

November 7, 2013

Ex Parte

The Honorable Thomas E. Wheeler
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: WC Docket Nos. 05-25, RM-10593, GN Docket Nos. 13-5, 12-353, 10-90

Dear Chairman Wheeler:

Congratulations on your new position as Chairman of the FCC. The undersigned associations and companies look forward to working with you and your staff as you establish the Commission's agenda and address the myriad of issues pending before the agency that will impact the future of true competition in the communications industry and the choices that will be available to consumers in that marketplace. We appreciate your recognition that protecting consumers' choices—and that must include business consumers—is critical. Pro-competitive policies are necessary to obtain that goal. As you rightly stated, “competition does not always flourish by itself; it must be supported and protected if its benefits are to be enjoyed.” Moreover, competition also encourages investment and innovation, such as the technological evolution of the network we are experiencing today.

As you are fully aware, the nation's telephone network is transitioning from circuit-switched technology to Internet Protocol (“IP”) based technology. Competitive providers are entrepreneurs that have driven technological innovation and created economic growth through competitive voice, video, and data offerings and the development of next-generation, IP-based networks and services. Competitors provide small and medium sized business customers a robust alternative to the incumbent carrier and work to deliver customized solutions to meet the needs of their customers. Placing a significant check on incumbents in the communications marketplace, competitors are investing in facilities and offering services specialized to meet business customer needs. Competitors' entry into the communications marketplace was made possible by the Telecommunications Act of 1996, particularly Sections 251 and 252, which lowered the legal and regulatory barriers to competition. Continued application and enforcement of those sections is critical as carriers update their networks. Specifically, these provisions are necessary in order for the benefits of the technology evolution to be fully appreciated and to maintain robust competition in the communications marketplace for business consumers, particularly for small and medium-sized businesses.

The Commission has numerous open dockets dealing with IP issues that are ripe for decision. In recent years, considerable disagreement has arisen among market participants regarding ongoing legal obligations and policy implications of implementing IP technology. In an effort to ensure that the IP transition, which holds promise for the future of communications, does not result in significant impairment of the ability of competitive carriers to serve business

customers and drastic reduction in these customers' choice in providers, we urge you to address without delay last mile access and interconnection rights and obligations.

First, the Commission's policies toward last mile facilities must ensure the communications marketplace for business customers remains competitive. Specifically, the Commission must ensure that, competitors can access their customers through last mile facilities leased from incumbent local exchange carriers—regardless of technology—at just and reasonable rates. Despite the billions of dollars of private investment that competitors have made in their networks over the last decade and a half, no competitor has been able to replicate the ubiquitous networks of the large incumbent local exchange carriers, and they retain control over the only physical connections to the vast majority of businesses in the United States. Policies that support and protect a vibrant wholesale market remain critical to promoting and sustaining competition in the retail communications marketplace, especially for providing choices for business consumers.

Given the importance of last mile access to the consumers, the Commission needs to ensure that special access services are offered at just and reasonable rates, terms and conditions, regardless of whether this bottleneck connection is served via TDM or IP technology. As the incumbents augment copper facilities with fiber and replace circuit-switched technology with packet-switched technology, competitors are at risk for losing access to the connections upon which they rely to offer a meaningful alternative to business customers, which also provides a check on the market power of the incumbents. To facilitate the preservation and promotion of robust competition and customer choice, it is imperative that the Commission update its last mile access policies so that consumers are not limited in their choice of providers.

Specifically, the Commission should give priority to completing its evaluation of the state of competition in the high-capacity services marketplace and revising its special access rules and unbundling rules, including where forbearance has been granted, as necessary. The special access docket, in particular, has been open for nine years with no resolution. Because the purchasers of special access facilities include small and medium-sized business and enterprise retail customers, competitive wireline providers and wireless providers, all segments of the communications industry will benefit from a speedy resolution of the issues raised in the special access docket.

Second, the Commission should reaffirm that the Section 251 and 252 interconnection obligations are technology neutral and apply equally whether carriers seek to interconnect and exchange voice traffic on an IP-to-IP basis or TDM basis. Thus far, competitors have led the way in the use of IP technology but the largest incumbent carriers have been fighting the obligation to interconnect on an IP basis, even where currently technically feasible, and have disputed the continuing relevance of Sections 251 and 252 as they prepare to transition their local networks to IP. Given the disparity in bargaining power between the incumbents and competitors, it is critically important that the Commission eliminate any doubt about carriers' continuing duty to negotiate the terms of interconnection agreements in good faith and the rights

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of parties to request arbitration by a state commission in the event that they cannot agree on particular terms or conditions. Some states have chosen to wait until the Commission addresses this issue in its pending *USF-ICC Transformation* proceeding. While those issues have been outstanding, the large incumbent local exchange carriers have been able to delay the benefits of end-to-end IP communications. The Commission should wait no longer to reaffirm that Sections 251 and 252 are technology neutral and apply to interconnection via IP technology.

Thank you for attention. We welcome your leadership and look forward to working with you and your staff.

Respectfully submitted,

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