

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	GN Docket No. 12-353
Request to Refresh Record and Amend the)	
Commission’s Copper Retirement Rules)	RM-11358
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**REPLY COMMENTS OF
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. (“WorldNet”) respectfully submits reply comments in the above-referenced docket. As set forth in more detail below, WorldNet agrees with and supports the CLEC petitioners and the commenters in this proceeding advocating for the protection and strengthening of CLEC access to unbundled ILEC copper loops. WorldNet has already submitted detailed comments to the Commission on the general issues raised by pending petitions from AT&T and NTCA.¹ WorldNet, however, would like to use this opportunity to briefly reinforce and add to its previous comments with the specific focus on the copper retirement issues raised here.

First, the Commission’s current copper retirement rules (like the currently-pending ILEC petitions for deregulation) represent an “end run” around the expressed will of Congress. Simply put, the Commission’s current copper retirement rules allow ILECs to virtually nullify Section 251(c)(3) of the 1996 Act. More than a decade after its enactment, the most important element of Section 251(c)(3) undeniably is the access that it gives competitors to ILEC last-mile facilities. Some 5,000 WorldNet customers in Puerto Rico now depend (quite happily) on copper facilities as a key component of this access for their desired narrowband and broadband

¹ See *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket 12-353, Reply Comments of WorldNet Telecommunications, Inc. (filed Feb. 25, 2013).

services and service provider. Yet, Commission rules now purport to enable an ILEC to thwart customer choice and decades of competitive development under Section 251(c)(3) by simply reconfiguring its network.

Even the threat that the ILEC could unilaterally dictate the timing and availability (or potential lack of availability) of copper facilities, which are still today very much critical network infrastructure components in many areas, including Puerto Rico, would devastate competition and deter investment in competitive companies. Moreover, the paradigm under which this threat is now even being seriously considered is wholly wrong as a policy and legal matter.

The current ideological debate over how best to reduce pricing, improve service, and promote innovation in telecommunications markets is one that Congress (along with the Commission and numerous policy makers, academics, and industry participants) undertook over a period of years in the lead-up to the 1996 Act, and it resulted in a still-binding statutory policy decision (as reflected in the 1996 Act) to achieve these goals through competitor access to ILEC networks (i.e., Section 251(c)(3)), not the pursuit of creating investment incentives for one or two dominant providers. To now say “never mind” and permit what is essentially a return to a monopoly environment where the dominant provider needs to be “incentivized” and gets to dictate what and how services are provided marks a complete reversal of the competitive construct Congress enacted in 1996, without any Congressional authority.

Second, sacrificing the pro-competitive goals of Section 251(c)(3) in order to create incentives for ILEC fiber investment is a sacrifice that inherently need not be made. As noted in WorldNet’s previous comments, there are more reasonable and measured alternatives to simply allowing ILECs to retire or remove still very useful copper facilities. Other commenters have noted that ILECs will be compensated, if not overcompensated, through the continued payment

of TELRIC rates for unbundled copper facilities used by CLECs. Another option, identified by WorldNet in its previous comments, could be the adoption of thoughtful and appropriate conditions that would, for instance, give competitors the right to acquire ILEC copper facilities at an appropriately established value.

Importantly, WorldNet believes that there should not be any relaxation whatsoever of current regulatory requirements to provision and share facilities. Indeed, rules regarding the notice and procedures for any sort of “retirement” of critical network infrastructure facilities, including copper, should be strengthened, not weakened, diluted, or abandoned. Moreover, the Commission’s decision to exempt fiber from unbundling should be re-visited and reversed in order to ensure that Congress’ mandate to foster competition through unbundling and interconnecting is accomplished, thereby attaining all of the critical benefits of competition. Nevertheless, to the extent the Commission is going to consider modifying its copper retirement policies to accommodate the dominant provider’s mere contention that it should be permitted to abandon existing facilities, then thoughtful provisions must be put in place to ensure that such abandonment does not harm competition and the public interest.

First, a process must be in place that requires ample notice, proceedings, and a burden on the dominant provider to determine if and where a competitive provider is utilizing the copper as part of a network deployment. Notably, such a network deployment by a wholesale/CLEC customer is a much more complex and involved arrangement than the ILECs’ simplistic notion of “moving the [retail] customer to the IP world.” Incredibly, the ILECs seem to totally ignore this critical distinction and treat a competitive network serving thousands of customers the same as a single residential customer – at some point, the ILEC gets to “tell” the customer that their service has been “changed,” or “moved,” to the IP world. That such a proposal fails to pass the laugh test seems obvious, yet, there has been a complete absence from the dominant carriers of

any serious proposals for thoughtful proceedings to address the situation where competitive networks are lawfully deployed on copper that is targeted for removal. Such proceedings should not put the competitor at risk to fight for its competitive life; rather, the burden should be on the dominant provider to show that it has determined the impact of its proposed actions on competitive network deployment and has arrived at an arrangement that preserves competition.

Second, the assessment of the competitive impact of copper retirement proposals should incorporate a component that reflects local conditions. In the case of Puerto Rico, this would allow decision-makers to consider the fact that copper is still very much being used as a robust deployment vehicle for numerous services, that broadband and technology are not up to the same level as on the mainland, and that removing or even constraining the availability of copper to competitors would have a wholly damaging effect on the island.

Finally, as stated above, the proceedings proposed herein could include a component that would permit acquisition of the copper facilities by competitors. This would of course address any legitimate issues regarding compensation and remove any potential complaint by dominant carriers of any ongoing burdens regarding copper. Again, this concept is not presented here as a formal or complete proposal, but rather as an illustration that Commission rules need not destroy nearly a decade of competitive development, betray the service and service provider choice of thousands of Puerto Rico consumers, and anoint fiber (by regulatory fiat) to be the exclusive broadband technology transmission option for all market segments in the future in order to address purported ILEC concerns about the cost burden of leaving copper facilities in place and available to competitors.

CONCLUSION

WorldNet joins the CLEC petitions and their supporting commenters in urging the Commission to update its rules to protect and strengthen CLEC access to unbundled ILEC

copper loops. CLEC access to ILEC copper loops under Section 251(c)(3) is creating huge benefits to consumers and helping to drive the TDM-to-IP transition in Puerto Rico. It is creating narrowband and broadband service options tailored both in price and function to the service needs of thousands of Puerto Rico consumers that would otherwise not be available to them. The Commission need not, should not, and lawfully cannot, undermine this in the name of protecting ILECs from the as-yet undocumented (and, even if real, ostensibly remediable) cost burden of preserving their copper networks if and when they determine to deploy new fiber facilities. However vocal the ILECs may be about their desire for complete freedom to abandon copper, this simply must be balanced against the clear pro-competitive language of the Act, the well-documented benefits of competition, and the legitimate reliance on such competitive fundamentals by companies like WorldNet in taking the risk and incurring the expense to provision robust competitive telecommunications networks. Dealing with such important issues in the manner suggested by the ILECs (complete freedom to abandon core competitive network elements) is, WorldNet submits, not a thoughtful, nor appropriate, balance.

Respectfully submitted,

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