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**VIA ECFS**

***EX PARTE***

June 9, 2014

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

Re: *WC Docket No. 05-25, Special Access for Price Cap Local Exchange Carriers; RM-10593, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; GN Docket No. 13-5, Technology Transitions; GN Docket No. 12-353, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*

Dear Ms. Dortch:

On June 5, 2014, Eric Einhorn, Jennie Chandra and Malena Barzilai, from Windstream Corporation, and Windstream's counsel, John Nakahata of Harris, Wiltshire & Grannis LLP (hereinafter "Windstream"), met with Daniel Alvarez, legal advisor to Chairman Wheeler, regarding the above-referenced proceedings. In the meeting, Windstream explained that, as a company both with significant incumbent local exchange carrier and competitive local exchange carrier operations, it has a unique perspective on competitive access issues, and it recommended next steps for the managerial framework that will guide the Commission's ongoing review of the legal and policy issues that must be resolved to ensure that business consumers of all sizes continue to have competitive options during and after the technology transitions. Windstream's advocacy was consistent with that in its April 28, 2014 letter to Commission General Counsel Jonathan Sallet and Wireline Competition Bureau Chief Julie Veach.<sup>1</sup>

In particular, Windstream emphasized that its number one priority with respect to the issues in the managerial framework is to ensure continued access to last-mile facilities on reasonable rates, terms and conditions during and after the IP transition. Windstream recommended that the Commission promptly issue a rulemaking proposing that ILECs be required to provide continued access to functionally equivalent last-mile facilities on reasonable

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<sup>1</sup> Letter from Eric Einhorn et al., representing Windstream Corporation, to Julie Veach, Chief, Wireline Competition Bureau, FCC, and Jonathan Sallet, General Counsel, FCC, GN Docket Nos. 13-5 and 12-353 (April 28, 2014).

rates, terms and conditions, and, as an interim step pending completion of its review of special access rules, requiring that those rates, terms and conditions be no higher than equivalent to existing TDM offerings. The result should be ground rules to ensure consistent treatment of fundamental competition issues in the Section 214 discontinuance process and speed further consideration of discontinuance requests by narrowing the range of items subject to individual dispute and review.

Windstream also urged the Commission promptly to clarify that an ILEC remains obligated to provide DS1 or DS3 unbundled (“UNE”) loops pursuant to 47 C.F.R. §§ 51.319(a)(4) and (5) when it transitions from TDM-based to IP-based technologies or avails itself of the copper retirement procedures set forth in 47 C.F.R. §51.333. As Windstream explained in detail in its April 28, 2014 letter,<sup>2</sup> a UNE is a facility that supports either TDM or IP technology, and the Commission in the *Triennial Review Order* clearly indicated that it was not limiting high-capacity loop unbundling to copper or to TDM.<sup>3</sup> It is important to reiterate these duties because AT&T and Verizon both have asserted that DS1 and DS3 UNEs cease to exist with the IP transition, which is simply wrong under existing rules.

These recommended actions would merely preserve the *status quo* and can readily be addressed in advance of the special access data submissions and review. Preserving the availability of tariffed DS1 and DS3 special access services is particularly legally justified because the grant of forbearance for packet-switched services was premised largely on the existence of TDM-based alternatives.<sup>4</sup>

Finally, Windstream emphasized that the need for these Commission actions on last-mile access is critical and urgent, and that failure to act would be detrimental not only to CLECs and their current customers, but also to the large ILECs’ business service customers. CLECs are by far the most important source of competition to ILECs in the business services marketplace, and if CLECs are rendered unable to compete, businesses will have access to fewer innovative service offerings and will be vulnerable to ILEC price increases.

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<sup>2</sup> *Id.* at 12.

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand And Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd. 16,978, 17,173 ¶ 325 n.956 (citations and cross-references omitted). *See also Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration (2004) (clarifying that unbundling requirements for fiber apply in MDUs that are not primarily residential).

<sup>4</sup> *See, e.g., Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18717 ¶ 20 and n.86 (2007).

Please feel free contact me if you have any questions.

Sincerely yours,

/s/ Malena F. Barzilai

Malena F. Barzilai

cc: Daniel Alvarez