks does not alter the economic barriers impeding deployment of competitive networks at these locations.

ILEC contracts for Commercial Wholesale Platform services, such as AT&T's Local Wholesale Complete ("LWC") and CenturyLink/Qwest Local Platform, however, typically deny CLECs the ability to obtain platform service over fiber loops. AT&T's LWC agreement, for example, states "nothing herein shall obligate AT&T-22STATE to provide LWC or LWCALs using or otherwise provided over (i) any fiber-to-the-premise, fiber-to-the-home or fiber-to-the-curb facilities (as defined and used in 47 C.F.R. section 51.319(a)(3) and FCC orders relating thereto)."⁴

In the *Technology Transitions Order*, the Commission adopted an interim rule providing that ILECs requesting authority under Section 214 to discontinue, reduce or impair a "TDM-based ... wholesale platform service" must "provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms and conditions."⁵ The Commission further defined commercial wholesale platform service by referencing AT&T's Local Service Complete and Verizon's Wholesale Advantage.⁶

⁴ Comments of Granite Telecommunications, LLC, GN Docket No. 12-353 (filed Jan. 28, 2013), *See* Exhibit F (Jan. 6, 2012 Letter from William Roughton, General Attorney, AT&T, to Marlene H. Dortch, extending term of June 2, 2009 Agreement between AT&T and EveryCall Communications, Inc. and amendment through Dec. 31, 2014, at § 1.7).

⁵ *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9444 ¶ 132.

⁶ *Id.*

The Commission, in part, adopted the “reasonably comparable” wholesale requirement because it recognized that absent such a requirement a CLEC “may be unable to obtain wholesale replacement services” in the marketplace and that such a lack of alternatives “will adversely affect its retail customers.”⁷ While the Commission admitted that “commercial wholesale platform services are not special access services” it established the issuance of an effective order in the current special access proceeding as the appropriate time to revisit whether to extend the completion date of the reasonably comparable wholesale requirement applicable to commercial platform service.⁸ But the Commission also sought comment in the FNPRM regarding extension of the end date of the wholesale requirement beyond the special access proceeding. The Coalition contends that the reasonably comparable requirement for the commercial wholesale voice market should have no fixed end date and that the special access proceeding is a particularly poor choice for such an end date even if one were needed.

II. The Commission should not establish a sunset date at this time for the requirement that ILECs provide reasonably comparable wholesale voice platform services to CLECs

There is no rational basis for setting an arbitrary end date for the reasonably comparable wholesale platform requirement. The Commission has long examined competitive entry in local exchange markets and determined that the critical factor in determining the likelihood of competitive entry is whether new entrants can obtain sufficient revenue to justify the projected costs of providing service.⁹ In the case of the Coalition members, this is in the range of \$30 to

⁷ *Id.* at 9457 ¶ 152.

⁸ *Id.*

⁹ See *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2581 ¶ 77 (2005) (“*Triennial Review Remand Order*” or “*TRRO*”) (competitor’s decision to enter the market “depends on whether the revenues it expects to obtain exceed the costs of entering and serving the market”) (*subseq. hist. omitted*).

\$50 per line per month for a voice POTS customer. The cost side of this equation is driven by the market entry bottlenecks, such as the cost of deploying new facilities, obtaining building access agreements, access to right of way, presence of third party suppliers, and economies of scale. The Commission has yet to — and may never — conduct a thorough analysis of this market.

There is no need for the Commission to establish an end date for commercial wholesale platform service because there are no competitive alternatives for platform service. Part of the Commission’s analysis in the *Technology Transitions Order* was its determination that it must establish an end date for the reasonably comparable requirement for DS1 and above special access services because “it is not yet clear whether (or where) competitive alternatives exist that are sufficient to constrain a discontinuing [I]LEC’s rates, terms and conditions for replacement services.”¹⁰ Thus, the Commission adopted the reasonably comparable requirement to “ensure that the competition that exists today is not undermined, at least until the Commission completes its full, data-driven evaluation of the special access market.”¹¹ The Commission rejected claims from ILECs that the “reasonably comparable” requirement was not necessary because the special access market was competitive on the grounds that it did not want to “prejudge the special access proceeding’s comprehensive data evaluation.”¹² These concerns simply do not apply to platform service.

At most locations where the Commercial Wholesale Platform is used, no such alternatives exist, and the Commission is not collecting data regarding this competition in the special access proceeding.

A. There are no alternatives to wholesale voice platform service

¹⁰ *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9451 ¶ 142.

¹¹ *Id.*

¹² *Id.* at 9452 ¶ 144.

1. Competitive facilities do not and will not exist at most locations served by the platform

The transition from TDM to IP does not alter the economics of deploying competitive networks to serve the relatively low bandwidth locations such as those that the members of the Wholesale Voice Line Coalition serve. The Commission recognizes that all competitive carriers, including cable companies, “face extensive economic barriers” to the deployment of competitive facilities needed to serve the customer.¹³ The significant barriers to competitive deployment to such locations do not disappear simply because the network protocol changes from TDM to IP or the date on a calendar has passed. Given the limited demand for services in most of the locations where the Coalition’s customers are located, there is little justification for competitive fiber deployment.

As indicated above, many of the locations served by CLECs using Commercial Wholesale platform service are located in areas outside the central business districts where most competitive networks are deployed.¹⁴ These locations are frequently single tenant buildings such as gas stations, convenience stores or fast food restaurants that are not located in multi-tenant buildings that large fiber operators often compete to serve.

Further, most of the business locations that the Coalition members serve are not in residential areas where cable companies often focus deployments, and wireless-based services lack the features and reliability necessary for business operations in many locations.

Compounding the problem, the telecommunications needs of the Coalition’s customers at these

¹³ See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8670 ¶ 90 (2010) (“*Qwest Forbearance Order*”) *aff’d* *Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012).

¹⁴ See, e.g. *TRRO*, 20 FCC Rcd at 2618, ¶ 154 (noting that CLECs deploy fiber in densely populated parts of large urban metropolitan areas “where the concentration of potential customers locations - and thus of revenue opportunities - is very dense”).

locations are modest. As Granite explained, over half of its locations require four or fewer voice lines.¹⁵ The same is generally true for the members of the Coalition. Competitive fiber providers are unlikely to undertake the time consuming and costly process to build fiber to a location with a single customer to provide four voice lines.¹⁶ The monthly recurring revenue will be insufficient to recoup the capital costs of deploying fiber and the risk of losing that investment is significant given that if the customer in a single tenant building were to switch its provider to the ILEC, the investment would be stranded since no other customers exist at the same location.¹⁷

Because of the lack of alternative facilities and the ILECs' refusal to compete for voice services outside of their incumbent territories, those business customers seeking to consolidate their telecommunications services at disparate locations are dependent on CLECs, like the members of the Coalition, to provide nationwide multi-location telecommunications services. And in turn, the members of the Coalition are dependent on the ILEC for reasonably-priced wholesale inputs necessary to serve these customers, which rarely require high-capacity network services.

¹⁵ Granite June 3, 2015 *Ex Parte*, Attachment at 4.

¹⁶ See *TRRO*, 20 FCC Rcd at 2616 ¶ 150 (the economics of deploying loops are determined by the costs associated with such deployment and the potential revenues that can be recouped from a particular customer location"); *id.* at 2619 ¶ 154 (CLECs building competitive networks "target areas that offer the greatest demand for high-capacity offerings (i.e. that maximize potential revenues)"); See also *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17032, ¶ 77 (2003) ("*Triennial Review Order*"), (competitor's decision to enter the market "depends on whether the revenues it expects to obtain exceed the costs of entering and serving the market").

¹⁷ See *id.* at 2617 ¶ 152 ("because a loop serves a specific location and cannot economically be transferred to serve another customer location, most of the costs of constructing loops are sunk... Unless the loop is subsequently [used]... to serve that same location, a carrier's ability to recover the cost of that loop is ...wholly tied to the carrier's ability to maintain service to a specific customer").

The lack of alternative wholesale suppliers in most of the areas where the members of the Wholesale Voice Line Coalition rely on ILEC wholesale inputs means that the absence of a compulsory requirement to provide access to platform service would, as the Commission has noted, allow ILECs “to turn off legacy services, [leaving] competitive carriers [to] face the prospect of having *no access to critical inputs*, at least not on reasonable terms and conditions—preventing them from continuing to provide competitive alternatives to small- and medium-sized businesses and other institutions like schools, libraries, and health care facilities.”¹⁸

2. The resale requirement under Sections 251(c)(4) and 252(c)(3) does not generate effective competition

The statutory requirement under 47 U.S.C. § 251(c)(4) and 252(c)(3) that ILECs offer for resale telecommunications services based on an avoided methodology does not generate competition to replace the competition now provided by the wholesale voice platform. First, the Commission has to classify VoIP as a telecommunications service; if the Commission decides it is not, there will be no resale requirement at all for TDM lines transitioned to IP. Obviously, in the absence of a requirement to resell, §§ 251(c)(4) and 252(c)(3) cannot create competition, and the Commission may not assume at this time that it will ultimately classify VoIP as a telecommunications service.

But even if the Commission classifies VoIP as a telecommunications service, the resale requirement will in no way replace the competitive pressure that exists today because of the wholesale voice platform. Members of the Wholesale Voice Coalition are very much aware of the resale requirement today, and utilize it to a very limited extent, most frequently to provide service in locations where (1) a wholesale voice platform is unavailable and (2) a multi-location

¹⁸ *Technology Transitions et al.*, GN Docket No. 13-5 et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14973, ¶ 6 (2014).

customer requests service as part of a package that also includes locations where the platform is available. The avoided cost discounts established by state commissions under § 252(c)(3), which typically range from 12-18%, simply do not provide enough margin to enable CLECs to compete. Members of the Wholesale Voice Line Coalition are willing to lose money reselling in a limited number of locations in order to preserve business from the same multi-location customer that generates profit in locations where the platform is available, but cannot base their business plan on resale.

Should the “reasonably comparable” requirement be sunset, even if there is a requirement to resell at an avoided cost discount, that would not provide a significant check on the ILEC’s monopoly power. For example, assume that the ILEC sells a retail business voice line for \$30, and the avoided cost percentage is 12%. That means that the CLEC reseller must pay \$26.40, providing a gross margin of \$3.60. That is not close to enough to enable a CLEC to compete. If the ILEC, freed from the competitive pressure created by the “reasonably comparable” requirement, were to increase the price of the retail business voice line by, say, 30%, the CLEC’s wholesale price would increase to \$34.32, providing a gross margin of \$4.68. This increase of \$1.08 in gross margin would not be enough to enable the CLEC to compete, and therefore the ILEC would be free to raise prices by 30% without losing market share to CLECs. Creating conditions in which ILECs can increase rates by sizeable amounts without losing market share does not constrain their exercise of monopoly power, is clearly not in the public interest, and is not in the interest of the customers now being served through the wholesale voice line platform.

B. Absent a regulatory requirement ILECs currently have little if any incentive to offer a platform at a price that would generate competition

The absence of alternative facilities-based sources of supply, and the economic impracticability of competitive construction of such facilities, at the customer locations that are

currently served through the wholesale voice line platform means that if there is no regulatory requirement to offer wholesale service, the ILEC will have monopoly control of supply at those locations. Basic economic principles will induce the monopolist to charge a profit-maximizing monopoly price. Facilitating competition only results in reduction of the monopolist's profit. This is why, when first presented with the requirements of the 1996 Telecommunications Act ("the Act") that they unbundle their networks, the ILECs responded by proposing that they be compensated for their "opportunity costs" under a principle known as the Efficient Component Pricing Rule ("ECPR").¹⁹ For example, Pacific Bell Telesis Group (now part of AT&T) advocated the ECPR, arguing that it "simply posits that an input sold to competitors should be priced at its economic cost," which "consists of the direct cost of making the input, plus the opportunity cost of making it available to competitors."²⁰ In other words, the ILECs were arguing for a regulatory regime in which they should retain after sharing their networks with CLECs whatever profits they earned as a monopolist before sharing their networks with CLECs.

The Commission recognized this in the *Local Competition Order*, stating that the ILECs' proposal would allow ILECs to maintain the profits they achieved in the absence of competition despite the presence of competition.²¹ The Commission recognized that such an approach "would insulate incumbent LECs' retail prices from competition" and "provides no mechanism that will

¹⁹ See William J. Baumol & Gregory Sidak, *Toward Competition in Local Telephony* (1994); William Baumol & Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 Yale J. on Reg. 2003 (1994).

²⁰ Comments of Pacific Telesis Group, CC Docket No. 96-98, at 69 (filed May 16, 1996); see *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14222, ¶ 147 (1996).

²¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 15859-60, ¶¶ 708-11 ("*Local Competition Order*") ("*subseq. hist. omitted*").

force retail prices to their competitive levels”; and therefore rejected it.²² There is absolutely no reason to believe that these same ILECs, absent any requirement that they offer wholesale service at a particular rate at locations where competitive facilities do not exist and cannot be economically installed, would share their facilities with competitive LECs at a price that would reduce the monopoly profits that an ILEC can extract from such conditions.

C. Current BOC offerings of wholesale platform are not voluntary

The ILECs opposed the Commission’s reasonably comparable access requirement, claiming that the offer of platform service was voluntary.²³ It is not reasonable, however to conclude that the ILEC offerings are voluntary and that they will remain available even after the transition to all fiber IP-based networks is complete. The Commission was correct when it concluded that “there is little evidence, either in the record or of which we otherwise are aware, that the RBOCs or incumbent LECs have voluntarily offered wholesale services at competitive prices once regulatory requirements governing wholesale prices were eliminated.”²⁴

First, all of the individual components of the commercial platform are subject to a compulsory unbundling requirement, under either §§ 251 or 271 of the Act. There is no dispute that the ILECs remain required to provide CLECs with access to voice grade loops under the Commission’s unbundling rules. In addition, the Commission’s loop unbundling rules for the mass market provide that ILECs must continue to provide CLECs a voice grade channel where the ILEC has retired all home run copper loops.²⁵

²² *Id.* at 15860, ¶ 710.

²³ *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9456 ¶ 149 (citing Verizon Reply Comments at 9).

²⁴ *Qwest Forbearance Order*, 20 FCC Rcd at 8640, ¶ 34, n.105.

²⁵ 47 C.F.R. § 51.319(a)(3)(C).

Section 271 similarly requires the RBOCs to provide unbundled access (although not at TELRIC rates) to local switching and shared transport. The presence of these requirements functions in part to motivate the ILECs to offer Commercial Wholesale platform services, regardless of any legal requirement for the ILEC to combine or commingle such services.

Second, the Commission's rules require the ILEC to provide access to a commingled combination of a § 251 loop with § 271 elements such as switching and shared transport.²⁶ The Commission has sufficient grounds to conclude that the ILECs' § 251 and § 271 obligations include a requirement to provide a § 251 UNE loop commingled with § 271 local switching and shared transport. The ILECs contend that because the *TRRO* contains a footnote suggesting that § 271 does not require ILECs to combine checklist items, the RBOCs are not required to provide voice line arrangements containing UNE loops, local switching and shared transport to CLECs under § 271.²⁷ This is incorrect.

The RBOC argument that the Commission's commingling rule does not require the RBOCs to provide a UNE loop commingled with switching and shared transport under § 271 misreads the Commission's commingling rule and applicable appellate decisions.²⁸ Relying on the Commission's rules in 47 C.F.R. § 51.309 (e)-(f), the Sixth Circuit held that ILECs must, "upon request, 'commingle'—package together—unbundled network elements provided under §

²⁶ 47 C.F.R. § 51.5.

²⁷ See Reply Comments of the United States Telecom Association, WC Docket No. 14-192 at 11 (filed Dec. 22, 2014).

²⁸ See 47 C.F.R. § 51.5 (defining "comingling" as "the connecting, attaching, or otherwise linking of an [UNE], or a combination of [UNEs], to one *or more* facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC"); *BellSouth Telecommunications, Inc. v. Ky. PSC*, 669 F.3d 704 (6th Cir. 2012); *Nuvox Communications, Inc. v. BellSouth Communications, Inc.*, 530 F.3d 1330, 1335 (11th Cir. 2008).

251 with elements mandated only by § 271.”²⁹ The Sixth Circuit also noted that this Commission filed an amicus brief supporting this interpretation of its rules.³⁰ Thus, any argument by RBOCs that they are offering a UNE-P replacement service such as AT&T’s LWC or Verizon’s Wholesale Advantage voluntarily is in outright conflict with controlling law, unless the Commission were to grant forbearance from Section 271.³¹

Further, if there is any ambiguity regarding the RBOCs’ obligation to provide access to a DSO arrangement consisting of a § 251 UNE loop commingled with switching and shared transport under § 271, the Commission should clarify, as Granite has requested in its Petition for Declaratory Ruling,³² that RBOCs must provide such an arrangement because the Commission requires RBOCs to provide § 271 checklist items on rates, terms and conditions consistent with §§ 201(b) and 202(a).³³

Sections 201(b) and 202(a) together obligate RBOCs to provide in combined form checklist items that are already combined. It would plainly be discriminatory and contrary to § 202(a) for the RBOCs to provide a combination of loop, switching and shared transport while withholding such combinations from CLECs.³⁴ Nor would it be just and reasonable under § 201(b) for RBOCs to separate elements that are already combined.

Similarly, §§ 201(b) and 202(a) require RBOCs to combine checklist items upon a CLEC’s request unless the RBOC has a reasonable basis for refusing such request. Refusal to

²⁹ *BellSouth v Ky. PSC*, 669 F.3d at 712.

³⁰ *Id.*

³¹ *Id.* at 712-713.

³² *See Petition of Granite Telecommunications, LLC for Declaratory Ruling Regarding the Separation, Combination, and Commingling of Section 271 Unbundled Network Elements*, WC Docket No. 15-114 (filed May 4, 2015) (“Granite Petition”).

³³ *See* Granite Petition at 8.

³⁴ *See* Granite Petition at 10.

combine § 271 checklist items for CLECs that the RBOC ordinarily combines for itself is unreasonably discriminatory, in violation of § 202(a) and an unjust and unreasonable practice under § 201(b). Further under §§ 201(b) and 202(a), CLECs may obtain a UNE commingled with a combination of checklist items consistent with the Commission's definition of "commingling" in 47 C.F.R. § 51.5.

D. Compelling ILECs to offer wholesale platform promotes innovation in customer service and does not deter investment in facilities

As discussed above, the vast majority of locations served by members of the coalition using commercial platform service are in locations unsuitable for investment in competitive fiber networks. In previous proceedings regarding competitive access to ILEC networks, the ILECs have claimed that promoting regulated access to ILEC wholesale facilities and services reduces the incentive of competitors to invest in their own facilities.³⁵ But no such investment incentive is at work here because no competitor is likely to invest in facilities to serve single user locations in suburban or rural areas with only a modest demand for telecommunications services.

Depriving competitors of reasonably priced access to wholesale platform service will not lead to further investment in facilities to serve the customers now served using platform service. In most locations, there are no economies of scale since a carrier cannot build out to a location and serve large numbers of small customers so as to generate sufficient revenue to warrant the investment in the build-out. Unlike in a multi-tenant environment, if the competitor builds and loses the customer it cannot recoup investment by redeploying facilities to another customer in

³⁵ See e.g., Letter from Michael Glover, General Attorney, Bell Atlantic Telephone Companies to William Kennard, General Counsel, FCC, *Promoting Facilities-Based Competition in All Markets: A Response To The Long Distance Incumbents*, CC Docket No. 96-98, at 11-12 (filed April 25, 1996); Comments of BellSouth, CC Docket No. 96-98, at 53-54 (filed May 16, 1996); Reply Comments of BellSouth, CC Docket No. 96-98, at 37-38 (filed May 30, 1996); Comments of US West, CC Docket No. 96-98, at 42-43 (filed May 16, 1996).

the same building.

Thus it is reasonable for the Commission to conclude that there is critical public interest benefit provided from commercial wholesale platform service as it brings the benefits of competition to customers that otherwise would be deprived of such benefits.

III. It would be inappropriate to use the end of Special Access proceeding as the sunset date for the obligation to provide reasonably comparable wholesale voice platform services

The Commission’s provisional determination in the *Technology Transitions Order* to sunset the obligation to provide “reasonably comparable” wholesale voice platform services when an order in the Special Access Proceeding (WC Docket No. 05-25) becomes effective, makes no sense. There can be no debate that the Special Access Proceeding is not designed to collect or analyze data regarding the presence of competitive facilities providing voice line service at locations where CLECs are currently providing service through the wholesale voice platform. In ¶ 242 of the Further Notice in this Docket, the Commission admitted that “the special access proceeding will not address the status of commercial wholesale platform services . . .” Thus the special access proceeding will not be developing the type of record that would enable the Commission to determine whether or not to continue the reasonably comparable standard beyond the order in the Special Access Proceeding.³⁶

Even though the two proceedings are not examining the same issues, the Commission

³⁶ In addition, if the Commission were to extend the “reasonably comparable” requirement in the Special Access Proceeding, there is a possibility that such an action might be vacated on appeal on the grounds that notice has not been provided, as required by the Administrative Procedures Act, that the Commission would be resolving the question of whether to extend the “reasonably comparable” requirement. *See Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014) (“deficient notice is a ‘fundamental flaw’ that almost always requires *vacatur*”). To prevent this possibility, the Commission could provide such notice in the Special Access Proceeding, but that would significantly delay the completion of a critically important docket.

seems to have chosen the special access proceeding as the end point for the reasonably comparable standard for wholesale platform services solely because the special access proceeding offered a “foreseeable and definitive point in the future . . .”³⁷. This explanation does not eliminating the reasonably comparable wholesale voice requirement at that time bears a rational relationship to the concerns that led the Commission to establish the reasonably comparable requirement.³⁸ The Commission should determine that it is not appropriate to sunset the reasonably comparable wholesale access requirement for wholesale platform services upon the effective date of an order in the Special Access Docket and should eliminate the sunseting created by the *Technology Transitions Order*.

Nor is it necessary to fix a sunset date for the “reasonably comparable” obligation at this time. Other vehicles are available to end the requirement if and when it can be shown that this requirement is no longer necessary to generate substantial competition for the types of customers being served by the wholesale voice platform. As the Commission stated in the *Technology Transitions Order*, if competitive alternatives (for example, just and reasonable rates, terms and conditions for special access services) exist for the wholesale service being discontinued, then the reasonably comparable wholesale access requirement becomes unnecessary.³⁹ If an ILEC believes that it can show substantial competition for wholesale platform services in a specific market or markets or nationwide, it can, request that the Commission terminate the “reasonably comparable” requirement through a petition for forbearance, declaratory ruling or other

³⁷ *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9457 ¶ 152.

³⁸ A failure to provide such an explanation is arbitrary and capricious. *See Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126, 1142-1143 (D.C. Cir. 2001) (holding that the Commission’s decision to eliminate an exemption to its attribution rules was arbitrary and capricious because the Commission failed to explain why eliminating the rule was rationally related to the goal the Commission sought to achieve when it adopted the exemption).

³⁹ *Technology Transitions Order and FNPRM*, 30 FCC Rcd at 9444 ¶ 132.

appropriate procedural vehicle. Alternatively, the Commission could establish a timetable for review, as it did with unbundling requirements in the *Triennial Review Order*. It is, however, inappropriate for the Commission's order in this proceeding to retain an end date for the reasonably comparable wholesale access requirement for all wholesale platform services nationwide in the absence of a showing in this docket of substantial competition for the services.

IV. The Commission Should Mandate IP Interconnection

While the members of the Coalition are primarily concerned with the Commission's arbitrary selection of the special access proceeding as the end date for the reasonably comparable access requirement for Platform service, some members also provide service in densely populated urban markets using their own switching and unbundled local loops. These CLECs, like other facilities-based competitors, also provide access service. These CLECs, who purchase tariffed feature group D access trunks from the ILEC, in addition to local interconnection trunks from the ILEC will not be able to continue to compete without reasonable rates, terms and conditions for IP interconnection.⁴⁰ The Commission should not permit ILECs to stop offering TDM-based interconnection unless and until they offer IP interconnection on rates, terms, and conditions comparable to those offered for TDM-based interconnection.

V. Conclusion

For the foregoing reasons the Commission should revise its finding in the *Technology Transitions Order* and conclude that specifying an end date for the reasonably comparable requirement applicable to Commercial Wholesale Platform service is not needed at this time.

⁴⁰ To promote transparency and competition, this requirement should also clarify that ILECs must publicly file IP-based interconnection agreements.

Respectfully submitted,

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