Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Policies and Rules Governing Retirement	)	RM-11358
of Copper Loops by Incumbent Local	)	
Exchange Carriers	)	

REPLY COMMENTS OF DSLNET COMMUNICATIONS, LLC

DSLnet Communications, LLC ("DSLnet") submits these reply comments in response to the comments of Verizon, AT&T and certain parties that broadly opposed the proposals set forth in the two Petitions that initiated this proceeding. While DSLnet supports these Petitions, in these reply comments it presents a more limited, alternative proposal to the Commission that would only alter the ILECs' obligations in certain rare instances of obvious, direct and immediate consumer harm.

DSLnet is a competitive facilities-based provider of broadband telecommunications services. The company was founded in 1998 based upon the promise of the Telecommunications Act of 1996 to open ILEC copper loops to competitive access. At that time, residential and business customers were being severely short-changed by the incumbent carriers, which knew how, and had the resources, to deploy DSL services but had generally declined to do so for fear of cannibalizing their more expensive T-1 and other high-capacity services. DSLnet broke this logjam and became the first carrier to deploy retail DSL services in the State of Connecticut, using unbundled copper loops. The incumbent carrier (the Southern New England Telephone Company, now part of AT&T) eventually followed. As a result of CLECs' access to unbundled copper loops, consumers today obtain broadband services from ILECs and

CLECs at much lower rates than were generally available prior to competition. It is beyond question that competitive access to copper loops produces significant consumer benefits.

In their comments, Verizon and AT&T overstate the actual impact of the CLEC Petition proposals on their broadband investment decisions.[1] However, DSLnet recognizes that the Commission has sought to limit unbundling obligations in certain instances where it believes that relief is needed to stimulate the ILEC's investment in new broadband facilities. Therefore, in response to the ILEC comments in this proceeding, DSLnet urges the Commission to consider, at a minimum, at least the adoption of additional narrowly-tailored regulations designed to prevent existing CLEC customers from having their DSL service disconnected as a result of a copper retirement. Such a regulation would affect far fewer loops than the CLEC Petitions, and would result in far greater and more perceptible benefits to consumers than it would impose additional costs on the incumbent carriers.

Where an ILEC retires a copper loop that is presently used by a CLEC to provide local exchange service to a customer, in most cases the CLEC service can be migrated to an alternative ILEC facility. For example, Verizon and AT&T will perform a line station transfer of a standard telephone line from a copper loop to a hybrid loop that will generally allow the CLEC to continue to provide the same local exchange services to its existing customer on the same rates and terms. However, there is a significant exception:

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1 The Commission should not be misled into believing that the retirement of *all* existing copper loops in a service area is an essential or even important prerequisite to deployment of new fiber facilities. For example, in the case of Verizon's fiber-to-the-home FIOS service, Verizon still needs the existing copper loops because not all customers in a neighborhood immediately convert to FIOS, and FIOS cannot be connected until the customer agrees to the installation of a fiber ONT and battery back-up at their premises. As a practical matter, therefore, Verizon will need to maintain its copper loop infrastructure in parallel to FIOS for years to come, regardless of the Commission's regulation of copper retirement.

DSL services. DSL technology requires the performance of certain multiplexing functions at the carrier end of a copper loop, before the broadband service can be transmitted to a fiber transmission facility. For traditional "home run" copper loops, DSLnet performs this function using DSLAMs that it collocates in ILEC central offices pursuant to Section 251(c)(6) of the Act. However, when a copper subloop is connected to a fiber feeder, this multiplexing functionality must be performed at the remote terminal. Since ILECs will not allow CLECs to install their own DSL line cards at ILEC remote terminals, there is no technically feasible, economically viable means for a CLEC to provide most DSL services over ILEC hybrid loops. Therefore, if an ILEC forces a CLEC to abandon a perfectly-usable copper loop and switch to a fiber-fed loop, the CLEC would be forced to disconnect the customer's DSL service.

The Commission has a strong policy reason to impose modest requirements on copper retirement to protect such consumers from disconnection of their DSL service. Consumers might not be able to replace the disconnected DSL service from the CLEC with comparable service from the ILEC, since facilities-based CLECs such as DSLnet offer different types of DSL services, and at different prices, from ILECs. On a practical level, consumers may not want to lose their e-mail and IP addresses, install new equipment, or change carrier relationships. Such changes often result in unplanned costs and/or disruptions to the consumers' service.

Such consumer harms could easily be avoided, at comparatively little undue cost to the ILECs, by shifting the burden of proof from the CLEC to the ILEC in establishing the public interest of a proposed retirement of a loop already being used by a CLEC to provide DSL services. Because the Commission rarely intercedes in copper retirement,

and because of the unequal bargaining power ILECs have over small CLECs such as DSLnet, the present rule that enables the ILEC to retire a loop unless the Commission rejects its request gives too little consideration to the interests of consumers who subscribe to CLEC DSL services that would be immediately terminated as a result of a retirement. Shifting the burden of proof from the CLEC to the ILEC for loops that are presently used by the CLEC would be eminently reasonable under such circumstances and would merely assure that a specific consumer's interests are not summarily ignored.

Specifically, DSLnet proposes that ILECs should only be permitted to retire in-service loops being used for CLEC DSL services if it satisfies either of two options. First, the ILEC could provide the CLEC an alternative facility on the same rates and terms that would enable the CLEC to continue to provide comparable service to its customer without significant additional CLEC construction or deployment. This option would generally be the best result for the public interest, because it would allow the end-user customer to continue to receive their existing DSL service. In the alternative, an ILEC would be permitted to retire such loops if it obtained advance, affirmative determination from the Commission that continued requirement to provide the loop would be unreasonably costly (above and beyond what the CLEC pays for the loop) and contrary to the public interest. If the ILEC cannot make such a showing, the public interest of the consumer receiving their existing DSL service would plainly outweigh the small incremental cost to the ILEC of maintaining a small number of additional copper loops.

DSLnet expects that its proposal will not unduly burden the Commission with greater oversight over individual ILEC loop decisions, but will instead simply encourage

the ILECs either to continue to allow a CLEC to use a loop when the costs of doing so are not in fact burdensome, or to find a viable alternative arrangement for the CLEC when it is in its overall interest to do so.

DSLnet urges the Commission to adopt all of the relief requested in the CLEC Petitions. However, at a minimum, the Commission should take measures to ensure that the Commission's general interest in allowing ILECs to retire copper loops does not unduly override the public's interest in assuring that consumers are not unnecessarily disconnected from their existing competitive broadband services.

Respectfully submitted,

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