Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
) 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) )
Technology Transitions ) GN Docket No. 13-5

COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) files these Comments in accordance with the Public Notice (PN) in WC Docket No. 15-1, DA 15-4 issued by the Federal Communications Commission (FCC or Commission) on January 6, 2015, soliciting comments or opposition on a petition for declaratory ruling (Petition) filed by Windstream Corporation (Windstream) on December 29, 2014. Comments are due on or before February 5, 2015, and Reply Comments are due on or before March 9, 2015.

Introduction and Summary

In its Petition, Windstream requests the Commission to issue a declaratory ruling to confirm that incumbent local exchange carriers’ (ILECs) obligations to provide DS1 and DS3 capacity loops on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. §§ 51.319(a)(4) and 5 are not altered or eliminated either by the replacement of copper with fiber or by the conversion of transmission from time division multiplexing (TDM) to Internet Protocol (IP) format.1 The PaPUC’s Comments generally support a finding that the ILECs’ obligations

1 Petition, at 1.
to provide DS1 and DS3 capacity loops on an unbundled basis or its functional equivalent remain intact even when copper loops have been retired. Accordingly, the PaPUC requests the Commission to confirm that its unbundling ruling for DS1 and DS3 capacity loops set forth in the Triennial Review Remand Order is technology neutral and will remain operative and intact when copper network facilities that are utilized for wholesale access purposes undergo a technology transition and are replaced with fiber optic circuits by the ILECs, or where relevant wholesale access transmission facilities cease to utilize the TDM communications protocol in favor of IP.

As an initial matter, these Comments should not be construed as binding on the PaPUC in any matter before the PaPUC. Moreover, the PaPUC’s position set forth in these Comments could change in response to later events, including Ex Parte filings, legal proceedings or other regulatory developments at the state or federal level. Lastly, the Comments build upon and reiterate prior filings of the PaPUC on several issues concerning copper retirement and unbundling obligations.

The Commission Should Confirm that the Unbundling Obligation for DS1 and DS3 Capacity Loops that is set forth in the Triennial Review Remand Order Remains Intact During the Transition from Copper to Fiber because the Failure To Adopt and Enforce Technology-Neutral Wholesale Policies Threatens the Ability of Competitive Carriers to Obtain Wholesale Access to Last-mile Facilities.

This Petition is concerned with the ongoing current technological transition by ILECs and how this technology transition will impact the wholesale access to the last-mile facilities that are used by competitors to deliver cost-effective retail business services (including Ethernet access services) to many thousands of small and medium-sized businesses, nonprofits and government entities. Petition at 2.

In the Triennial Review Order, the Commission emphasized the importance of incentivizing investment for the deployment of new technologies. In doing so, the Commission limited the unbundling requirements associated with the ILECs’ fiber optic loops to the home or _______________

2 Triennial Review Order, 18 FCC Red at 17111, para. 213.
to the premises (FTTH/FTTP) that are commonly utilized for the delivery of retail broadband access services to “mass market” residential and very small business customers. However, the FCC did not eliminate the requirement to unbundle DS1 and DS3 capacity local loops that are utilized for wholesale access purposes.3

Competitive LECs (CLECs) continue to rely significantly on wholesale access to the last-mile facilities of the ILECs. This is especially true in those cases where the potential return on investment from serving the needs of lower demand users, such as residences and small businesses, does not justify the cost of overbuilding a redundant network over that of an incumbent. The unbundling rule ensures that the ILECs provide cost-effective last-mile access so as to minimize capital investment waste in areas where copper loops have been or are being replaced with FTTH/FTTP, or where network access facilities are being converted from the TDM protocol to IP. Faced with these economic realities of building out their own interconnection facilities, CLECs have expressed concern about the future of wholesale access to last-mile facilities and services as local wireline networks undergo the technology transitions.

With ILECs planning to implement significant fiber deployment throughout their service territories already underway, the Commission should ensure the customers of both ILECs and CLECs who currently depend on legacy services continue to have appropriate access to either adequate legacy or IP-based service alternatives to interconnect and provide competitive services in a cost-effective manner. The PaPUC is concerned that failing to maintain an unbundling requirement for DS1 and DS3 capacity local loops or a functional equivalent could effectively undermine the competition, which state and federal regulators have concluded is more efficient than minute regulatory oversight. Accordingly, the Pa. PUC believes retention of the unbundling requirement is necessary to protect competitive carriers, the competitive market, and, ultimately, consumers.

3 See, e.g., Triennial Review Remand Order, 20 FCC Rcd at 2536, para. 5 (holding that the availability of special access does not preclude impairment); see also Triennial Review Order, 18 FCC Rcd at 17346, para. 582, n.1796 (providing an example that a competitive LEC connecting a UNE loop to special access interoffice transport facilities would pay UNE rates for the unbundled loops and tariffed rates for the special access service). See also 47 C.F.R. § 51.319(a)(4), (5). See also Petition, at 13.
The PaPUC notes that in the *Technology Transitions Order*, the Commission noted the importance of maintaining wholesale access to protect the enduring value of competition embodied in our communications laws during and after the technology transitions.\(^4\) Moreover, one of the primary fundamental questions addressed in the Commission’s recent *Notice of Proposed Rulemaking* at PS Docket No. 14-174 et al (FCC 14-185) is how to ensure that there is competition in serving every level of the enterprise market, from very small businesses to large enterprises.\(^5\)

Accordingly, the PaPUC recommends that the Commission expressly clarify that the unbundling requirements for DS1 and DS3 capacity loops set forth in the *Triennial Review Remand Order* remain intact in a transition from copper to fiber loops, including any functional equivalent.

The Pa. PUC appreciates this opportunity to file Comments in this proceeding.

Respectfully submitted,

_/s/_________________

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\(^4\) *Technology Transitions, et al.*, GN Docket No. 13-5, et al., 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, 29 FCC Rcd 1433, 1453, ¶ 59 (2014) (identifying the need to “maintain wholesale access” as a condition of preserving the core value of competition as carriers conduct service-based trials and experiments that will allow the Commission and the public to evaluate how customers are affected by the technology transition) (*Technology Transitions Order*).