

July 31, 2013

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services, WC Dkt. No. 13-150; Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable To Retirement of Copper Loops and Copper Subloops, RM-11358; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Dkt. No. 12-353; Petition of Verizon for Special Temporary Authority and Waiver To Support Disaster Planning and Response, WC Dkt. No. 06-63*

Dear Ms. Dortch:

Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., and tw telecom inc. (collectively, the "Joint CLECs") write to express serious concern about information that XO has brought to light regarding Verizon's apparent exploitation of Hurricane Sandy as a pretext for retiring valuable copper loop facilities in lower Manhattan without complying with the Commission's rules.¹ XO has provided alarming and persuasive evidence that Verizon has (1) misrepresented the extent of the damage to its copper network resulting from the storm, (2) failed to comply with the Commission's network modification rules when retiring its allegedly damaged copper facilities, and (3) sought to improperly apply a limited waiver of the network modification rules to circumstances that lie beyond that waiver's scope.² The Joint CLECs urge the Commission to thoroughly investigate these allegations. The Commission must make clear that it will not tolerate incumbent LEC attempts to circumvent FCC rules in order to speed the

¹ 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 to Support Disaster Planning and Response* and Request for a Cease and Desist Order, WC Dkt. No. 06-63, RM-11358 (filed July 1, 2013) ("XO July 1 Filing"); see also Letter from Thomas Cohen, Counsel for XO Communications Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-63; RM-11358 (filed July 23, 2013).

² See generally *id.*

retirement of copper networks.³ It should also strengthen those rules so that valuable copper loop facilities remain in place while the Commission conducts a comprehensive review of its last-mile access policies.

As the Joint CLECs have explained, the central challenge that the Commission faces in connection with the transition from TDM networks to IP networks is updating its competition policies.⁴ In order to spur investment and innovation both during and after the transition, the Commission must, among other things, ensure that competitors retain access to incumbent LECs' last-mile facilities in a packet-mode environment.⁵ While the Commission considers how best to make this change, however, competitive LECs have no choice but to continue to rely on incumbent LECs' last-mile copper facilities in order to serve their retail customers. It is therefore vital that the Commission take appropriate steps to ensure that any copper retirement is conducted in a manner that minimizes harm to competition.

First, the Commission must vigilantly enforce its existing network modification rules in all contexts, including in the aftermath of natural disasters. Requiring incumbent LECs to properly disclose and obtain approval for network modifications “promotes open and vigorous competition” and “effectively removes potential barriers to entry, which could otherwise frustrate the efforts of new competitors.”⁶ For these reasons, the FCC recently rejected incumbent LECs' claims that network modification rules “involve unnecessary delay and uncertainty” and denied USTelecom's request for forbearance from those rules.⁷ As incumbent LECs attempt to free themselves of the regulatory obligations associated with their copper networks, the Commission's network modification rules are as important as ever. In particular,

³ At a minimum, the Commission should require Verizon to provide fiber-based services to competitive LECs supporting capacity equivalent to that which the competitive LECs could have obtained over Verizon's copper facilities associated with the central offices that are the subject of XO's filings. *See* XO July 1 Filing at 12.

⁴ *See generally* Letter from Thomas Jones, Counsel for Cbeyond, Inc., EarthLink, Inc., Integra Telecom, Inc., and tw telecom inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 *et al.* (filed Dec. 4, 2012).

⁵ Specifically, the Joint CLECs have urged the Commission to adopt rules requiring incumbent LECs to provide competitors with access—on reasonable rates, terms, and conditions—to (1) conditioned copper and dark fiber loops, or alternatively, (2) packet-mode loops (*i.e.*, fiber loops and the packet-mode capabilities of hybrid fiber-copper and copper loops). *See id.* at 5.

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, ¶¶ 171, 199 (1996).

⁷ *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd. 7628, ¶¶ 116-25 (2013).

neither Verizon nor any other incumbent LEC should be permitted to use natural disasters as an excuse to unlawfully retire copper loop facilities without providing competitors with timely advance notice in accordance with the Commission's rules. Such conduct should be punished.

Second, as part of comprehensive reform of its last-mile access policies, the Commission should update its network modification rules to reflect the fact that innovative broadband services are now commonly provided over copper facilities. Competitive LECs have been leaders in deploying services such as Ethernet-over-Copper to small and medium-sized businesses ("SMBs"), enabling SMBs to realize many efficiencies that were previously reserved for large enterprise customers.⁸ These offerings also benefit SMBs by providing an important source of competition to services provided by incumbent LECs and cable operators.⁹ In order to preserve these benefits, the Commission should modify its copper retirement policies in the manner that TelePacific and other competitive LECs have proposed.¹⁰ In particular, the Commission should (1) reverse the "deemed denied" standard for objections to the retirement of copper loops; (2) clarify that "retirement" does not permit physical removal; (3) separately define a standard for removal; (4) apply the rules to the feeder portion of the loop; (5) make retirement/removal data easily accessible and searchable; and (6) clarify that states may adopt restrictions on the disconnection, removal, or disabling of copper loops that are more stringent than the FCC's rules.¹¹ These changes would help ensure that incumbent LECs do not use copper retirement as a means of eliminating competition to the detriment of businesses and consumers.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Matthew Jones

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EarthLink, Inc., Integra Telecom, Inc., and
tw telecom inc.*

⁸ See Comments of the Office of Advocacy, Small Business Administration, GN Dkt. No. 10-188, at 5 (filed Oct. 15, 2010) ("Many small carriers rely exclusively on legacy copper networks to offer a variety of affordable services to small business broadband customers that would not otherwise be available to them, particularly in non-urban areas.").

⁹ See Comments of EarthLink, Integra, and tw telecom, RM-11358, GN Dkt. No. 12-353, at 7 (filed Mar. 5, 2013).

¹⁰ See Letter from Eric J. Branfman, Counsel for TelePacific *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-188, GN Dkt. Nos. 09-51, 12-353 & 13-5, RM-11358 (filed Jan. 25, 2013).

¹¹ See *id.* at 20-22.