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March 16, 2016

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Notice

RE: In the Matter of 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), WC Docket No. 15-1.

Dear Ms. Dortch:

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully requests that the Federal Communications Commission (“Commission”) move forward in the above-captioned proceeding. Resolving the petition would eliminate any uncertainty concerning the obligation of an Incumbent Local Exchange Carrier (“ILEC”) to provide DS1 and DS3 capacity loops on an unbundled basis during the technological transitions from networks based on time-division multiplexed (“TDM”) circuit-switched voice services running on copper loops to all-Internet Protocol (“IP”) multi-media networks using copper, coaxial cable, wireless, and fiber as physical infrastructure. The MDTC has long advocated for the Commission to preserve the fundamental principles of competition, consumer protection, universal service, and public safety during the technology transitions.² In doing so, the

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16.

² See e.g. MDTC Reply Comments, *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications et al.*, PS Docket No. 14-174 et al. (Mar. 9, 2015); MDTC Comments, *Comments Sought on the Tech. Transitions of the Nation’s Commc’ns Infrastructure et al.* GN Docket No. 12-353 et

Commission must fully consider how the existing regulatory landscape currently serves, and will continue to fulfill the Commission's mission.³

The Commission has been conducting a number of proceedings to address and preserve these fundamental principles before service providers complete their technology transitions.⁴ While these proceedings are ongoing, the Commission must ensure that the transitions are not used to impede competition. As the Commission stated in its Notice of Proposed Rulemaking on Customer Premise Equipment Backup Power for Continuity of Communications Technology Transitions ("NPRM"):

Technology transitions must not harm or undermine competition. Our present goal is to maintain established rules and decisions that provide for wholesale access to critical inputs as we continue our special access rulemaking proceeding, along with other initiatives such as technology trials, to determine how customers are affected and whether rules and policies need to be modified in the future.⁵

The Commission in its discussion of competition in the NPRM brought attention to the appropriate regulatory obligation concerning DS1 and DS3 unbundled loops when obtaining discontinuance stating:

We also take this opportunity to point out that since section 214(a) and the Commission's discontinuance rules apply to common carrier and interconnected VoIP services, the mere fact that a carrier obtains discontinuance authorization under section 214(a) for such services has no legal bearing on its obligation to provide UNEs under section 51.319 of our rules. The Commission has held that "the provision of an unbundled network element is not the provision of a telecommunications service."⁶

The Commission also stated that while "[i]n the *Triennial Review Order*, the Commission emphasized the importance of incentivizing investment for the deployment of new technologies⁷.

al. (Mar. 5, 2013); MDTC Comments, *Comments Sought on the Tech. Transitions of the Nation's Commc'ns Infrastructure et al.* GN Docket No. 12-353 et al. (Jan 28, 2013).

³ MDTC Comments, *Comments Sought on the Tech. Transitions of the Nation's Commc'ns Infrastructure et al.* GN Docket No. 12-353 et al. at 3 (Mar. 5, 2013).

⁴ See e.g., *Tech. Transitions*, GN Docket No. 13-5; *Ensuring Customer Premises Equipment Backup Power for Continuity of Commc'ns*, P.S. Docket 14-174; *Numbering Policies for Modern Communications*, WC Docket No. 13-97; ; *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; *Comments Sought on the Tech. Transitions of the Nation's Commc'ns Infrastructure*, GN Docket No. 12-353.

⁵ *Ensuring Customer Premises Equipment Backup Power for Continuity of Commc'ns et al.*, P.S. Docket 14-174 et al. *Notice of Proposed Rulemaking and Declaratory Ruling* FCC 14-185, 29 FCC Rcd. 14968, 15012-15013, ¶ 110 (rel. Nov. 25, 2014) ("NPRM").

⁶ *Id.* at 15012, ¶ 109 (citing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20595, ¶ 95 (1997)).

⁷ *Id.* at 14985-14986, ¶ 29 (citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, et al., *Report and Order and Order on Remand and*

. . [t]his decision did not, however, eliminate the requirement. . .to unbundle DS1 and DS3 capacity loops.”⁸ And in acknowledging the concerns of competitive LECs (“CLECs”) that they may lose the ability to access last-mile facilities if ILECs discontinue TDM-based services in the technology transitions, the Commission stated “[n]o discontinuance would affect an [I]LEC’s obligations to provide unbundled access to loops under section 51.319(a)(4) of our rules.”⁹

Despite these statements from the Commission, the Nebraska Public Service Commission (“NPSC”) in a recent filing noted some ILECs have taken the position that once an ILEC retires copper, TDM facilities and equipment, it is no longer required to offer unbundled DS1 and DS3 capacity loops.¹⁰ With regard to ILEC unbundling obligations, the MDTC believes the Public Interest Commenters expressed the correct view in their comments that:

Under the Commission’s rules, an ILEC has an obligation to provide unbundled DS1 and DS3 capacity loops unless it establishes that the basis for a finding of non-impairment has been met—short of any change in rule or forbearance decision by the Commission.[] If ILECs wish to change that rule, they can petition for forbearance or a new rulemaking under the Commission’s procedures. In the meantime, it is important that the Commission continue to protect the competition that exists in the network now, in addition to pursuing policies to encourage more competition to benefit consumers.¹¹

Accordingly, the MDTC concurs with its fellow state commissions and urges the Commission to act promptly on Windstream’s petition and clarify an ILEC’s obligation to provide DS1 and DS3 capacity loops on an unbundled basis.¹²

Further Notice of Proposed Rulemaking, 19 FCC Rcd 16978, 17111, ¶ 213 (2003) (“Triennial Review Order”).

⁸ *Id.* (Citing *e.g. Unbundled Access to Network Elements, et al.*, WC Docket No. 04-313, *et al.*, *Order on Remand*, 20 FCC Rcd 2533, 2536, ¶ 5 (2004) (“Triennial Review Remand Order”); *Triennial Review Order*, 18 FCC Rcd at 17346, ¶ 582, n.1796; 47 C.F.R. § 51.319(a)(4), (5)).

⁹ *Id.* at 15011, ¶ 106, n. 203.

¹⁰ See Nebraska Public Service Commission (“NPSC”) Ex Parte Letter, *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)*, WC Docket No. 15-1at 2 (Feb. 23, 2016) (“Windstream Petition”)(citing “Public Notice of Network Change Under Rule 51.333(a)” for Midlothian, VA, available at <http://www.verizon.com/about/networkdisclosures/> (last visited Mar. 6, 2015). See also Short Term Public Notice Under Rule 51.333(A) for Orchard Park, NY, Hummelstown, PA, Farmingdale, NJ, Lynnfield, MA, and Belle Harbor, NY; Letter from Robert C. Barber, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 13-5, *et al.*, attachment at 11 (filed May 30, 2014); Reply to Comments of AT&T Services, Inc., GN Docket Nos. 13-5, 12-353, at 40-41 (filed Apr. 10, 2014).

¹¹ Comments of Public Knowledge, Appalshop, Benton Foundation, Center for Media Justice, Center for Rural Strategies, Common Cause, The Greenlining Institute, Media Action Center, Media Literacy Project, National Consumer Law Center, on Behalf of its Low-Income Clients, New America’s Open Technology Institute, Rural Broadband Policy Group, and TURN (The Utility Reform Network), *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications et al.*, PS Docket No. 14-174 *et al.* at 17 (Feb. 5, 2015) (citation omitted).

¹² NPSC Ex Parte Letter, *Windstream Petition* at 2; Washington Utilities and Transportation Commission (“WUTC”) Ex Parte Letter, *Windstream Petition* at 3 (Feb. 11, 2016); Vermont Public Service Board and Vermont Public Service Department (“Vermont”) Reply Comments, *Windstream Petition* at 3 (Feb. 27,



Thank you for your time and attention to this matter and if you should have any questions regarding the MDTC's position please contact Lindsay DeRoche, Director of Competition, at 617-305-3580 or Lindsay.DeRoche@state.ma.us.

Very truly yours,



Karen Charles Peterson
Commissioner

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2015); Pennsylvania Public Utility Commission ("PaPUC") Comments, *Windstream Petition* at 4 (Feb. 5, 2015).

