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EX PARTE

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers,
WC Docket No. 05-25, RM-10593; Technology Transitions Policy
Task Force, GN Docket No. 13-5; Petitions to Launch a
Proceeding Concerning the TDM-to-IP Transition, GN Docket No.
12-353; Connect America Fund, WC Docket No. 10-90.

Dear Ms. Dortch:

In follow-up to our meeting with the Technology Transitions Task Force, we consolidate below a number of the documents/information previously submitted to the Commission in other pending proceedings that demonstrate the significance of the wholesale provisions of the Act and support COMPTEL's recommendations to (1) develop a last mile solution so that consumers may access alternative service providers and (2) confirm the Act's interconnection rights using IP facilities. We believe that the Commission's focus on and resolution of these two issues should be prioritized, as it considers the legal and policy issues of the technology transitions, and we look forward to working further with the Commission to ensure that these two critical issues are addressed in a manner that best promotes a robust, competitive marketplace.

Competitive carriers have been at the forefront of the IP transition, investing in IP networks and offering IP-based services to their customers for well over a decade. As a result of this innovative technology, competitive providers have been able to offer their business customers innovative services such as cloud-based PBX, Unified Messaging, Directory, Attendant and Find-Me functions, as well as consolidated multi-location and telecommuter support. This innovation has allowed business customers to reduce capital and operational costs, improve operational efficiencies of their own businesses while, at the same time, guard against technological obsolescence by supplanting fixed communications assets with cloud-based

services. As a result of competitors embracing the new technology and rapidly translating that technology into innovative services, the business market is likely the sector that has benefited most so far from the IP transition.¹

Nevertheless, as COMPTTEL has also stressed, the business market – which is a critical market for the economy as a whole – also may be the market most at risk (or negatively impacted) by the IP transition. As we've explained, this is because the critical wholesale inputs and arrangements competitive carriers rely upon to serve business customers, namely last mile access and interconnection agreements, are in jeopardy as larger ILECs join the rest of the industry in the transition to IP technology.

Public policy has permitted competitors to deliver innovation and customer service because competitors have generally been able to obtain, where necessary, access to last mile facilities from the incumbent LEC and have been provided rights under the law for interconnection of networks at reasonable rates, terms and conditions.² However, some large incumbent LECs are seeking to use the transition to IP technology as a means of escaping these obligations. If they succeed, they will then be in a position to reassert greater control over the business market, and customers will lose access to the competitive vigor that has brought them the advances in technology and lower costs, and the economy as a whole will suffer. The Commission must move quickly and decisively to see that incumbents LECs comply with their interconnection obligations pursuant to Section 251, via IP, and that reasonable access to last mile facilities pursuant to Sections 201/202 and 251/271 be available regardless of the technology or platform of the facilities/services.

Last Mile Access Recommendation: The Commission needs to revisit its policies and ensure the availability of wholesale last mile access at just and reasonable rates, terms and conditions, regardless of technology.

1. According to the Commission's latest Local Competition Report, as of December 31, 2012 there were 59 million wireline retail local telephone service connections to businesses, 25

¹ While, according the FCC's Local Competition Report, the penetration of IP networks in the residential market exceeds that for the business market, residential IP services typically terminate in devices that provide simple analog interfaces to the customer that largely mimic the same service to the customer that was provide through circuit switching. Although IP-based business voice services are similarly indistinguishable from traditional voice service, IP technology provides the opportunity to offer features and capabilities to business customers (such as those listed above) that enable services to be more individually tailored to the particular needs of this, more complex, customer segment.

² The Telecommunications Act of 1996 was critical in opening up the local telephone market to competition. The wholesale requirements in the Act, including last mile access and interconnection, have been critical to the competitors' success in providing alternative service options to end users.

million of which are served by a non-ILEC.³ Using USTelecom’s estimate that 96 percent of cable telephony lines serve residential customers,⁴ of the 29 million lines on coaxial cable,⁵ only 1.2 million lines served business customers. Based on these calculations (23.8 million of the 25 million of the competitive connections), **95% of the competition in the business market comes from traditional (non-cable) CLECs** and they rely substantially on wholesale inputs from the ILEC to provide their services to this critical market.⁶

- a. The increase in total coaxial cable lines for year end 2011 to year end 2012 was only 1.5 million.⁷ Even if one were to attribute the entire increase to the business market (which is highly unlikely since residential is cable’s primary market), this increase represents an insignificant dent in the nearly 60 million business line market.
 - b. Moreover, the Commission should not attach great significance to claims of large percentage increases in cable activity in the business market, for that is little more than the mathematical result of starting with a very small base.
2. CLECs’ significant reliance on wholesale inputs from the ILEC is not just a preferred method of providing service – but rather an economical necessity – as demonstrated by statements of incumbents providing services outside their incumbent regions:
- a. “Despite investing billions of dollars in recent years to expand and upgrade its network throughout its incumbent (ILEC) and competitive (CLEC) local exchange areas, Windstream’s substantial CLEC operations still rely on AT&T’s ILEC facilities for last-mile access to serve consumers in AT&T operating territories.”⁸
 - b. “Verizon holds the view that continued regulatory controls must remain in place to safeguard access to the necessary wholesale inputs and thereby support competition to the benefit of customers.” *See Attachment A (highlighting added).*
3. While the *Act*’s last mile obligations are technology neutral, the Commission’s last mile access policies vary by technology. However, as the Commission itself has recognized, the technology does not alter the barriers to entry (impairment) at the physical layer or economic viability of replicating the physical facility.

³ Local Telephone Competition, Status as of December 31, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, November 2013, p. 5, Figure 4 (“November 2013 Local Competition Report”).

⁴ USTELECOM, “Evidence of Voice Competition and ILEC Non-Dominance Mounts,” April 3, 2013, at 8 (“2013 USTELECOM Brief”); Available at: <http://www.ustelecom.org/news/research-briefs/ustelecom-research-brief-april-4-2013>.

⁵ *November 2013 Local Competition Report* at 17, Table 6.

⁶ *See id.* at 9-10.

⁷ *See id.* at 17, Table 6 for YE2012; *See* Local Telephone Competition, Status as of December 31, 2011, Industry Analysis and Technology Division, Wireline Competition Bureau, January 2012, p. 17, Table 6 for YE2011.

⁸ Letter of Eric N. Einhorn, Windstream, to Marlene H. Dortch, WC Docket Nos. 05-25, 10-90; RM-10593; GN Docket Nos. 13-5, 12-353, p.1, Nov. 22, 2013.

- a. “[S]ome wholesale access policies vary based on technology – including whether the facility or service operates using a circuit- or packet-based mode or constructed from copper or fiber-regardless of economic viability of replicating the physical facility.”⁹
 - b. “This situation undermines longstanding competition policy objectives. In some cases it limits the ability of smaller carriers –often those specializing in serving niche markets such as SMBs – to gain access to the necessary inputs to compete.”¹⁰
 - c. “Competitive LECs face large fixed and sunk costs in deploying competitive fiber, as well as substantial operational barriers in constructing their own facilities...The most significant portion of the costs incurred in building a fiber loop results from deploying the physical fiber infrastructure into underground conduit to a particular location, rather than from lighting the fiber-optic cable.”¹¹
 - d. “[T]he barriers to entry impeding competitive deployment of loops are substantial: The costs of the loops themselves, *as well as costs associated with accessing right-of-ways and obtaining building access* do not generally vary with demand.”¹²
 - e. “As new entrants, competitive LECs do not enjoy a large guaranteed subscriber base that would provide a predictable source of funding to offset their local loop deployment costs.”¹³
4. The Commission’s policies impact competitors’ ability to obtain last mile access at just and reasonable rates. For example, in the *Broadband Forbearance Orders*,¹⁴ the Commission decided that its dominant carrier and *Computer Inquiry* rules were unnecessary to ensure just and reasonable pricing in the non-TDM special access market. Attachment B, entitled

⁹ Federal Communications Commission, National Broadband Plan at 47, available at: <http://download.broadband.gov/plan/national-broadband-plan-chapter-4-broadband-competition-and-innovation-policy.pdf>.

¹⁰ *Id.*

¹¹ Order on Remand, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, ¶150 (2005).

¹² *Id.* at ¶153 (*emphasis added*).

¹³ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 *et al.*, , FCC 03-36, 18 FCC Rcd 16978, ¶237 (2003).

¹⁴ See FCC News Release, *Verizon Telephone Companies Petition for Forbearance From Title II and Computer Inquiry Rules With Respect To Their Broadband Services Is Granted By Operation of Law*, WC Docket No. 04-440 (rel. Mar. 20, 2006); *Petition of AT&T, Inc. for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007); *Qwest Petition for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 08-168 (rel. Aug. 5, 2008).

“Evaluating the Just and Reasonableness of BOC Ethernet Offerings,”¹⁵ which compares the current published prices of BOC switched Ethernet offerings to the cost of a comparable offering built using the wholesale broadband transmission platform offered by rural ILECs in NECA Tariff#5, demonstrates the failure of this deregulatory experiment. The BOC prices are substantially greater, sometimes by an order of magnitude, even though the BOCs enjoy significantly higher economies of scale and scope than the rural ILECs in the NECA pool.

5. When the Verizon’s copper facilities in Lower Manhattan were allegedly destroyed by Super Storm Sandy, Verizon only offered 64kbps on its fiber facilities as replacement for UNEs that competitors relied upon to serve their customers.¹⁶ The Commission should seek information from Verizon on the features/functional differences of any replacement products available to CLECs; the price differential between UNEs and the products offered at wholesale to competitors after the storm; and the impact on end-user businesses.¹⁷
6. NASUCA’s “The IP/Broadband Transition – Public Policy Still Matters”¹⁸ and COMPTTEL’s December 13 *Ex Parte Letter*¹⁹ rebut the notion that regulation forces incumbents to invest in

¹⁵ This analysis was attached to COMPTTEL’s Comments supporting the reversal of the Commission’s *Broadband Forbearance Orders*. See COMPTTEL Comments, WC Docket No. 05-25, RM-10593, Apr. 16, 2013, Attachment A.

¹⁶ April 25, 2013 Verizon Industry Letter Relating to Notices of Network Changes for Locations Where Copper Network Facilities Rendered Inoperable by Hurricane Sandy; available at <http://www.verizon.com/idc/groups/public/documents/adacct/il13-0213.pdf> See also *Ex Parte Notice* of Karen Reidy to Marlene H. Dortch, GN Docket Nos. 09-51,13-5, 12-353 and RM-11358, pp. 1-2, Feb. 25, 2013 [“As the attached presentations of Broadview and MegaPath demonstrate, a substantial number of small and medium size end-user businesses will be significantly impacted by the Commission’s policies and planned ILEC activities regarding last mile access. These two carriers alone provide over eighty thousand small and medium size businesses with innovative and affordable broadband services, often through the use of copper based solutions...[I]f copper facilities were to be broadly retired – with no functionally and similarly priced alternative wholesale product available - the cost of providing broadband services to these small and medium size business customers could increase dramatically (could increase by 10 to 40 times).”]

¹⁷ At least one competitor has raised a serious question as to Verizon’s alleged claims that the storm damaged copper facilities and has asked the Commission to investigate. 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 Corporations for Temporary Authority and Waiver to Support Disaster Planning and Response*, And Request for a Cease and Desist order, filed in WC Docket No. 06-63 and RM-11358 on July 1, 2013.

¹⁸ Trevor R. Roycroft, Ph.D., “The IP/Broadband Transition – Public Policy Still Matters” Prepared for NASUCA (“NASUCA Response to Kovacs”); available at: http://www.nasuca.org/archive/NASUCA_Response_to_Kovacs_Final.pdf COMPTTEL hereby incorporates by reference this document into the record in its entirety.

obsolete facilities or discourages investment in next generation networks. Indeed, competition spurs investment and innovation, including the investments that large ILECs have undertaken in response to competitive forces.

7. The wireline network (and therefore underlying wireline wholesale inputs) are critical to *all forms of competition* in the communications market.
 - a. As USTelecom represented before Congress: “Wireline technologies comprise the most robust, secure, and relied upon communications infrastructure in the nation. [USTelecom] members provide service to wireline end-user customers of all sizes, and also supply the veins and arteries of wireless communications...Broadband, Wi-Fi, LTE, 4G, Ethernet, and so on all rely on robust wired networks, and each day the demand for those networks grow. Last year, wireline networks handled 99% of U.S. video traffic and 98.4% of total U.S. data traffic. The share of traffic handled on mobile networks...will only represent about 5% of overall traffic in five years...[F]or all wireless network and technologies, one of the most important traffic management tools is offloading traffic onto landline networks as quickly as possible.”²⁰
 - b. Claims of competition from “alternatives that ride over-the-top of a broadband connection ignore[] the dearth of competition in the underlying broadband market...For most consumers, the underlying technology platform associated with the wireline broadband is a duopoly *at best*.”²¹ Significant portions of the business market would have only the ILEC, as explained above.

Interconnection Recommendation: The Commission needs to confirm the safeguards under Sections 251/252 of the Act apply with regard to IP interconnection for voice services:

1. The NRRI white paper entitled “The Transition of an All-IP Network: A Primer on the Architectural Components of IP Interconnection”²² demonstrates the economic and operational benefits of an immediate move to IP Interconnection between PSTN participants. It further shows that accomplishing IP Interconnection is not dependent upon a transition of end users to IP. Current industry databases are fully supportive of IP Interconnection as an initial step in the larger IP Transition. Finally, IP Interconnection will facilitate the IP Transition itself, by establishing the next-generation links that are a crucial prerequisite to

¹⁹ Letter of COMPTTEL to Marlene Dortch, GN Docket Nos. 12-353 and 13-5; and WT Docket No. 13-135, Dec. 13, 2013.

²⁰ Statement of Jeff Gardner, President and Chief Executive Officer, Windstream Corporation, on behalf of the United State Telecom Association, before the Senate Subcommittee on Communications, Technology and the Internet, July 25, 2013 at 1-2.

²¹ *NASUCA Response to Kovacs* at pp. i and 16.

²² Joseph Gillan and Dave Malfara, “The Transition to an All-IP Network: A Primer on the Architectural Components of IP Interconnection” NRRI, May 2012; available at:

<http://communities.nrri.org/documents/317330/7821a20b-b136-44ee-bee0-8cd5331c7c0b>

COMPTTEL hereby incorporates by reference this document into the record in its entirety.

such advanced services as NG911. These points are also addressed in “Implementing VoIP Interconnection Maximizing Economic and Operational Efficiencies,” Attachment B of COMPTTEL’s Comments to the Technology Transitions Policy Task Force.²³

2. While the Commission has stated that “the duty to negotiate in good faith has been a longstanding element of the interconnection requirements under the Communications Act and does not depend upon the network technology underlying interconnection, whether TDM, IP, or otherwise,”²⁴ AT&T argues that it has no duty to enter into good faith negotiations.²⁵
3. Verizon refuses to allow other carriers to even view, let alone opt-in to, what it presumably deems a commercially reasonable agreement with Comcast.²⁶
4. The FCC’s Technical Advisory Committee (“TAC”) found: “VoIP Interconnection is growing in the USA due to efforts by MSOs and CLECs...but is largely being delayed due to commercial and policy considerations...The FCC has established a significant record on this issue in response to the further notice. The FCC should answer the question of whether section 251 requirements apply to VoIP Interconnection.”²⁷
5. The expected consumer benefits from ICC reform will be lost without confirmation that the interconnection provisions of the Act, in particular Section 251(b), that provides for the reciprocal recovery of costs, apply to IP interconnection for voice services.
 - a. The Commission quantified the benefits: “Our reforms will bring numerous and significant benefits to consumers. As with past intercarrier compensation reforms, we anticipate savings from intercarrier compensation payments will result in more robust wireless service, more innovative offerings, and cost savings to consumers.... Indeed, we estimate, based on conservative assumptions, that once our ICC reform is complete, mobile and wireline phone consumers stand to gain benefits worth over

²³ Comments of COMPTTEL, *In Matter of Technology Transition Policy Task Force*, GN Docket No. 13-5, Attachment B, Jul. 8, 2013.

²⁴ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al*, FCC 11-161, ¶¶ 1011 (2011)(“USF/ICC Transformation Order and FNPRM”).

²⁵ See Application for Rehearing of the AT&T Entities, BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO, In the Matter of the Commission’s Review of Chapter 4901:1-7 of the Ohio Administrative Code, Local Exchange Carrier-to-Carrier Rules, Case No. 12-922-TP-ORD, p. 9 (Nov. 30, 2011).

²⁶ See Opposition of Verizon MA to “Motion to Comply”, *Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252*, Commonwealth of Massachusetts Department of Telecommunications and Cable, D.T.C. 13-6, Dec. 16, 2013.

²⁷ TAC Memo-VoIP Interconnection, Sept. 24, 2012; available at: <http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting92412/VoIP-Interconnection-TAC-Memo-9-24-12.pdf>

\$1.5 billion dollars per year.”²⁸ If the Commission found its regime would generate such savings, anything that jeopardizes its balanced scheme (i.e., reciprocal compensation) would impose substantial costs on consumers.

- b. AT&T, for one, has indicated its intent to offer only a few points of interconnection and then impose asymmetric transport charges on all but a few very large providers: “AT&T is gearing up a full-blown SIP transport architecture and plans to peer with a select number of Tier 1 providers -- everyone else is going to have to purchase transport services.”²⁹ (Attachment C). AT&T’s plans would completely subvert the Commission’s finding that a reciprocal “...bill-and-keep framework for intercarrier compensation best advances the Commission’s policy goals and the public interest, driving greater efficiency in the operation of telecommunications networks and promoting the deployment of IP-based networks.”³⁰

Should you have any questions concerning the foregoing, please do not hesitate to contact me.

Respectfully Submitted,

/s/

Karen Reidy

Attachments

cc: Jon Sallet
Jonathan Chambers
Patrick Halley
Stephanie Weiner

²⁸ *ICC/USF Transformation Order and FRNPM* at ¶654.

²⁹ Doug Mohney, “AT&T Discusses Its SIP Peering Architecture” (Attachment H)(*highlighting added*).

³⁰ *ICC/USF Transformation Order and FRNPM* at ¶741. COMPTEL has previously expressed concerns that a bill-and-keep may not permit all of its members to recover their costs. That said, a system of asymmetric compensation where AT&T is able to impose transport costs on smaller carriers that are denied a reciprocal opportunity is contrary to the Commission’s underlying policy goal of the intercarrier compensation regime.