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February 29, 2016

Ex Parte

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

Re: Technology Transitions Policy Task Force, 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.

Dear Ms. Dortch:

I write in response to the February 11, 2016, Notice of Ex Parte Meeting filed by U.S. TelePacific Corp. d/b/a TelePacific Communications in the above referenced matters (“Feb. 11 Ex Parte”).

In its Petition for Clarification,¹ TelePacific sought a remedy for a narrow issue it claimed could arise under the *Technology Transitions Order*:² if a long series of unlikely contingencies occur, a CLEC might have to discontinue a service provided over copper that is being retired while the CLEC’s Section 214 application remains pending. But, as TelePacific acknowledged in its Feb. 11 Ex Parte, there is a straightforward, unopposed solution to that hypothetical problem: the Commission could “automatically grant the CLEC’s Section 214 application by the date of retirement so long as the application was submitted to the Commission 40 days before the retirement date.”³ If the Commission takes any action in response to TelePacific’s Petition—and we do not agree that the *Order* requires any clarification⁴—it should stop there.

¹ Petition for Clarification of U.S. TelePacific Corp., GN Docket No. 13-5, *et al.* (Nov. 18, 2015) (“Petition”).

² *Technology Transitions, et al.*, Report and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015) (“*Technology Transitions Order*” or “*Order*”).

³ Feb. 11 Ex Parte at 1.

⁴ See Verizon Opposition to the U.S. TelePacific Corp. Petition for Reconsideration, GN Docket No. 13-5, *et al.*, at 1-2 (Dec. 28, 2015) (“Opposition”).

The Commission should not expand the scope of its review of the *Order*, as TelePacific now invites. TelePacific's Feb. 11 Ex Parte goes far beyond the relief it requested in its Petition. Aside from proposing automatic grants of Section 214 applications in some circumstances, the Petition states only that "the Commission could consider in the Section 214 process whether it should require a delay in the copper retirement until the CLEC's discontinuance no longer creates 'an unreasonable degree of customer hardship.'"⁵ But the Feb. 11 Ex Parte asks the Commission to reconsider whether it should ever allow copper retirement that results in a discontinuance of service by a CLEC, asserting that "[i]t would be a step backward for customers that have broadband today to lose that service because a portion of the copper route is replaced by fiber."⁶ At a minimum, TelePacific appears to be requesting that the Commission delay copper retirement indefinitely even where fiber is available to serve consumers. Because these requests are outside the scope of TelePacific's Petition, and were made with no explanation for why they were not included in the Petition, they are time-barred.⁷

Regardless, the Commission should decline the invitation to delay or refuse to allow copper retirement. Indeed, the Commission has already done so.⁸ The stated goals of the *Technology Transitions Order* are to "ensure that the deployment of innovative and improved communications services can continue without delay" and to "provide all parties [the] certainty" they need for making network planning decisions.⁹ And the Commission rejected any change to "the nature of the network change and copper retirement process from one based on notice to one based on approval."¹⁰

⁵ Petition at 9.

⁶ Feb. 11 Ex Parte at 2.

⁷ 47 C.F.R. § 1.106(f) ("No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period [from the date of public notice of final action], will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor."); *Id.* § 1.429(d) ("No supplement to a petition for reconsideration filed after expiration of the 30 day period [from the date of public notice of final action] will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement."). See also *Licenses of 21st Century Telesis Joint Venture and 21st Century Bidding Corporation For Facilities in the Broadband Personal Communications Services*, Order on Reconsideration, 16 FCC Rcd 17257, ¶18 (2001) ("Given the statutory restrictions on our jurisdiction to hear petitions for reconsideration, we are not inclined to exercise our discretion to hear late-filed supplements when a petitioner offers no plausible explanation as to why supplemental arguments were not made in an initial petition."), *aff'd*, *21st Century Telesis Joint Venture v. FCC*, 318 F.3d 192, 199 (D.C. Cir. 2003) ("The court has discouraged the Commission from accepting late petitions in the absence of extremely unusual circumstances.").

⁸ *Technology Transitions Order*, ¶¶ 15-16.

⁹ *Id.* ¶¶ 1, 31.

¹⁰ *Id.* ¶ 14.

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In short, the Commission should not undermine the fundamental purposes of the *Technology Transitions Order* for the sake of avoiding the extremely unlikely chain of events that TelePacific speculates might someday occur.¹¹ As noted above, if the Commission does anything, it should adopt the narrowly tailored solution to this hypothetical problem that the parties have already accepted, rather than broadly revisit the *Order*.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel Jaundon". The signature is written in a cursive style with a long horizontal flourish at the end.

cc: Michele Berlove
Megan Capasso
Matthew DelNero
Brian Hurley
Daniel Kahn
Peter Saharko

¹¹ Opposition at 3.