

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	PN Docket No. 13-5
Technology Transitions	)	
	)	
Policies and Rules Governing Retirement Of	)	
Copper Loops by Incumbent Local Exchange	)	RM-11358
Carriers	)	
	)	
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	)	RM-10593
Access Services	)	

**REPLY COMMENTS OF INCOMPAS**

INCOMPAS supports the Petition filed by U.S. TelePacific Corp. d/b/a TelePacific Communications (“TelePacific”) in the above referenced proceedings,<sup>1</sup> and hereby submits comments in response to the oppositions to the Petition.<sup>2</sup> In its petition, TelePacific seeks action from the Commission to ensure that, where the loss of access to retired copper leads to a discontinuance of retail service by a competitive carrier that had been leasing the copper

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<sup>1</sup> Petition for Clarification of U.S. TelePacific Corp., *In the Matter of Technology Transitions, et al.*, GN Docket No. 13-5 *et al.*, filed Nov. 18, 2015 (“Petition”). See FCC Public Notice, Report No. 3035, dated Dec. 4, 2015 (“While the petition is styled as a petition for clarification...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.”)

<sup>2</sup> See Verizon Opposition and Opposition of ADTRAN, Inc. filed Dec. 28, 2015.

unbundled network element from the incumbent, the Section 251(b) retirement process and the Section 214(a) discontinuance process be harmonized. Specifically, the Commission needs to ensure that a timely filed discontinuance application from a competitor that relies on the retired copper unbundled network element is granted prior to, or simultaneously with, the effective date of the copper retirement. Whether the Commission determines “timely filed” to be 30, 40 or, at most, 60 days, the time clock should not start when the Commission releases a Public Notice of the filing, but be measured from the date the competitor submits its discontinuance application to the Commission.

The current rules provide that the “application to discontinue, reduce or impair service, if filed by a domestic, non-dominant carrier, shall be automatically granted on the 31st day after its filing with the Commission ...”<sup>3</sup> This automatic grant, however, is qualified by an allowance in the rule for the Commission providing notification to the applicant that the grant will not be automatically effective.<sup>4</sup> Additionally, the timing of the automatic grant is not within the carrier’s control as “an application will be deemed filed on the date the Commission releases public notice of the filing.”<sup>5</sup>

The notices of copper retirement, on the other hand, “shall be deemed approved on the 180th day after the release of the Commission’s public notice of the filing.”<sup>6</sup> As opposed to the qualification in the rules for discontinuance of service, there is no provision for delaying the

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<sup>3</sup> 47 CFR 63.71(e).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 47 CFR 51.332 (f).

copper retirement if, for example, “an unreasonable degree of customer hardship would result.”<sup>7</sup> This, as TelePacific has pointed out, could result in the Commission delaying the grant of discontinuance of a competitor’s service, but not the retirement of the copper unbundled network element that the competitor relies upon to provide the service it has found necessary to discontinue – leaving the competitor without means to provide a service for which it has not yet received a discontinuance grant.

As a number of commenters have expressed, there is a strong probability that a competitor that has been using the copper unbundled network element it obtains pursuant to section 251 to provide services will need to discontinue that service to its retail end-user upon the retirement of the copper by the incumbent.<sup>8</sup> Access to the copper unbundled network element as a transmission medium has enabled competitors to offer more innovative services than is feasible when limited to the ILEC DSn unbundled loops or services. This has facilitated a degree of competition and more affordable offerings in the Ethernet market, particularly for smaller businesses. In its opposition, ADTRAN claims that “the Commission has already imposed obligations on the ILECs to ensure that any service disruption to the CLEC’s customers resulting from the copper retirement will be minimized.”<sup>9</sup> They cite to the fact that the copper facilities to be retired will be replaced with fiber facilities. But the Commission did not put in place a requirement that the ILEC provide a comparable facility, at comparable rates, terms, and

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<sup>7</sup> See Petition at 8, citing *Rhythms Links Inc. Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17024, 17025-26 ¶ 4 (2001) (“Rhythms”) quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, 85 FCC 2d 1 at ¶ 146 (1980).

<sup>8</sup> See Comments of Sonic Telecom, LLC at 3-4; Response of TEXALTEL at 1; and Comments of XO Communications, LLC at 2-3.

<sup>9</sup> ADTRAN at 3.

conditions, to the unbundled bare copper the ILEC is retiring. Moreover, the discontinuance of TDM special access services is a separate issue from copper retirement, as TDM can be – and is – provided over copper or fiber (as is the case for IP services). The services the ILEC offers over the fiber facilities may not be comparable to the services the competitor was offering using the copper unbundled network element, or provide competitors the ability to provide that particular service. Even Verizon, in its opposition, seems to acknowledge this fact, as it states “providers that retire copper *may* continue to offer services over other facilities that could meet the needs of competing carriers.”<sup>10</sup>

In conclusion, since the Commission has determined no approval is needed for copper retirement and competitors have no control (or ability to forecast) the retirement of copper, when a competitor uses the copper facilities being retired to provide service, the grant for a timely filed 214 discontinuance application should be absolutely automatic and harmonized with the effective date of the copper retirement.

Respectfully submitted,

*/s/ Karen Reidy*

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<sup>10</sup> Verizon at 3.