



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
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March 11, 2016

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: *WC Docket No. 15-1, Petition for Declaratory Ruling to Clarify That Technology Transitions Do Not Alter The Obligation of Incumbent Local Exchange Carriers to Provide DS1 and DS3 Unbundled Loops Pursuant to 47 U.S.C. §251(c)(3)*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's (Commission's or FCC's) rules, 47 C.F.R. § 1.1206, undersigned counsel files this letter, on behalf of the Pennsylvania Public Utility Commission (Pa. PUC), to address the legal and policy issues raised in the above-referenced proceeding. In particular, this letter addresses the reasons why, based on federal and state law and sound public policy, incumbent carriers have an obligation to provide unbundled DS1 and DS3 capacity loops or a functional equivalent to requesting competitive carriers regardless of the physical medium or transmission protocol the incumbent uses in its network. Specifically, the Pa. PUC asserts that ILECs have a continuing obligation to provide DS1 and DS3 capacity loops on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. § 51.319(a)(4) and (5) and that this obligation is not altered or eliminated either by the replacement of copper with fiber or by the conversion of transmission from time division multiplexing (TDM) to Internet Protocol (IP) format.

In the *Triennial Review Order*, the FCC determined that, in order to incentivize the continuing investment in the deployment of new technologies, it would limit the unbundling requirements associated with the ILECs' fiber optic loops to the home or to the premises (FTTH/FTTP) that are commonly utilized for the delivery of retail broadband access services to "mass market" residential and small business customers. However, the FCC did not eliminate the requirement to unbundle DS1 and DS3 capacity local loops that are utilized for wholesale access purposes.¹

¹ See, e.g., *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*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17346, para. 582, n.1796 (footnote omitted) (2003) (*Triennial Review Order*) *aff'd in part, remanded in part, vacated in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*).

The Pa. PUC is concerned about protecting and promoting vibrant competitive services for the enterprise telecommunications market throughout the Commonwealth of Pennsylvania in accordance with applicable federal and independent state law.² The Pa. PUC notes that the competitive LECs (CLECs) providing service in the enterprise markets continue to rely significantly on wholesale access to the last-mile facilities of the ILECs.³ Given the economic reality of financing the build out of additional interconnection networks and facilities, CLECs have expressed concern about the future of wholesale access to last-mile facilities and services as local wireline networks undergo the technology transitions. The continuing applicability of the unbundling rules for DS1 and DS3 capacity local loops helps ensure that the ILECs provide cost-effective and cost-recovering last-mile access. This serves to minimize capital investment in wasteful duplicative networks in areas where copper loops have been or are being replaced with FTTH/FTTP, or where network access facilities are being converted from the TDM protocol to IP.

The Pa. PUC is concerned that failing to maintain an unbundling requirement for DS1 and DS3 capacity local loops or a functional equivalent could effectively undermine competition, which is one of the Commission's core principles to be sustained and protected during any technology transition. In fact, the absence of that competition could generate considerable pressure to address the claims of cost versus excessive rates likely to arise if one or two entities provide most of the needed physical last-mile access to others with whom they compete to provide services.⁴

Accordingly, the Pa. PUC repeats its view that the FCC find the ILECs' obligations to provide DS1 and DS3 capacity loops on an unbundled basis or the functional equivalent remain intact even when copper loops have been retired. The Pa. PUC again requests the Commission to confirm that its unbundling ruling for access to DS1 and DS3 capacity loops set forth in the *Triennial Review Remand Order* is technologically neutral. The Commission also should confirm that an unbundling/functional equivalent rule will remain operative and intact when copper network facilities that are utilized for wholesale access purposes undergo a technology transition and are replaced with fiber optic circuits by the ILECs, or where relevant wholesale access transmission facilities cease to utilize the TDM communications protocol in favor of IP or some other technology.

² For independent Pennsylvania law, see Sections 3011(8), 66 Pa.C.S. § 3011(8), *inter alia*,

³ See *inter alia* Federal Communications Commission, Industry Analysis and Technology Division, *Local Competition Report* (October 2014), Figure 8.

⁴ See, *In re: Special Access*, Docket No. 05-25, RM-10593, Reply Comments of BT Americas (February 19, 2016).

Thank you for your attention to this correspondence.

Sincerely,

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/s/ David E. Screven

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