STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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EX PARTE

February 11, 2016

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 112th Street SW
Washington, DC 20554

RE: *WC Docket No. 15-1, Petition for Declaratory Ruling to Clarify That Technology Transitions Do Not Alter The Obligation of Incumbent Local Exchange Carriers to Provide DS1 and DS3 Unbundled Loops Pursuant to 47 U.S.C. §251(c)(3)*

Dear Ms. Dortch:

The Washington Utilities and Transportation Commission (UTC)[1] respectfully requests the Federal Communications Commission (Commission) move forward and render a decision promptly in the above-captioned proceeding, reaffirming that incumbent carriers have an obligation to provide unbundled DS1 and DS3 capacity loops to requesting competitive carriers regardless of the physical medium or transmission protocol the incumbent uses in its network.

Consistent with the Commission's efforts to promote competitive markets for communications services during and after the ongoing technology transitions, the UTC also strives to promote vibrant and competitive communications service markets in Washington. The UTC shares the concerns of Windstream and others regarding potential efforts by incumbent local exchange carriers (ILECs) to invoke technology transitions as a pretext for lessening or eliminating access to unbundled network elements that competitors use to serve customers.

[1] The UTC has authority to "participate in proceedings before federal administrative agencies in which there is at issue the authority, rates or practices for transportation or utility services affecting the interests of the State of Washington, its businesses and general public. . . ." Wash. Rev. Code § 80.01.075.

Competitive local exchange carriers (CLECs) in Washington state compete directly with ILECs, and the business, non-profit, and government customers CLECs serve are direct beneficiaries of that competition. According to the latest data available from the Commission, nearly one-half (i.e., 47 percent) of all business class customers in Washington state were served by a non-ILEC provider.[2] To serve these customers, mostly small and medium sized businesses, the UTC understands that CLECs routinely use DS1 capacity (1.544 Mbps) and DS3 capacity (45 Mbps) unbundled loops, which the CLECs may use to offer both TDM-based and Ethernet services. The continued availability of unbundled DS1 and DS3 capacity loops to competitors is a matter of public interest in Washington, as customers should be able to choose among multiple providers, lower-priced rate plans and service bundles. If an ILEC attempts to discontinue these unbundled loop offerings when it uses fiber or transitions from TDM-based to IP-based services, customers may be thwarted from selecting lower priced alternatives. In addition, disputes that result from unilateral ILEC conduct disavowing these unbundling obligations will needlessly frustrate customers with higher rates, harm competition, and burden the carriers and state regulators who must address the disputes.

As Windstream noted in its petition, nothing in the text of the FCC's rules or orders limits ILECs' UNE obligations to copper facilities or TDM services. The express language of the DS1 and DS3 capacity loop rules is technology neutral.[3] The UTC understands that AT&T itself recently agreed with this principle in the context of a wholesale rate dispute case in Georgia. In that case, AT&T invoked the FCC's definition of a DS1 loop from the *Triennial Review Order*[4] and explained that "a DS1 circuit is defined by its speed and capacity, and not by any particular type of equipment."[5] AT&T also noted in that case that DS1 loops "can be provisioned over a variety of transmission technologies,"[6] but "[a]t the end of the day . . . the *particular transport technology does not matter as long as the customer receives a loop* with DS1 speed (1.544

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[2] Local Telephone Competition Report: Status as of December 31, 2013, Table 11 (rel. Oct. 2014).

[3] *See* 47 C.F.R. § 51.319(a)(4)(i) ("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); 47 C.F.R. § 51.319(a)(5)(i) ("DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second"). The Commission in its *Technology Transitions NPRM* affirmed this focus on functionality rather than technology when referring to the "requirement to unbundle DS1 and DS3 *capacity* loops." *Technology Transitions, et al.,* GN Docket No. 13-5 et al., Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-184, ¶ 29 (rel. Nov. 25, 2014) (emphasis added).

[4] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 16978 (2003) ("*Triennial Review Order*") (subsequent history omitted).

[5] *Cbeyond Communications, LLC, v. BellSouth Telecommunications, LLC, d/b/a AT&T Georgia,* Georgia Public Service Commission Docket No. 24173, Post-Hearing Brief of AT&T Georgia ("AT&T Brief"), 4-5 (filed Nov. 4, 2015), available at http://www.psc.state.ga.us/factsv2/Document.aspx?documentNumber=160794.

[6] *Id.*, AT&T Brief, at 20-21.

Mbps) and capacity for 24 channels."[7] The UTC believes that technology transitions do not alter the fundamental economics of last-mile deployment.

Extensive comments have been filed in this matter, and the issues posed in the Windstream petition are squarely before the Commission and ripe for decision. The UTC is concerned that continued ambiguity over CLEC access to unbundled network elements, potentially exacerbated by technology transitions, may lead to higher prices and less choice for Washington consumers. Accordingly, the UTC urges the Commission to act promptly on Windstream's petition in order to ensure consumers in our state do not experience less competition and higher rates due to technology transitions. In particular, the UTC supports a Commission declaratory ruling that confirms ILEC obligations to provide DS1 and DS3 capacity loops on an unbundled basis, regardless of technology, pursuant to federal law.

Please contact Brian Thomas, UTC Director of Policy, at (360) 359-1049 or bthomas@utc.wa.gov if you have any questions regarding this matter.

Sincerely,

Steven V. King
Executive Director and Secretary

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[7] *Id.*, AT&T Brief, at 4-5 (*citing Triennial Review Order* at ¶ 202 n.634 ("DS1 loops are provided over various transmission media and combinations of transmission media, including but not limited to two-wire and four-wire copper, fiber optics, or radio."). *See also* AT&T Brief at 20 (asserting that "there is only one kind of DS1 unbundled loop, namely a loop that provides 1.544 Mbps transmission speed and capacity for 24 channels").