

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

In the Matters of)	
Applications of Verizon New Jersey Inc. and)	WC Docket No. 13-149
Verizon New York Inc. to Discontinue)	Comp. Pol. File No. 1112
Domestic Telecommunications Services)	
)	WC Docket No. 13-150
)	Comp. Pol. File No. 1115
)	
)	
Petition of BellSouth Corporation for Special)	
Temporary Authority and Waiver To Support)	WC Docket No. 06-63
Disaster Planning and Response)	
)	
Petition of Verizon for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petition of Qwest Communications)	
International Inc. for Special Temporary)	
Authority and Waiver To Support Disaster)	
Planning and Response)	
)	
Petitions for Rulemaking and Clarification)	
Regarding the Commission's Rules Applicable)	RM-11358
to Retirement of Copper Loops and Copper)	
Subloops)	

**XO COMMUNICATIONS SERVICES, LLC'S AND MEGAPATH CORPORATION'S
COMMENTS IN RESPONSE TO APPLICATION OF VERIZON NEW JERSEY INC.
AND VERIZON NEW YORK INC. TO DISCONTINUE DOMESTIC
TELECOMMUNICATIONS SERVICES**

XO Communications Services, LLC (“XO”) and MegaPath Corporation (“MegaPath”) hereby respond to the Public Notices of the Wireline Competition Bureau soliciting comment on the Applications of Verizon New Jersey Inc. and Verizon New York Inc. to discontinue domestic telecommunications services to certain parts of New Jersey and New York allegedly “destroyed

or rendered inoperable” by Hurricane Sandy on and after October 29, 2012.¹ Through the Discontinuance Filings, Verizon seeks to discontinue copper-based services to certain parts of New York and New Jersey, including copper-based interstate interexchange and exchange access copper-based special access services. Verizon also plans to discontinue intrastate services to the affected customers in the affected areas.

The Discontinuance Filings represent an attempt by Verizon to use the Commission’s procedures to evade an issue of significance for telecommunications customers: whether, in the wake of a major natural disaster (such as Hurricane Sandy) an incumbent local exchange carrier can unilaterally make major network modifications, specifically replacing copper upon which many customers have come to depend with less-capable wireless services. These filings are not the only examples of Verizon’s evasive and opaque efforts in the wake of this storm. In a recent Objection, XO submitted that Verizon improperly invoked the limited waiver and special temporary authority that the Commission granted in its Order *In the Matter of Petition of BellSouth Corporation for Special Temporary Authority and Waiver To Support Disaster Planning and Response*, 21 FCC Rcd 6518 (2006) (“STA Order”) to make network changes to copper facilities in Lower Manhattan from its 140 West Street and 104 Broad Street central offices allegedly affected by Hurricane Sandy² because at least some of the network changes

¹ See *Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-149, Public Notice, DA 13-1474 (June 28, 2013); *Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, Public Notice, DA 13-1475 (June 28, 2013) (collectively, the “Public Notices”). Verizon’s applications referenced in the Public Notices are referred to herein, collectively, as the “Discontinuance Filings.”

² See XO Communications Services, LLC’s Objection to Verizon’s Invocation of the Limited Waiver and Special Temporary Authority Granted in the Order Issued in the Matter of Petition of Bellsouth Corporation for Special Temporary Authority and Waiver

were not a direct result of the damage from the storm.³ The Objection demonstrated that, as a result of Verizon's misstatements to XO and abuse of the relief established in the STA Order, the service alternatives competitors can make available to end users have been reduced, and competition has been diminished.

In a recent *ex parte* meeting with the Commission following up on its Objection, XO stressed that a situation presented by damage to copper caused by a natural disaster or man-made emergency is fundamentally different from a scenario involving planned copper retirement and replacement.⁴ Prior to a disaster or emergency in an area where an incumbent local exchange carrier ("ILEC") has not announced, and does not currently have, plans to retire copper in that area, both the ILEC and wholesale customers have every expectation that the copper will continue to be available for the foreseeable future for use by competitors on an unbundled basis. This is totally unlike the situation where, as part of the normal planning process, an ILEC plans to retire copper. Accordingly, XO explained that the Commission's general copper retirement rules are inapplicable to an emergency situation. MegaPath shares XO's views regarding the adequacy of these regulations in the circumstances of a natural disaster or man-made emergency that unexpectedly destroys or irreparably damages copper network facilities. XO and MegaPath advocate, therefore, that the Commission adopt a new approach to the availability of ILEC

to Support Disaster Planning and Response and Request for a Cease and Desist Order, WC Docket No. 06-63 and RM-11358 (filed July 1, 2013) ("Objection").

³ In the Objection, XO urged the Commission to investigate more thoroughly the facts surrounding Verizon's communication about and availability of copper after Hurricane Sandy and the full extent to which Verizon violated the Commission's network change disclosure rules by invoking the STA Order where copper remained undamaged or available through restoration after the storm. XO also sought a cease and desist order pending the investigation to ensure Verizon undertakes no further changes in violation of the network disclosure requirements under the Commission's copper retirement rules.

⁴ See Letter from Thomas Cohen, Kelley Drye & Warren, LLP, Counsel for XO, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-63 and RM-11358 (filed July 23, 2013) ("XO Letter").

unbundled loops, or their equivalent, in such circumstances where no plans had existed for copper retirement.⁵

Verizon's invocation of the Section 214(a) discontinuance process in the wake of Hurricane Sandy further reveals the inadequacy of the Commission's existing regulatory framework to address emergency situations resulting from damage to the existing network caused by a natural disaster. As Public Knowledge has explained in these two proceedings, "[t]he Commission has always assumed that, when a portion of a copper network is destroyed by natural disaster, the carrier will rebuild the network at some point in the future. Because this application raises unique questions with significant implications for the overall transition of the public switched telephone network (PSTN), the Commission should take the time to fully consider the matter."⁶ Through the Discontinuance Filings, Verizon seeks not so much to discontinue a service, but to make a major network change, replacing one technology with another that, as Public Knowledge has observed, may compromise certain important features and functionalities of the pre-existing copper-based service.

XO and MegaPath agree with Public Knowledge that the Commission should provide guidance to carriers with regard to their obligations in the event of a disaster or emergency resulting in actual or apparent damage or destruction to existing networks. This is particularly the case with regard to ILECs whose networks are an essential piece of the competitive

⁵ In the XO Letter, XO advocated that, in a post-emergency situation, *where copper is destroyed or irreparably damaged*, an affected ILEC either continue to make available copper loops (using new or restored copper) or provide fiber facilities or services enabling equivalent throughput to that obtained or which could have been obtained by competitors using copper (and at a net price equivalent to that of the requisite number of unbundled copper loops). *Id.* at 2.

⁶ Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, GN Docket No. 12-353, WC Docket No. 13-149, and WC Docket No. 13-150 (filed July 19, 2013).

environment given their continuing unparalleled access to commercial buildings. If an ILEC in the wake of a natural disaster or man-made emergency wishes to replace part of its copper-based network with an alternative technology, it is essential that the applicable regulatory framework ensure that any such replacement not impair end users or competition that relied on that network.⁷ The destruction of network facilities as the result of an emergency should not serve as a pretext allowing the ILEC to walk away from its obligations as a carrier that immediately predated the disaster. The Commission's regulatory framework should emphasize restoration of the network, end user services, and the competitive environment, and the introduction of new technologies where facilities have been demonstrably destroyed or irreparably damaged should be accomplished consistent with those objectives.

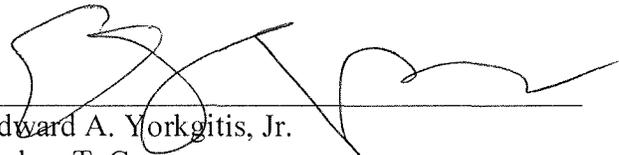
Because the Commission's section 214(a) procedures were not adopted with disasters such as Hurricane Sandy in mind, the Commission should address the policy questions surrounding network and service restoration in the wake of a disaster or emergency – including the many questions Public Knowledge has already raised in its ex parte filings in the above-referenced dockets – before determining whether to grant Verizon's Discontinuance Filings. In addition, the Commission should expeditiously proceed to initiate a proceeding to develop appropriate measures to ensure that competitive carriers continue to have access to ILEC unbundled loops, or their equivalent, in the wake of natural disasters and man-made emergencies where no plans had existed for copper retirement. The Commission should not permit natural disasters and made-made emergencies that cause damage to existing ILEC networks be exploited

⁷ Public Knowledge asks the Commission to require carriers changing technologies “to establish that their replacement services will be adequate substitutes for the services consumers have come to rely upon over the copper network.” Letter from Jodie Griffin, Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, FCC, GN Docket No. 12-353, GN Docket No. 13-5, WC Docket No. 13-149, and WC Docket No. 13-150 (filed June 12, 2013).

by ILECs as opportunities to use Commission processes intended for very different circumstances as a means to undercut competition or cause harm to end users.

Respectfully submitted,

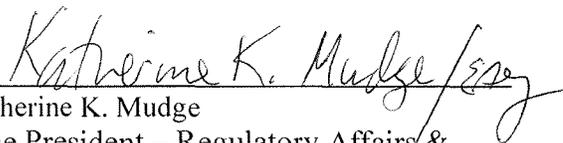
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