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June 27, 2014

**VIA ECFS**

***EX PARTE***

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

**Re: GN Dockets No. 13-5 and 12-353; RM-11358**

Dear Ms. Dortch:

Wireline Competition Bureau Chief Julie Veach's blog entitled "Protecting Consumers in the Transition from Copper Networks" requests comment on the impact of copper retirements from all consumers, including wholesale customers.<sup>1</sup> COMPTEL submits this letter focusing specifically on Verizon's public notice of its intent to retire its copper facilities in wire centers in Virginia, New York, Massachusetts, Pennsylvania, and New Jersey ("Verizon Notices"),<sup>2</sup> as well as assertions made by AT&T in an *ex parte* letter recently filed with the Commission regarding the availability of unbundled elements ("AT&T Ex Parte").<sup>3</sup> Additionally, COMPTEL urges the Commission to revisit its rules and "ensure appropriate balance in its copper retirement policies" as discussed in the National Broadband Plan.

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<sup>1</sup> Julie Veach, FCC's Wireline Competition Bureau Chief, "Protecting Consumers in the Transition from Copper Networks" *available at* <http://www.fcc.gov/blog/protecting-consumers-transition-copper-networks> (stating "We want to hear from every kind of customer—residential, small or large business, wholesale, and those served by wholesale customers—about the potential benefits and/or harms that could come from the retirement of these copper facilities.").

<sup>2</sup> See "Short Term Public Notice Under Rule 51.333(A)" for Lynnfield, MA, Belle Harbor, NY, Hummelstown, PA, Farmingdale, NJ, and Ocean View, VA, *available at* <http://www.verizon.com/about/networkdisclosures/> ("Verizon Notices").

<sup>3</sup> Letter from Robert C. Barber, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 13-5, *et al*, filed May, 30, 2014 ("AT&T Ex Parte").

**I. The Commission Should Remind ILECs of Their Continued Duty to Provide Access to DS1 and DS3 UNE Loops, Irrespective of Copper Retirement and/or an IP Conversion.**

As an initial matter, the proposed retirement of copper by the incumbent local exchange carrier (“ILEC”) does not eliminate the ILEC obligation to provide DS1 and DS3 loops on an unbundled basis, where impairment exists, in accordance with the Act and Commission rules and Orders. Verizon fails to acknowledge this fact in the aforementioned retirement notifications. Specifically, in the *Verizon Notices*, Verizon states only that a 64 kbps voice-grade channel will be available to competitors as an unbundled network element (UNE) upon copper retirement, with no mention of its continuing obligations to provide access to DS1 and DS3 unbundled loops pursuant to 47 U.S.C. 251(c)(3) and 47 C.F.R. 51.319(a)(4)-(5).<sup>4</sup> Similarly, in the *AT&T Ex Parte*, AT&T demonstrates a misunderstanding of an ILEC’s obligation to provide unbundled DS1 and DS3 loops as the ILEC transitions from TDM to IP facilities, stating that there is “no high capacity loop UNE requirement in all-IP environment.”<sup>5</sup>

As both COMPTTEL and Windstream (which is both a CLEC and an ILEC subject to Section 251(c)(3) unbundling obligations) have noted in recent filings in these proceedings, an incumbent’s obligations to provide DS1s and DS3s as UNEs do not end with the retirement of copper, or replacement of TDM electronics with IP electronics.<sup>6</sup> Verizon and AT&T – and all other ILECs not exempted from Section 251(c)(3) - are required to continue to provide DS1 and DS3 unbundled loops where the impairment trigger has been met, regardless of whether they have retired copper loop facilities or replaced TDM electronics with IP electronics, and they cannot unilaterally alter those requirements in a network modification notification. We thus urge

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<sup>4</sup> In particular, in its notices, Verizon states: “After the retirement of the copper facilities, Verizon will: (1) no longer offer services over copper facilities; and (2) cease maintaining the copper facilities. However, to the extent required by applicable agreements and federal law, Verizon will offer to requesting carriers a 64 Kbps voice-grade channel over fiber loops that have been deployed where copper was retired.” *Supra*, n. 2.

<sup>5</sup> *AT&T Ex Parte*, attachment at 11. See also AT&T Reply Comments, *In the Matter of Technology Transitions, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5 and 12-353, pp. 40-41, filed Apr. 10, 2014 (“AT&T Reply Comments”). Notably, AT&T seems to contradict itself earlier in its *ex parte* letter, where it acknowledges that high capacity loop (DS1/DS3) unbundling is required “except in wire centers where specific triggers are met” and subject to certain per building caps. *AT&T Ex Parte*, attachment at 7. Similarly, in its reply comments regarding its proposed technology transition experiment, AT&T clearly acknowledges that the “FCC’s rules require the ILEC to provide access to certain unbundled high capacity (DS1 and DS3) loops and transport pursuant to Section 251(c)(3), except in those geographic areas where certain triggers have been met demonstrating that competitors would not be impaired without such access.” *AT&T Reply Comments* at 40.

<sup>6</sup> COMPTTEL Comments, *In the Matter of Technology Transitions, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5 and 12-353, at 11-13, filed Mar. 31, 2014; Letter of Eric Einhorn, Windstream, to Jonathan Sallet and Julie Veach, FCC, GN Docket Nos. 13-5 and 12-353, at pp. 12-13, filed Apr. 28, 2014.

the Commission to inquire about Verizon's intentions with regard to the continued provision of DS1 and DS3 UNE loops in the aforementioned wire centers and, if necessary, to remind all ILECs of their obligation to provide DS1 or DS3 unbundled loops pursuant to 47 U.S.C. 251(c)(3) and 47 C.F.R. §§ 51.319(a)(4) and (5) regardless of their plans to retire copper loops pursuant to 47 C.F.R. §§ 51.319(a)(3)(iv) and 51.333 or their transition to IP electronics.

In the *Triennial Review Order*, the Commission addressed the ILECs' obligation to offer unbundled DS1 and DS3 loops in the enterprise market analysis section of the order. There, the Commission affirmatively retained the incumbent's unbundling obligation for these enterprise loops regardless of how the loops are provisioned. For example, the Commission stated:

DS1 loops will be available to requesting carriers, ***without limitation, regardless of the technology used to provide such loops***, e.g., two-wire and four-wire HDSL or SHDSL, ***fiber optics***, or radio, used by the incumbent LEC to provision such loops and regardless of the customer for which the requesting carrier will serve unless otherwise specifically indicated. The unbundling obligation associated with DS1 loops is in no way limited by the rules we adopt today with respect to hybrid loops typically used to serve mass market customers.<sup>7</sup>

While the Commission reduced certain ILEC unbundling obligations in circumstances where the ILEC has deployed fiber-to-the-home ("FTTH"), fiber-to-the-curb ("FTTC"), and fiber to predominately residential multi-dwelling units ("MDUs"), it clarified that these reductions apply only to mass market loops.<sup>8</sup> In particular, as the Commission explained, the *TRO* adopted the "greatest unbundling relief for dark or lit fiber loops serving mass market customers that extend to the customer's premises (known as fiber-to-the-home or FTTH loops) ...."<sup>9</sup> In subsequently extending this same unbundling relief to FTTC loops, the Commission

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<sup>7</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *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, FCC 03-36, ¶ 325 n. 956 (2003) ("Triennial Review Order" or "TRO") (emphasis added) (citations and cross-references omitted). The Commission subsequently placed limitations based on the size of the wire center and caps, but not facility or technology used in provisioning the loop. *See infra*, n. 13.

<sup>8</sup> As the Commission has stated, "the mass market consists primarily of residential and similar, very small, business users of analog POTS." *TRO* at ¶ 197, n. 624.

<sup>9</sup> Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al*, CC Docket Nos. 01-338, 96-98 and 98-147, FCC 04-248, ¶ 6 (October 2004) ("Fiber-to-the Curb Order" or "FTTC Order").

again made clear that the modifications to the ILECs' unbundling obligations applied only to mass market loops:

In the *Triennial Review Order*, the Commission limited the unbundling obligations imposed on mass market FTTH deployments to remove disincentives to the deployment of advanced telecommunications facilities in the mass market. We find here that those policy considerations are furthered by extending the same regulatory treatment to incumbent LECs' mass market FTTC deployments.<sup>10</sup>

In the *MDU Reconsideration Order*, the Commission again affirmed that its FTTH rules (and subsequent FTTC rules) do not apply to loops used to serve business customers by acknowledging that it had previously excluded all MDUs from the FTTH rules because it had found that "carriers seeking to service mass market customers residing in MDUs face similar deployment barriers as when serving enterprise customers."<sup>11</sup> The Commission then reconsidered its treatment of MDUs and decided to extend the FTTH exemption to multi-dwelling units that are primarily residential (i.e., mass market).<sup>12</sup> If, as the ILECs have claimed, the FTTH rules applied to all fiber loops and not just mass market loops, the Commission would have had no need to issue a *reconsideration order* to apply the FTTH rules to MDUs that are predominantly residential – the FTTH rules would have already applied and the Commission would have issued a clarification order instead.

Moreover, the Commission's rules are technology neutral. They define unbundled DS1s and DS3s by the specific bandwidth delivered to the customer, not the nature of the physical connection (copper or fiber) or the electronics (TDM or IP) used in the loop.<sup>13</sup> And, the impairment triggers define the areas in which unbundling obligations apply based on the size of the wire center and the cap established by the Commission<sup>14</sup> - not the facility or technology used

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<sup>10</sup> *FTTC Order* at ¶ 2.

<sup>11</sup> Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98 and 98-147, FCC 04-191, ¶¶ 1 and 4 (August 2004) ("MDU Reconsideration Order").

<sup>12</sup> *Id.* at ¶ 1 ["Specifically, we reconsider certain of the Commission's determinations with regard to multiple dwelling units (MDUs) and conclude that the fiber-to-the-home (FTTH) rules will apply to MDUs that are predominately residential."]

<sup>13</sup> See 47 C.F.R. § 51.319(a)(4)(i) ["A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, **but are not limited to**, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services."] (emphasis added); See also 47 CFR § 51.319(a)(5)(i) ["A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second."]

<sup>14</sup> See 47 C.F.R § 51.319(a)(4) ["*DS1 loops.* (i) Subject to the cap described in paragraph (a)(4)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not

to provision the loops. In particular, the unbundling rules for DS1s and DS3s provide no condition on the obligation based on whether the incumbent replaces copper loops with fiber loops or uses TDM or IP equipment.

Consequently, if an ILEC wishes to eliminate its obligations to provide its DS1 and DS3 as UNEs it can only do so by (1) demonstrating that the trigger for a finding of non-impairment has been met, (2) filing a petition for forbearance pursuant to 47 U.S.C. § 160 and meeting each of the relevant statutory requirements, or (3) by persuading the Commission to propose and adopt rules to modify its existing unbundling rules. Verizon cannot use the copper retirement process as an end-run around these requirements, nor does any statement by Verizon in its copper-retirement notices modify or alter Verizon's unbundling obligations as set forth in 47 C.F.R. § 51.319.

## **II. The Commission Should Include Revisiting of the Copper Retirement Processes as Part of the IP Transition Proceeding.**

Notwithstanding the availability of DS1 and DS3 loops, a competitor's ability to offer Ethernet-over-Copper services is eliminated by the incumbents' retirement of copper under existing Commission rules. As we discuss below, and as the Commission addressed in its National Broadband Plan, the Commission should revisit its rules and "should ensure appropriate balance in its copper retirement policies."<sup>15</sup> COMPTTEL recently discussed in its *ex parte* letter proposing a managerial framework that the Commission should add a public interest standard to its copper retirement rules that would properly consider whether there are comparable last-mile alternatives available in the marketplace for competitors to offer Ethernet services.

Earlier this year, a number of competitive carriers met with the FCC staff concerning the Commission's ongoing review of the technology transitions.<sup>16</sup> In that meeting, the competitors

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served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that wire center...*(ii) Cap on unbundled DS1 loop circuits.* A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops."]; *See also* 47 C.F.R. § 51.319(a)(5) [*"DS3 loops.* (i) Subject to the cap described in paragraph (a)(5)(ii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS3 loop unbundling will be required in that wire center...*(ii) Cap on unbundled DS3 loop circuits.* A requesting telecommunications carrier may obtain a maximum of a single unbundled DS3 loop to any single building in which DS3 loops are available as unbundled loops."]

<sup>15</sup> National Broadband Plan, Recommendation 4.9

<sup>16</sup> *See* Letter from Angie Kronenberg, COMPTTEL, to Marlene H. Dortch, FCC, GN Docket No. 13-5 *et al.* (filed Feb. 6, 2014).

discussed how the Commission’s National Broadband Plan made a number of recommendations concerning wholesale services that still need to be fully addressed by the Commission. Specifically, Recommendations 4.7-4.10 were intended to help promote a robust, competitive broadband marketplace, including Recommendation 4.9 which states that “[t]he FCC should ensure appropriate balance in its copper retirement policies.”

On April 2, 2014, in response to the Chairman’s announcement that he plans to set forth the process and timetable to address the key legal and policy issues related to the ongoing technology transitions, COMPTTEL submitted a letter discussing the issues that the Commission must address to ensure that robust competition in the business broadband marketplace will thrive post-transition.<sup>17</sup> Since that submission, a number of entities have weighed in supporting COMPTTEL’s proposed managerial framework, including Windstream, Sprint, Level 3, Granite, Access Point et al., XO, and Public Knowledge.<sup>18</sup>

With respect to copper retirement, in addition to the fact that the Commission’s own National Broadband Plan recognized that it needs to ensure appropriate balance in its copper retirement policies, COMPTTEL stated that the Commission should proceed with this rebalance as soon as possible. As COMPTTEL and XO Communications (“XO”) have stated, equivalent wholesales access should be made available on comparable rates, terms, and conditions, as identified in the *Technology Transitions Order*.<sup>19</sup> XO also urges the Commission to facilitate network planning by requiring ILECs “to provide forecasts of their planned retirements sufficiently in advance to competitors.”<sup>20</sup> COMPTTEL agrees that this would be beneficial and would advance the necessary network planning all companies must do in preparation for changes that will occur.

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<sup>17</sup> Letter from Angie Kronenberg, COMPTTEL, to Marlene H. Dortch, FCC, GN Docket No. 13-5 *et al* (filed Apr. 2, 2014) (“COMPTTEL Managerial Framework Ex Parte Letter”).

<sup>18</sup> See *Ex Parte* Letters from XO Communications, GN Docket No. 13-5 *et al*, dated Jun. 4, 2014 (“XO Letter”); Public Knowledge, GN Docket No. 13-5 *et al*, received May 29, 2014; Joint Letter from Access Point Inc., Matrix Telecom, Inc., New Horizon Communications Corp., GN Docket No. 13-5 *et al*, dated May 29, 2014; Granite Telecommunications, LLC, GN Docket No. 13-5 *et al*, dated May 23, 2014; Level 3 Communications, LLC, GN Docket No. 13-5, dated May 16, 2014; Sprint Corporation, GN Docket No 13-5 *et al*, dated May 9, 2014; and Windstream Communications, Inc., GN Docket No. 13-5 *et al*, dated Apr. 28, 2014.

<sup>19</sup> See *COMPTTEL Managerial Framework Ex Parte Letter* at 10-11; *XO Letter* at 7; See also Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, *Technology Transitions, et al*, GN Docket No. 13-5, *et al*, FCC 14-5, ¶59 (Jan. 31, 2014)(“*Technology Transitions Order*”).

<sup>20</sup> *XO Letter* at 7.

COMPTEL members compete with the large ILECs in providing integrated data and network management solutions to non-residential customers, including small, medium and large enterprises, government entities, health care institutions, and schools and libraries. As this Commission knows, these solutions are critical to modern business management, including secure transmission of human resource data, controlling inventories, managing overall productivity, processing payments and many other critical day-to-day functions. For COMPTEL members, access to ILEC last-mile networks is essential to their ability to provide these innovative, competitive solutions. As the Commission recognized in its *Technology Transitions Order*, “competition is a core value of the [Communications] Act,”<sup>21</sup> and wholesale access is a crucial part of promoting and ensuring continued competition, particularly in the enterprise service markets. We thus urge the Commission to move forward quickly to issue orders clarifying or establishing the policy choices that will govern the IP transition.

Respectfully submitted,

*/s/ Karen Reidy*

cc: Jonathan Sallet  
Linda Oliver  
Jennifer Tatel  
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<sup>21</sup> *Technology Transitions Order* at ¶ 58.