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April 28, 2014

VIA ECFS

EX PARTE NOTICE

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

Re: *Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353; Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Petition of tw telecom inc. et al. to Establish Regulatory Parity in the Provision of Non-TDM-Based Broadband Transmission Services, WC Docket No. 11-188; Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Services, WC Docket No. 11-119; Business Broadband Marketplace, WC Docket No. 10-188; Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act, WC Docket No. 09-223; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, RM-11358; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25*

Dear Ms. Dortch:

Thomas Jones from Willkie Farr and Gallagher LLP and Angie Kronenberg and the undersigned from COMPTTEL met with Linda Oliver of the Commission's Office of General Counsel (OGC), on April 24, 2014, and had a follow up phone conversation with Jonathan Sallet and Linda Oliver of OGC on April 25, 2014. In the meetings, we discussed the timeline for Commission action in the above-references proceedings, as outlined in the *ex parte* letter and proposed managerial framework COMPTTEL submitted on April 2, 2014.¹ We emphasized that

¹ COMPTTEL *Ex Parte* Letter to Marlene H. Dortch, FCC, filed in GN Docket No. 13-5 *et al.*, dated Apr. 2, 2014.

these issues have been pending for a number of years and are in need of speedy resolution to ensure a competitive marketplace, especially with respect America's businesses, and to provide a stable investment environment for all carriers and their investors.

The conversations focused on three issues that the Commission should address this year – adopting rules to prevent the exclusionary impact of special access term and volume discount agreements, confirming IP interconnection rights for voice services, and revisiting the existing copper retirement rules.

We explained the exclusionary impact of the larger ILECs' lock-up term and volume special access agreements and how these agreements prevent carriers from being able to buy from competing providers of special access services (to the extent one is available), which ultimately diminishes competing carriers' incentive to build facilities. An example of such a term is requiring a ridiculously high percentage (such as 95%) of special access purchase volume to be purchased from the ILEC in order to receive the discounted rate and circuit portability. We confirmed that the Commission has sufficient data to address this issue, pending overall reform of the special access regime. We specifically referred them to an earlier filing made by competitive carriers that includes an economic analysis that substantiates the harms that result from these arrangements.²

We also discussed the importance of the Commission confirming IP interconnection rights for voice services pursuant to Sections 251 and 252 of the Act. We emphasized that this issue should be addressed given that large ILECs continue to refuse to negotiate such interconnection arrangements in good faith within the framework established in Section 252 of the Act; that large ILECs seek to avoid the ICC reforms, including the bill and keep rate, that the Commission already unanimously agreed should ultimately apply to all voice calls; and that the Commission has a complete record on this matter, as well as significant support from the rural incumbent, wireless, cable, and competitive carrier (CLEC) industries to address this outstanding legal issue. Moreover, we alerted them to the gamesmanship the ILECs attempt to play through affiliates and the need for the Commission to confirm that Section 251/252 rights and obligations extend to affiliate providers.

Finally, with regard to the rules regarding copper retirement, we explained that existing rules are insufficient to protect the public interest. In particular, they only provide for notification that the copper loop will no longer be available for competitive services without ensuring an alternative form of access to last mile facilities. This creates substantial harm, particularly to small and medium size businesses that rely on competitors to provide the affordable broadband services they need to run and grow their business. We proposed that the Commission could suspend its copper retirement rules, pending its modification to the rules as described above and in more detail in COMPTEL's April 2 proposed managerial framework.

Please do not hesitate to contact us if you have any questions about this submission.

² See Comments of BT Americas *et al.*, WC Docket No. 05-25 and RM-10593, filed Feb. 11, 2013.

Respectfully submitted,

/s/ Karen Reidy

cc: Jon Sallet
Linda Oliver