

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Wireline Competition Bureau Copper
Retirement Network Change Notification filed
by Verizon New York Inc. in Connection with
Facilities at the W. 36th St., New York Wire
Center

WC Docket No. 16-40

Report No. NCD-2509

VERIZON RESPONSE¹

Residents of the West 36th St., New York, wire center have already overwhelmingly made the decision to move to Verizon’s fiber-based services or to competitors. Completing the migration to Verizon’s more advanced and reliable fiber facilities, and retiring the legacy copper loops in this wire center, is not just a logical and efficient step, but an incremental one. One objector, Transbeam,² seeks to delay the copper retirement for a time period well beyond the length contemplated by the rules or else halt it altogether. But Transbeam misconstrues the nature of the facilities being retired, ignores the fact that it has already been offered several alternative products to serve its customers after the copper is retired, and fails to support its claims as required by the copper retirement rules. Its objection is meritless.

A. Fiber Brings Tremendous Advantages to The Customers and Communities In This Wire Center and There Is No Reason to Continue to Maintain Redundant Copper Facilities

Most of the customers remaining on copper-based services in this wire center today are purchasing plain old telephone service, or POTS. Following copper retirement, they may

¹ This response is filed on behalf of Verizon New York Inc. (“Verizon”).

² Opposition of Transbeam Inc., WC Docket No. 16-40, Report No. NCD-2509 (Mar. 2, 2016) (“Transbeam”).

continue to receive the same traditional POTS service over fiber on the same terms and conditions and at the same or better price as they received over copper. There are no changes in the underlying features and functionalities in their service: voice mail, collect calling, and other features will continue to work just as they did over copper; customers will continue to be able to use fax machines, medical monitoring devices, and home alarms; and accessibility services – such as relay services used by customers who are deaf or hard of hearing – also will continue to work as before. There will be no change to customers’ ability to call 911: public safety answering points will receive the same E911 information as before.

Most of the other services that customers are purchasing in this wire center are also supported on fiber facilities.³ For those few retail customers purchasing high speed internet services, Fios Internet will provide them far more than they are getting today. Customers will also continue to be able to buy DS1 and DS3 level services as they do today, just over the fiber network.⁴ Wholesale customers may also purchase Verizon’s Wholesale Advantage product, a local service offered throughout Verizon’s footprint under commercial agreement that lets competitors purchase and rebrand Verizon narrowband circuit-switched services and features. Other options for these customers include products such as Fiber To The Internet (FTTI), which is a high-speed, fiber-based data service that enables Internet-only access for business end users of wholesale customers. Provisioning of FTTI includes shared fiber optic facilities, IP assignment and transport of the wholesale customer’s end-user data traffic from the end user’s premise to the public Internet. Wholesale customers may also purchase Ethernet Transparent

³ While there may be one or more obsolete, narrowband services that are incompatible or unavailable over fiber, we will work closely with those customers to address their particular needs and will file separately any applicable section 214 applications to discontinue those particular services.

⁴ Indeed, DS3 services are today only available over fiber.

LAN Service (TLS), a high-speed data service which provides Ethernet transport over a shared network to transport the customer's data between the customer's designated premises; or Verizon Optical Networking, a point-to-point dedicated private line that allows wholesale customers to offer Ethernet protocols at various speeds between customer locations.

The move toward fiber here is nothing new. As customers and public entities have widely recognized, fiber is a safe, proven, and known technology with a track record of serving communities well. From the perspective of reliability, fiber is resistant to many environmental factors that affect copper cable, and is less likely to experience outages during weather events, homeland security incidents, or other public safety emergencies. Fiber lines are generally more durable, do not corrode, have a much longer lifespan, and require fewer repairs than copper lines.

The reliability advantages of fiber directly benefit customers. For example, as a result of Verizon's programs in recent years to encourage customers experiencing repeated service issues with copper facilities to migrate to fiber, there have been approximately *2.7 million* fewer repair or trouble-shooting dispatches than would have been required had these customers remained on copper facilities. This equates to 2.7 million instances in which customers have *not* experienced an outage or other problem with their service. And for many of those customers, this also equates to time savings, since they would not have to schedule repair appointments and take time out to meet a repair technician. While the resulting consumer welfare gains may be difficult to quantify precisely, to put this in perspective, if these customers were able to avoid a repair visit with a four hour window, a conservative estimate of the consumer welfare gains from those avoided repairs would be approximately \$275 million.⁵ Of course, there may be other ways to

⁵ This values customers' time based on the national average hourly wage of \$25.39. See Bureau of Labor Statistics, Table B-3: *Average hourly and weekly earnings of all employees on private nonfarm payrolls by industry sector, seasonally adjusted*,

quantify the benefits, but regardless of the calculation the point is the same: the benefits to customers are significant and substantial. And, of course, the customer benefits from avoiding the outage or other service problem in the first place.

Fiber also provides performance advantages, as it offers significantly greater bandwidth and is much less sensitive to distance limitations than is copper. Because the fiber optic signal is a light rather than an electrical signal, there is very little signal loss during transmission, and data can move at higher speed and for greater distances. As a result, fiber can support much greater broadband and higher speed services than copper.

Fiber facilities are also more energy efficient than copper because they use laser light – not an electrical signal – reducing energy consumption and resulting in a greener network. And in instances such as those at issue here, the energy savings are particularly pronounced: once the copper facilities and switch are retired, there is no longer a need to power two parallel networks as there is today. Instead, only the more efficient fiber network will consume energy going forward. Based on these benefits, communities throughout the United States have been clamoring for the benefits of all-fiber networks. The President has praised fiber deployment and investment; and the Commission has had as a long-standing goal the encouragement of more widespread fiber deployment. Indeed, providers across the country have deployed fiber cables in their networks and to homes for decades.

<http://www.bls.gov/news.release/empsit.t19.htm> (last visited Mar. 2, 2016) (calculating average wage at \$25.39).

B. The Copper Retirement in West 36th St. Does Not Require an Application Under Section 214 For Unbundled Network Elements

In its objection, Transbeam misconstrues the established procedures for retiring copper⁶ and wrongly asserts that Verizon was required to file an application under Section 214 in connection with its offering of unbundled network elements. But the Commission has previously held that an unbundled network element, or “UNE,” is a facility and not a service, and thus that no Section 214 application is required. Moreover, Transbeam ignores the fact that Verizon has offered it multiple reasonable replacement options that would prevent it or its customers from losing service.

A UNE is, by definition, “a facility or equipment used in the provision of a telecommunications service,” and not a service itself.⁷ The Commission has underscored this, explaining that “the provision of an unbundled network element is not the provision of a telecommunications service.”⁸ And, the Commission has specifically held that “use of unbundled network elements is not resale of the telecommunications services of another carrier.”⁹ Thus, no Section 214 application is warranted when Verizon retires the UNE copper loops at issue here.

⁶ See 47 C.F.R. §§ 51.325, 51.329 and 51.333. Verizon submitted its Certification of Public Notice of Network Change(s) pursuant to current rule 51.333(a) rather than revised rule 51.332, which was not in effect at the time Verizon’s notice was filed (and today is still subject to review by the Office of Management and Budget and thus not yet in effect). See *Technology Transitions, et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, ¶ 74 (2015) (“*Technology Transitions Order*”); see also *id.* at Appx. A, [Proposed] Final Rules, ¶ 51.332(a).

⁷ 47 U.S.C. § 153(35).

⁸ *Technology Transitions, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14,968, ¶ 109 (2014).

⁹ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20,543, ¶ 95 (1997).

Nor does the *Technology Transition Order* and rules adopted therein dictate a different result. Transbeam asserts that this recent order requires that Verizon, upon retiring the UNE copper loops that Transbeam bonds together to provide its Ethernet-on-copper (EoC) service, must offer Transbeam “reasonably comparable wholesale access on reasonably comparable rates, terms and conditions.”¹⁰ Wrong. The *Technology Transition Order’s* “comparable replacement service” requirements apply only where an ILEC discontinues a “special access service at or above the DS1 level” or a wholesale platform service.¹¹ The copper loops about which Transbeam complains, however, are DS0-capacity UNEs that fall into neither of those categories.

Moreover, even if legally correct – which it is not – Transbeam’s argument would effectively transform the copper retirement process from a notice-based process to an “approval” process. The Commission has repeatedly rejected this approach.¹² The *Technology Transitions Order* reaffirmed the Commission’s prior determination that ILECs are permitted to retire copper facilities after deploying fiber, subject to the obligations to comply with the Commission’s network disclosure rules.¹³ The Commission specifically addressed and rejected proposals that would require affirmative regulatory approval prior to the retirement of any copper loop facilities,¹⁴ as Transbeam urges here. The Commission found that “by retaining a notice-based process that promotes certainty for consumers, interconnecting carriers, and incumbent LECs,

¹⁰ Transbeam at 2.

¹¹ *Technology Transitions Order*, ¶ 146.

¹² *See id.* ¶ 14.

¹³ *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978, ¶¶ 273, 281 (2003) (“TRO”).

¹⁴ *See TRO*, ¶ 281; *see also Technology Transitions Order* ¶ 14.

our actions advance the transition to fiber while serving our key pro-competition and pro-consumer goals.”¹⁵

Pursuant to these rules,¹⁶ the Commission provided for a period of notice to the public and to interconnecting carriers, and created a specific time frame for objections that would both allow well-founded objections to be heard but also not unduly delay retirement. Indeed, the Commission has acknowledged that requiring providers to retain copper or other facilities no longer needed to serve their customers would necessarily divert resources better spent deploying or enhancing the networks that they intend to use to serve their customers, to the detriment of consumers.¹⁷

However, even though no section 214 application is required for these UNEs, as a matter of customer service, Verizon has voluntarily undertaken to help customers like Transbeam transition from EoC (provided on subsidized UNE copper loops that are being retired) to fiber-based replacement services. In addition to FTTI and other products discussed above, in early 2015, Verizon put forth a special offer that allowed Transbeam and other customers to obtain TLS service at substantial discounts off of already-discounted promotional rates. As a fiber-

¹⁵ *Technology Transitions Order* ¶ 13; see also *TRO* ¶ 281 (concluding that such proposals were “not necessary” and that the established network disclosure rules would best encourage all providers, including non-ILECs, to invest in broadband facilities).

¹⁶ See 47 C.F.R. § 51.333; see also *Technology Transitions Order*, at Appx. A, [Proposed] Final Rules, ¶ 51.332(a).

¹⁷ See FCC, *Connecting America: The National Broadband Plan*, at 48-49 (2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf> (stating that incumbents forced to retain redundant copper networks would have reduced incentives to invest in and deploy next generation facilities). Relatedly, in the USF context, the Commission has recognized that it makes no sense to support duplicative networks, and has accordingly proposed that support be limited to “[a] single fixed broadband connection” per residence/household. *Connect America Fund; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 1256 (2011).

based switched Ethernet service, customers such as Transbeam typically migrate to TLS from copper-dependent Ethernet over copper at wire centers where Verizon retires copper.

This offer, along with other replacement service options, is still open to Transbeam and Verizon's account teams remain available to make the transition to fiber-based replacement services as smooth as possible.

C. Transbeam's Objection to Verizon's Copper Retirement and Network Change Notice is Procedurally Invalid

As required by the Commission's current procedures in Sections 51.325, 51.329 and 51.333,¹⁸ Verizon properly served, posted on its website, and filed its network change and copper retirement notices for this wire center in July and August of 2015. The notices indicated an implementation date of Verizon's copper retirement on or after August 5, 2016, more than a year away.¹⁹ Since filing the notice of copper retirement, Verizon has communicated with its wholesale customers multiple times to discuss individual timelines for migration of particular service arrangements and to confirm customers' options for services. The Commission issued its public notice more than six months after Verizon filed its notice, but still nearly six months prior to Verizon's planned copper retirement implementation date.

Despite this long timeline, Transbeam seeks to impermissibly extend the copper retirement date even further – essentially indefinitely. Transbeam asserts that it might be able to comply with Verizon's copper retirement at some point approximately six months after the date on which – it claims – it would deem acceptable one of the several options (or some other option) Verizon has already offered. This proposal would transform the straightforward copper

¹⁸ See 47 C.F.R. §§ 51.325, 51.329 and 51.333 and note 6, *infra*.

¹⁹ Under the current rules, the same section governs both copper retirement and short-term notices. Thus, while Verizon properly filed its notification under this section, its notice here was in no way “short term.”

retirement notification process into one in which a customer has effective veto power over retirement. But, as noted above, the Commission has already rejected claims to transform the notice-based retirement process into one that hinged on approval;²⁰ it should not re-visit that decision here.

Transbeam's objection also ignores a number of the requirements under Section 51.333(c) necessary to substantiate a proper objection. For example, Transbeam failed to submit specific reasons why it could not accommodate these changes by the stated implement dates (more than a year after the initial date Transbeam received notice), nor did it explain what steps it was taking to accommodate these changes.

Because Transbeam's objection is neither legally viable nor properly supported, the Commission should not rely on it to extend the West 36th St. copper retirement timeline.

Respectfully submitted,

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²⁰ See *Technology Transitions Order* ¶ 14.