

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

In the Matter of

Petition of Ad Hoc Telecommunications Users
Committee, BT Americas, Cbeyond, Computer &
Communications Industry Association, EarthLink,
MegaPath, Sprint Nextel, and tw telecom To Reverse
Forbearance from Dominant Carrier Regulation of
Incumbent LECs' Non-TDM-Based Special Access
Services

WC Docket No. 05-25

RM-10593

**REPLY COMMENTS OF U.S. TELEPACIFIC CORP. AND MPOWER
COMMUNICATIONS CORP.**

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Dated: May 31, 2013

U.S. TelePacific Corp. and Mpower Communications Corp. (collectively “TelePacific”) respectfully submit these Reply Comments in connection with the Petition filed by Ad Hoc Telecommunications Users Committee *et al.* Each of the three RBOCs has pointed to TelePacific as a source of competition in the provision of business Ethernet service.¹ With one exception, discussed below, the competition from TelePacific referenced by the RBOCs is predicated on TelePacific’s ability to use *the RBOC’s copper loops* to provide Ethernet over copper (“EoC”) service. As TelePacific has previously pointed out, the ability of CLECs to continue to use the RBOC’s copper loop to provide such competition is, under current FCC regulation, dependent upon the RBOC’s decision not to replace the copper loop with fiber and retire the copper.² Moreover, in GN Docket 12-353, the Commission is considering AT&T’s Petition requesting, among other things, that the Commission relax even those limited copper retirement rules that exist today.³

The RBOCs’ reference to EoC competition provided by TelePacific and others is disingenuous, and clouds the issue, which is that at most locations, the ILEC is the only source of last mile access. TelePacific has shown that it would be able to buy last mile access from a provider other than the ILEC at only 9% of its customer service addresses in California.⁴ This shows how fragile competition is. At 91% of the locations of TelePacific’s business customers, TelePacific’s ability to continue to serve the customer is totally dependent upon its continued

¹Comments of AT&T Inc. (filed April 16, 2012) at 31, 42; Comments of Verizon and Verizon Wireless (filed April 16, 2013) at 12, Appendix A at 29; Opposition of CenturyLink (filed April 16, 2013) at 49.

²Mpower *et al.*, Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules and to Promote Affordable Broadband over Copper, *WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; RM-11358* (filed January 25, 2013), at 11-13.

³AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket 12-353 (filed November 7, 2012), at 19.

⁴Reply Comments of Mpower *et al.*, GN Docket No. 12-353, RM-11358, filed March 20, 2013, at 14.

right to lease the ILEC's copper loop. Should the ILEC elect to replace the copper loop with fiber and retire the copper and should the Commission's regulations permit the RBOC to do so, TelePacific's ability to continue to offer EoC services would vanish at that location, and TelePacific's investment would be stranded. This presents a substantial risk, and therefore constitutes a deterrent to additional investment in EoC, particularly in light of the assertion by Verizon's CEO that Verizon is "going into the copper plant areas and every place we have FiOS, we are going to kill the copper"⁵ and AT&T's Petition requesting that ILECs have unfettered discretion to retire copper loops.⁶

In addition to its offering of EoC which, as discussed above, is dependent upon TelePacific's ability to use the ILEC's copper loop, AT&T also claims that TelePacific "offers business class fixed wireless Ethernet solutions up to 100 Mbps in many areas throughout the country."⁷ This is not true, and misrepresents the statements on TelePacific's website upon which AT&T relies. AT&T cobbles together and cites information on two webpages, one of which shows that TelePacific offers extensive broadband coverage and the other of which asserts that TelePacific uses several techniques to provide this broadband coverage, including EoC and fixed wireless. In fact, TelePacific offers broadband over fixed wireless only in very limited areas: the southern San Francisco Bay Area, Los Angeles, and Las Vegas, and then only where

⁵ Transcript, Verizon at Guggenheim Securities Symposium at p. 8 (June 21, 2012).

⁶ AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, filed November 7, 2012, at 19, GN Docket 12-353.

⁷ Comments of AT&T Inc. (filed April 16, 2012) at 31.

line of sight is available. This competition in highly limited locations is not evidence that ILECs lack market power.

Respectfully submitted,

/s/ electronically signed

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