

**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
)	

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP. IN SUPPORT OF PETITION
FOR CLARIFICATION**

U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) submits these reply comments in support of its Petition for Clarification (“Petition”) of the Commission’s *Technology Transitions* Report and Order.¹

I. Introduction and Summary

In its Petition, TelePacific identified a practical problem that will result under the *Technology Transitions Order* when an ILEC retires copper loops or feeder that are being used

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*”). On December 4, 2015, the Commission issued a Public Notice stating that “the Wireline Competition Bureau has determined that the petition is more properly treated as a petition for reconsideration, for the purpose of seeking public input.” Report No. 3035.

by a CLEC such as TelePacific to furnish Ethernet over Copper (“EoC”). As TelePacific showed, a CLEC receiving a 180-day notice from an ILEC of copper retirement can attempt to retain its broadband customer by investigating whether there is any alternative means of providing broadband that is economically feasible, but that process is likely to be time-consuming and the end result may be that the CLEC must discontinue offering broadband service to the customer. By the time that the CLEC determines it can no longer serve the customer, it may be too late for the CLEC to file and receive approval under § 214(a) to discontinue service. Alternatively, the CLEC could decide immediately upon receiving notice from the ILEC that it will abandon the customer, provide the customer with notice, and file a § 214 application with the Commission. This approach likely will ensure that the CLEC obtains § 214 approval before the underlying copper is retired, but abandons the benefits of CLEC competition.

While leaving open the possibility of other solutions to this dilemma, TelePacific identified two proposed remedies: (1) the Commission could issue a rule automatically granting the CLEC’s § 214 application upon the date of copper retirement, provided that the CLEC submitted the application to the Commission no less than 60 days prior to the planned retirement date;² or (2) during the § 214 process, the Commission could consider whether it should require a delay in the copper retirement until the CLEC’s discontinuance no longer creates “an unreasonable degree of customer hardship.”

Comments from XO Communications, LLC (“XO”), Sonic Telecom, LLC (“Sonic”), and Texaltel supported the Petition. Oppositions were filed by ADTRAN, Inc. (“ADTRAN”) and

² TelePacific clarifies that it proposes the 60 days start to run when the carrier submits its § 214 discontinuance application to the Commission, not when the Commission issues the public notice of the application. *See* 47 C.F.R. § 63.71(e) (“For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.”) Because the carrier cannot predict when the Commission will issue the public notice, the 60 days should be counted from the date the carrier submits the § 214 application to the Commission.

Verizon (collectively “Opposers”). Neither opposition undermines the premise of the Petition that in some instances the ILEC’s copper retirement will force the CLEC to discontinue service to its customer. Neither opposition demonstrates that it would be in the public interest to force a CLEC to decide whether to file a § 214 application before it has had adequate time to explore alternative means of continuing to provide broadband to its EoC customer. Neither opposition identifies a reason why it would be contrary to the public interest to adopt at least the Petition’s first proposed remedy of deeming the CLEC’s § 214 application granted on the date of the ILEC’s copper retirement, provided that the CLEC submits its § 214 application to the Commission no less than 60 days prior to the planned retirement. The Petition should be granted.

II. Argument

The fundamental premise of the Petition is that while the Commission has decided to allow ILECs to retire copper that is being used by a CLEC to provide EoC, because competition is in the public interest the Commission should also allow the CLEC an appropriate time to investigate alternative means of continuing service. Verizon and ADTRAN argue that the Commission has already weighed the hardship to the CLEC and its customer from a rigid 180-day rule and determined that 180 days strikes the “proper balance.”³ But the *Technology Transitions Order* did not explicitly acknowledge the possibility that customers who currently receive broadband service through EoC provided by the CLEC using ILEC copper might lose their broadband at the end of the six month period. To the contrary, the copper retirement section includes considerable language about ILECs working with customers to ensure minimal⁴

³ Verizon Opposition to the U.S. TelePacific Corp. Petition for Reconsideration, at p. 2 (filed Dec. 28, 2015) (“Verizon Opposition”).

⁴ *Technology Transitions Order*, ¶ 17.

or no⁵ service interruption for carrier-customer end users. In cases where an ILEC copper retirement results in a CLEC service discontinuance, the FCC should address explicitly the possibility of current broadband customers losing their broadband service as a factor in its balance of the pros and cons of a date certain for retirement. If, after balancing that possibility, the FCC affirms the six month period, it should also find that CLECs submitting a notice of discontinuance 60 days prior to the retirement date will have their § 214 application automatically approved no later than the retirement date.

Neither Opposer offers serious disagreement with the fundamental premise that a CLEC should have the ability to investigate alternative means of continuing service.⁶ To the contrary, each Opposer identifies several alternatives that may be available to enable the CLEC to continue providing broadband to its customer in the absence of ILEC copper.⁷

Where there is disagreement is only over how frequently this is likely to occur. For example, ADTRAN points to the possibility that the CLEC can purchase the retired copper from the ILEC and cites a 2013 filing by FiberTower regarding its ability to provide 100 Mbps and 1 GBPS service to schools under the e-rate program.⁸ Verizon speculates that ILECs “may continue to offer services over other facilities that could meet the needs of competing carriers,” “other providers in the area may offer a competing option,” or “a carrier may decide to invest in

⁵ *Id.*, ¶¶ 12, 26, 31, 77; rule 51.332(g).

⁶ ADTRAN points out that by replacing copper with fiber, the ILEC will be able to offer the end user broadband service. Opposition of ADTRAN at p. 3, (filed Dec. 28, 2015) (“ADTRAN Opposition”). This ignores one of the key goals of the *Technology Transitions Order*, which as Sonic points out, include the objective “to ‘facilitate continued availability of existing competing options,’ so that end users do not ‘face higher communications costs and less competitive choice.’” Comments of Sonic Telecom, LLC at p. 4, quoting *Technology Transitions Order* at ¶¶ 131, 135.

⁷ See Verizon Opposition at p. 3; ADTRAN Opposition at pp. 3-5.

⁸ ADTRAN Opposition at 3-4.

its own facilities.”⁹

TelePacific does not disagree that in some circumstances, the CLEC will be able to find another way to serve its customer on an economically feasible basis, although it is less sanguine about the frequency with which this will happen. As the Commission noted, Verizon asserted that “selling [the retired copper] facilities would be easier said than done, due to the intertwined way that copper and fiber often are deployed and the required ongoing engagement from ILECs that might be necessary to make such a sale work.”¹⁰ TelePacific has shown that fiber only exists in the vicinity of 11% of its customer locations.¹¹ There is a reason for this: construction of competitive facilities to serve customers with the volume of demand that are now served by EoC is often not economical.¹²

Similarly, nothing in the FiberTower filing quoted by ADTRAN suggests that it would be economically feasible to replace EoC service averaging 20 Mbps with a fixed wireless service designed to provide 100 Mbps to 1 Gbps E-rate service to schools and libraries in “challenging areas” where laying fiber is impeded by “among other things, solid rock formations, rivers, airport runways, distance limitations related to equipment capabilities or labor cost or deployment obstacles, and lack of land usage rights.”¹³ In fact, TelePacific operates one of the most robust fixed wireless networks in the western United States. Even after expansion and

⁹ Verizon Opposition at 3.

¹⁰ *Technologies Transitions Order* at n. 356.

¹¹ *Ex Parte* Letter from Tamar E. Finn, Counsel for TelePacific, to Marlene H. Dortch, Secretary, *Technology Transitions*, GN Docket No. 13-5 *et al.* at p. 2 (filed July 30, 2015).

¹² *See Technologies Transitions Order* ¶ 135 (“The record contains compelling comments alleging that competitive LECs will be unable to serve their retail customers at competitive rates, terms, and conditions without reasonable access to incumbent LEC last-mile inputs.”).

¹³ Reply Comments of FiberTower Corporation, WC Docket No. 13-184, at pp. 4-5 (filed Nov. 8, 2013).

upgrades to its fixed wireless network, however, TelePacific serves only 2,100 locations with fixed wireless broadband. In almost all of the more than 21,000 locations in California, Nevada, and Texas in which TelePacific currently uses EoC, TelePacific cannot serve the location through fixed wireless networks.

Indeed the Opposers' plethora of suggested alternatives supports the Petition's premise that it will take time for a CLEC faced with copper retirement to explore alternatives. Verizon's assertion that selling the retired copper facilities to the CLEC will be "easier said than done" strongly supports allowing time for this process to be worked out. Likewise, before a CLEC could determine, as Verizon suggests, whether "to invest in its own facilities" will take some time. And while TelePacific agrees that the interconnecting carriers may be able to work out an arrangement for the CLEC to lease the ILEC's fiber or other facilities, negotiating such an arrangement takes time. XO explains the process that a CLEC must undertake once it learns that an ILEC is retiring copper:

When XO learns that an ILEC intends to retire its copper in a particular building or service area, it must undertake an extensive evaluation of its options for continuing to provide or upgrading its services to customers. This process includes meeting with the customer to review the customer's service needs and requirements, exploring wholesale service alternatives from the ILEC that may allow XO to provide acceptable alternate offerings to customers, making plans to expand its own network, or arranging to obtain the services or wholesale inputs from third-party competitive carriers, where available, and negotiating wholesale rates, terms, and conditions. In some instances, at the end of this process, which may begin to approach the date for the copper retirement, XO may determine that it is infeasible to continue providing services to customers in the area that will be impacted by the copper retirement. In such a case, XO would need to file a § 214 application for approval of a discontinuance.¹⁴

¹⁴ Comments of XO Communications, LLC in Support of U.S. TelePacific Corp. Petition for Clarification, at p. 3 (filed Dec. 27, 2015) ("XO Comments").

XO notes that “each of these steps takes time in the ordinary course of business and cannot be expedited.”¹⁵

TelePacific agrees with XO’s analysis. The 180 days provided does not leave enough time for the CLEC to investigate its options for continuing to serve its customer after the copper is retired and be confident that if none pan out, it can submit a § 214 application and have it approved before the copper is retired. Nothing in the Opposers’ filings undermines this proposition. Therefore, to avoid unduly undermining competition, the Commission should modify its order so that a CLEC can investigate copper alternatives and still be certain that it will receive timely approval to discontinue service when it is forced¹⁶ to do so by the retirement of the ILEC copper.

TelePacific has proposed two options to achieve these goals. Verizon has supported one of these options: automatically granting a CLEC’s § 214 application that has been submitted to the Commission no less than 60 days before the scheduled retirement.¹⁷ Sonic and Texatel also support this option. XO agrees, but suggests that the filing deadline for the CLEC’s § 214 application be shortened to 40 days and the applicant certify that the filing is “predicated on the

¹⁵ *Id.* at n. 8 (internal quotations omitted). Similarly, the Ad Hoc Telecommunications Users Committee has asserted that “planning and carrying out the migration of a large enterprise network from one service to another often takes a year or more.” Comments of the Ad Hoc Telecommunications Users Committee, at p. 11 (filed Feb. 5, 2015).

¹⁶ Verizon’s description of a CLEC’s filing of a Section 214 discontinuance petition as a “decision” is misleading. Once the CLEC has determined that as the result of the announced copper retirement there is no economically viable way to continue to provide broadband to its customer, the CLEC is *forced* to discontinue service. There is no “decision,” in the usual sense of the word, left to be made.

¹⁷ Verizon Opposition at pp. 2, 4-5. Verizon also states that TelePacific’s proposal would “essentially require” that “copper retirement notices ‘be approved.’” Verizon Opposition at p. 4. This Verizon criticism is plainly not aimed at TelePacific’s proposal that a CLEC’s Section 214 application that has been filed no less than 60 days before the scheduled retirement date be granted automatically, as that proposal in no way requires FCC approval of the ILEC’s copper retirement notice.

copper retirement eliminating a key wholesale input to the service as the primary reason for its submission.”¹⁸ TelePacific finds these suggestions to be reasonable.

While ADTRAN does not endorse the automatic grant option, it does not offer any reason why it should be rejected, instead arguing that the Commission should not “place an additional burden on the ILECs’ replacement of fiber with copper facilities.”¹⁹ ADTRAN does not explain why the automatic grant of a CLEC § 214 application on the date of copper retirement would be a burden to ILEC copper retirement. Rather, it appears that ADTRAN opposes the other option proposed by TelePacific--allowing the Commission, as part of the § 214 process, to consider whether it should require a delay in the copper retirement until the CLEC’s discontinuance no longer creates “an unreasonable degree of customer hardship.”²⁰ As noted above, in addressing this alternative proposed relief, the Commission should weigh the possibility of current broadband customers losing their broadband service as a factor in its balance of the pros and cons of a date certain for retirement when a competitive carrier has filed a § 214 discontinuance application due to the incumbent’s copper retirement.

¹⁸ XO Comments at 4.

¹⁹ ADTRAN Opposition at 6.

²⁰ See *Rhythms Links Inc. Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17024, 17025-26 ¶ 4 (2001), quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, 85 FCC 2d 1 at ¶ 146 (1980).

III. Conclusion

For the foregoing reasons and those set forth in the Petition, the Commission should issue an order on reconsideration granting the requested clarification.

Respectfully submitted,

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Date: January 5, 2016