February 25, 2013

EX PARTE NOTICE

VIA ECFS

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

Re: National Broadband Plan, GN Docket No. 09-51; Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper Subloops, RM-11358; Technology Transitions Policy Task Force, GN Docket No. 13-5; Comment Sought on the Technological Transition of the Nation’s Communications Infrastructure, GN Docket No. 12-353

On February 21, 2013 Mike Robinson, President and CEO of Broadview Networks, Craig Young, CEO and Chairman of MegaPath, and Jerry James, CEO, and the undersigned of COMPTEL, met separately with Commission McDowell and his legal advisor Christine Kurth; Commission Pai and his legal advisor Nicholas Degani; Charles Mathias, Special Counsel to Chairman Genachowski, Sean Lev, FCC General Counsel, and David Turetsky of the Public Safety and Homeland Security Bureau; Louis Peraertz, Commissioner Clyburn’s legal advisor; and, Pricilla Argeris, Commissioner Rosenworcel’s legal advisor. During the meetings the companies use the attached presentations to discuss the potential widespread and harmful impact of copper retirement.

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. The decommissioning of copper facilities could strand massive dollar investments in competitive products and services, as well as curtail future innovation of products and services over existing copper infrastructure. Additionally, as discussed in the meetings, if 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

1 COMPTEL also subsequently provided Mr. Peraertz with the ex parte letters and presentation COMPTEL filed with the Commission on August 17, 2012 and December 14, 2012 in Connect America Fund, et al, WC Docket No. 10-90.
customers could increase dramatically (could increase by 10 to 40 times). The Commission
should consider, in forming its policy decisions, the fact that a substantial rise in communications
cost experienced by these end-user customers will diminish their investment abilities and in
some cases may lead them to forgo the broadband services they have been able to obtain from
competitors at affordable rates. Competitive carriers serve a vast array of industries with their
copper based solution, such as financial institutions, non-profits, retail customers, educational
institutions, insurance companies, health care providers, publishing and consulting firms.
Growth in the economy depends on growth in these industries.

The Commission has confirmed the importance of last mile access pursuant to Section
251 of the Act to competition. Even in those markets that the ILECs claimed to be most
competitive, the Commission found that “reasonably efficient competitors face barriers to entry
that are likely to make entry into these markets uneconomic without access to [UNE loops].”

The Commission has also found that section 251(c)(3) UNE regulations are necessary to ensure
that the ILEC’s charges, practices, classifications, or regulations are just and reasonable, and are
not unjustly or unreasonably discriminatory.

Yet, while the Commission has recognized (and these presentations demonstrate) the
critical nature of last mile access, the Commission’s rules do not protect it as mandated by the
Act. The Commission’s rules allow the ILEC to retire the copper loop in a manner that makes it
unavailable to competitors. Additionally, through its manner of implementing, or forbearing
from, the ILEC statutory obligations, the Commission has allowed the ILECs to deny access to
packet-mode facilities at just and reasonable rates.

So, upon the retirement of the copper loops,

See e.g., Memorandum Opinion and Order, Petition of Qwest Corporation for
Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical

See e.g., Qwest UNE Forbearance Order at ¶ 95.

In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers, CC Docket No. 01-338 et al, Report and Order and Order on Remand and
Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (2003)(“Triennial
Review Order”); In the Matter of Review of Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers, CC Docket No. 01-338, Order on Reconsideration, 19 FCC Rcd
20293 (2004); Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47
U.S.C. §160(c); SBC Communications, Inc.’s Petition for Forbearance Under 47 U.S.C.
§160(c); Qwest Communications International Inc Petition for Forbearance under 47 U.S.C.
§160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. §160(c),
WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004); 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
there is no equivalent UNE access loop available to competitors. The Commission needs to revisit its rules (and grants of forbearance) in both these regards.\(^5\) In the very least, the Commission should modify its copper retirement rules to require the ILEC, if it retires its copper facilities, to provide the functional and price equivalent on fiber facilities.\(^6\)

This is necessary not only to preserve competition, investment and innovation in the telecommunications industry, but also to provide the opportunity for job growth and investment in the industries served by competitive carriers.

Please do not hesitate to contact me if you have any questions regarding this submission.

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\(^5\) This issue of the Commission’s rules on copper retirement is currently pending in the proceeding “Petitions for Rulemaking and Clarification Regarding the Commission's Rules Applicable to Retirement of Copper Loops and Copper Subloops,” RM-11358. The Commission has sought comment on the request of a number of carriers that the Commission “refresh the record” in this proceeding and make certain changes to its copper retirement rules. FCC Public Notice DA 13-14, WC Docket No. 12-353; RM-11358, rel. Feb. 4, 2013. Additionally, a number of parties have asked the Commission to reverse the forbearance from dominant carrier regulation and certain Computer Inquiry requirements granted to Verizon, AT&T, legacy Embarq, Frontier, and legacy Qwest in their provision of non-TDM-based special access services. The Commission has sought comment on this petition. FCC Public Notice, DA 13-232, WC Docket No. 05-25; RM-10593, rel. Feb. 15, 2013. The issue of access to packet-mode loops has also been raised in a number of proceedings. See Letter of Hon. Chip Pickering et al, to Marlene Dortch, WC Docket No. 10-90 et al, filed Oct. 31, 2012 (“Competitive Coalition Letter”).

\(^6\) As stated in the Competitive Coalition Letter, the Commission should “ensure a technology-neutral approach to unbundling by applying the established impairment standard to packet-mode unbundled loops. Where competitors are impaired in the absence of packet-mode loops, the FCC should enforce reasonable unbundling policies…Commission [should] maintain a technology neutral approach to special access by applying appropriate price and non-price policies in product and geographic markets in which incumbent LECs have market power over packet-mode special access services….[and] adopt a technology neutral approach to copper loop retirement so as to eliminate uneconomic and anti-competitive regulatory incentives for incumbent LECs to retire copper before the end of its useful life, especially in cases where no wholesale packet-mode last-mile facility is available on reasonable rates, terms, and conditions.” Competitive Coalition Letter at 5-6.
Respectfully submitted,

/s/ Karen Reidy

Karen Reidy

Attachments

cc (via email):

Christine Kurth
Nicholas Degani
Charles Mathias
Sean Lev
David Turetsky
Louis Peraertz
Pricilla Argeris
ILEC Copper Retirement
Customer Impact

Mike Robinson, President and CEO Broadview Networks
February 21, 2013
Leading Provider of Next-Generation Communications Solutions
- IP, T-1 and Cloud based products represented 81% of new retail sales in 3Q 2012
- Cloud communications represented 16% of retail revenue and 40% of new retail sales in 3Q 2012

State-of-the-Art Network Infrastructure
- Advanced, IP / MPLS network and over 3 years of experience deploying Ethernet-over-Copper
- 3,000 fiber route miles, 3 data centers, 260 colocations

Large & Diversified Customer Base
- Approximately 30K SMB customers with a significant opportunity to sell into the base
- 87% of retail revenue is from customers with greater than $500 MRR
- Target market represents the largest concentration of communications spending in the U.S.

Strong and Improving Key Operating Metrics
- Steadily increasing revenue per customer
- Churn rates at or below pre-recession levels

Experienced Management
- Senior management has an average of 24 years of industry expertise
Regional Player with Cloud Services to Address Customers Nationwide

- **Strong local presence with strategic regional sales offices**
  - Significant addressable market for telecommunications and data services in our Northeast footprint, before cloud opportunity
  - Strong, existing customer relationships

- **Cloud-based services and MPLS network allow us to extend our reach**
  - Able to increase revenue per customer through up-selling new cloud-based products and services to new and existing customers
  - Requires less local presence allowing nationwide expansion without significant capital investment
  - Quality of service supported through MPLS network

- **Large, Untapped Opportunity**
  - Ability to address out-of-region multi-location customers through OfficeSuite® and other cloud-based services

**REGIONAL FOCUS WITH NATIONAL COVERAGE**

**Cloud Services Available Nationwide**

**Dense Northeast & Mid-Atlantic Footprint**

- Boston
- New York
- Philadelphia
- Washington, D.C.
Company Stats

Customers & Market
- Total Business Customers: 30K+
- Average Monthly Revenue per Customer: $730

Network
- Retail Access Line Equivalents: 577K
- Retail T-1 Circuits: 24K
- Colocation Sites: ~260
- Ethernet-over-Copper Equipped Colos (EoC): 38%
- Fiber Route Miles: ~3,000

Employees as of 9/30/12
- Total Employees: 815
- Quota-Bearing Sales Reps (all Channels): ~140
- Agent Channel Partners: ~300

Superior Customer Service & Quality
- Commendation for High Quality Service from the State of New York
- 2012 Gold Stevie Winner for Sales & Customer Service
- Stevie Award for Innovation in Customer Service at the 2012 Stevie Awards for Sales & Customer Service
- Recognized by Crain’s as the 56th Largest Private Company in the New York area
COPPER RETIREMENT IMPACTS

- Inhibits Cost Effective Deployment of Broadband Services
- Increases Cost of Broadband Access
- Increases Costs of Broadband Services to Customers
- Extends Provisioning Intervals to Deliver Broadband
  - Copper: Weeks
  - Fiber: Months
- Increases NRC Costs to Customer of Broadband Services
  - Fiber Builds: $5K to 600K (Single Location)
- Reduces “Ubiquitous” availability of Cost Effective Broadband
- Strands Capital Broadband (EOC) Investment
  - ILEC Collocation Augments (DS0 Terminations)
  - EOC Collocation Equipment and CPE

UNCERTAINTY
Copper Retirement Discussion

› D. Craig Young, CEO and Chairman
› February 21, 2013
MegaPath Overview

- Nationwide Company headquartered in Pleasanton, CA with over 1,000 employees located in over 50 cities
- One of the largest privately held end-to-end data, VoIP, and security technologies provider serving, Enterprise, SMB and Wholesale customers for over 16 years.
  - Acts as an extension of internal IT division of its key Enterprise and multi-location SMB customers
  - Enables businesses to lower costs, increase security, and enhance productivity
- Industry-leading products
  - Provide Business Class DSL, MPLS, Managed Security, VoIP & Cloud Services
  - Provide Nationwide Wholesale Access products; DSL, T1 and Ethernet Over Copper
  - Industry Pioneer in DSL, MPLS and Hosted VoIP
  - Recipient of multiple and repeat Product of the Year Awards
- Nationwide owned and operated fiber-optic MPLS core network
  - Delivering customer MPLS VPNs for over 10 years
  - Fully PCI Compliant and HIPAA-ready network
  - Industry-leading customer support available 24x7x365
  - Partners with over 40 providers to deliver last mile connectivity. Two primary last mile partners being AT&T and Verizon
MegaPath Overview

- Nationwide owned and operated COLO network:
  - MegaPath is physically present in over 2,000 CO’s in the Top 50 US markets
    - IP-POPs in 15 markets
    - Reach 4,000 CO’s via Loop & Tail
    - Serving 240 metro areas
    - Reaching over 11 million business addresses
  - Largest CLEC EoC footprint in the U.S.
    - Utilizing the AdTran TA-5000
    - 700 CO’s enabled for Ethernet Access
  - We serve a Customer Base of approximately 52,000 with copper based solutions
    - 50,000 SMB customers
    - 1,550 Enterprise customers
    - 460 Wholesale customers
    - 146,000 Hosted VoIP seats
Customer Overview

- Top 3 verticals are Professional Services, Hospitality and Retail with no SIC classification representing more than 10% of recurring revenue
- Recurring revenue by segment (2012): SMB – 56%; Wholesale – 26%; Enterprise – 18%

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MegaPath | www.megapath.com
Copper Retirement – What It Means to the industry

- Elimination of many current broadband offerings to customers from CLECs:
  - EOC – 3 to 100 meg services to most business customers
  - DSL – low cost/high availability broadband to SMB customers
- Strands billions of dollars of investment in competitive products, services, and companies
- Eliminates future innovation of products and services over existing copper infrastructure
- Limits future innovation and investment to only a few big players (AT&T, Verizon, Wireless players and Cable) who have the capital and time to replace the current copper infrastructure with fiber or wireless alternatives. In addition, these players will control who can provide services over the PSTN and what services can run over the PSTN through pricing and/or only offering finished service products.
- Reduces competitive alternatives and increases prices for customers
Copper Retirement – Real Case Study

- Real world example – Super Storm Sandy hits NY
  - Broad Street CO – one of MegaPath’s most successful COs for EoC sales
    - 100% copper circuits down
  - West Street CO – also affected
    - 70% MP circuits up; 30% MP circuits down
- Verizon is proposing all fiber installations for both COs
  - Broad Street - no rebuild of copper plant
  - West Street – If customer up, will not repair or maintain working copper; if customer down, require fiber replacement
  - For both COs – for new customers, MegaPath forced to order fiber-based facility or services
- To replace current MegaPath copper-based services with same amount of bandwidth for customer, will require more loops at a higher unit cost than current UNE rates for xDSL copper circuit
- Copper retirement will significantly increase MegaPath’s monthly recurring costs to deliver a comparable service (depending on Vz replacement offerings) which in turn will increase our prices to SMB & Enterprise customers.
In Summary

- Copper Retirement will:
  - Significantly increase the LEC’s wholesale pricing structure and reduce competitive retail offerings to the public from CLEC’s
  - Kill copper-based Products (DSL and EoC) in any CO where copper is retired or not maintained
  - Kill further Technological Innovations and Advancements on an infrastructure that touches every business and home in America
  - Negate the Pro-Competitive Intent of the 1996 Telecom Act and diminish real competition, investment, and jobs

- What the industry needs to promote competition:
  - Competitive wholesale pricing and products which allow smaller competitors to add value added services to the public
  - A packetized loop product with the same features and cost point as current UNE loops