January 15, 2013

Ex Parte

VIA ECFS

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


Dear Ms. Dortch:

On January 11, 2013, Kathleen Grillo, Will Johnson, Maggie McCready, David Young and Chris Miller of Verizon met with the following members of the FCC’s Technology Transitions Policy Task Force: Sean Lev, General Counsel, and Tejas Narechania of the Office of General Counsel; Rebekah Goodheart, Lisa Gelb, and Tim Stelzig of the Wireline Competition Bureau; Bill Lake, Chief of the Media Bureau; Gene Fullano of the Public Safety and Homeland Security Bureau; Patrick Halley of the Office of Legislative Affairs; Jonathan Chambers, Steve Wildman, and Henning Schultrinne of the Office of Strategic Policy; and Michael Steffen and Charles Mathias, legal advisors to Chairman Genachowski. The purpose of the meeting was to discuss the Commission’s recently formed Technology Transitions Policy Task Force and its scope.

We began by emphasizing the ongoing evolution in the industry from legacy, circuit-switched voice services offered over copper networks to packet-switched services based on internet protocol running over a wide variety of broadband networks, including fiber, copper, wireless, and cable. The emergence and widespread deployment of broadband and IP technology has enabled a fundamental shift from TDM-based POTS wireline services to feature-rich VoIP and other IP-enabled wireline services. The same shift is now occurring in wireless networks as LTE networks are deployed nationwide. As consumers begin to experience the benefits of IP-based services, demand for increased access to them is exploding. Companies have made massive investments to provide customers access to these new wireline and wireless broadband networks and services. These investments have been made in an environment with no incumbent or dominant providers. Verizon is a leader in this regard, investing heavily in deploying world-class fiber and LTE networks. In particular, Verizon has invested billions of dollars to deploy a fiber-to-the-premises network to over 18 million homes and businesses. Verizon is offering IP-based voice, Internet, and video services over these
networks.\(^1\) Other wireline providers have made similar large scale investments. Cable companies have invested billions of dollars to upgrade their broadband infrastructure and, as a result, in many areas cable providers have captured a larger share of the market than other wireline competitors.\(^2\)

The transition to broadband networks has not only facilitated competition among network operators, but also has opened the door to a wide range of over-the-top services and providers that consumers are now using in place of traditional POTS. Vonage, the largest over-the-top VoIP provider, already serves more than 2.2 million subscribers in the United States.\(^3\) Microsoft, which acquired Skype in October 2011, reports that Skype “continue[s] its rapid growth and now has over 280 million users” worldwide.\(^4\) Consumers are also using broadband networks to rapidly expand the means by which they communicate, replacing traditional voice services with MMS, email, and social media.

At the same time, advances in wireless network and smartphone technology have caused a parallel shift away from wireline services entirely with many consumers embracing wireless for all their communications needs. As of mid-2012, approximately 36% of U.S. households have disconnected wireline service entirely. Another 16% of the population receives all or almost all calls on their wireless devices even though they still maintain a wired service – meaning that more than half of U.S. households are primarily relying on wireless services.\(^5\) Further deployment of 4G LTE networks – by multiple providers – will only further accelerate this process\(^6\) as consumers increasingly have access to wireless broadband speeds that are comparable to or faster than their traditional wireline connections.

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\(^2\) Jaison T. Blair et al., Telsey Advisory Group, *NCTA’s Cable Show*, at 1 (May 29, 2012). See also Jessica Reif Cohen, Bank of America/Merrill Lynch, *Battle for the Bundle: Easier Data, Tougher Voice for Cable*, at 7 (Nov. 21, 2011) (DOCSIS 3.0 will be available to 89 percent of cable homes by the end of 2012).

\(^3\) See Vonage Holdings Corp., Form 10-Q, at 22 (SEC filed Nov. 01, 2012), http://www.sec.gov/Archives/edgar/data/1272830/000127283012000073/a10-qq312.htm (customers in the U.S. represented 93 percent of Vonage’s 2.4 million subscriber lines as of Sept. 30, 2012).


\(^6\) See International Comparison Requirements Pursuant to the Broadband Data Improvement Act,
This explosion in consumer demand for broadband services has given rise to a highly competitive and dynamic marketplace. Multiple wireless and wireline providers now compete to provide consumers with access to a full range of communications services, including but not limited to voice, over a broadband connection. There is no incumbent provider of any broadband service and no provider – much less the ILECs – has achieved a dominant position. Yet despite this competition, the wireline LECs that built and operate the PSTN remain uniquely subject to a complex and far-reaching regulatory regime premised on the existence of a single incumbent wireline carrier in each geographic area.

These massive shifts in the competitive and technological landscapes are well underway, and are providing consumers with a growing array of communications options that can better serve their needs. In light of this reality, we encouraged the Task Force to focus on how the Commission can best encourage this ongoing transition and the investment and innovation that underlie it. As a starting point, the Commission should ensure that outdated regulation – such as regulations that apply in a discriminatory manner to a subset of the broadband providers competing today – do not deter investment or distort competition. As the industry has now evolved, a regulatory regime premised on the existence of a small number of allegedly dominant providers no longer makes sense given the shifts in the market, and indeed, such a regime may handicap the network evolution process. The Commission’s own Task Force recognizes this shift, acknowledging that “the ongoing changes in our nation’s communications networks require a hard look at many rules that were written for a different technological and market landscape.” Indeed, we encouraged the Task Force not to start from the premise that today’s body of regulation should be shoehorned into the competitive broadband world that is emerging, but instead to start from a clean slate and to determine what subset of issues will continue to require regulatory involvement in order to protect legitimate interests related to consumers and competition. In particular, a number of existing regulations or ambiguities in the rules could be modified or eliminated to better aid the transition to IP-based technologies. These include (1) designating all IP services as inherently interstate services; (2) eliminating 64 Kbps transmission path obligations where copper has been retired; and (3) modifying Eligible Telecommunications Carrier (ETC) Universal Service Requirements and preempting State Carrier of Last Resort (COLR) Requirements where still applicable.

Order,8 VoIP services are practically inseverable, and therefore inherently interstate. The Commission recognized that IP-based services “enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously.”9 Such “functionalities in all their combinations form an integrated communications service designed to overcome geography, not track it.”10 Moreover, these services are deployed nationally and internationally, using common systems and platforms. Deployment cannot be done on a state-by-state basis under more than fifty different sets of rules and requirements. As such, there should be no question that IP-based services are inherently interstate.11

Eliminating Required 64 Kbps Transmission Path on Fiber to the Home Loop Where Copper Has Been Retired. In the Triennial Review Order, the Commission exempted ILECs from providing access to newly deployed fiber-to-the-home loops, subject to one exception. The Commission held that “in fiber loop overbuild situations where the incumbent LEC elects to retire existing copper loops . . . the incumbent LEC [must] offer unbundled access to those fiber loops, and in such cases the fiber loops must be unbundled for narrowband services only.”12 ILECs are required to either keep the existing copper loop connected after deploying fiber to the home, or, if it has retired the copper loop, it “must provide unbundled access to a 64 kbps transmission path over its FTTH loop.”13 The Commission should now eliminate these requirements which force ILEC either to incur wasteful costs associated with maintaining two redundant networks (one of which is unnecessary to serve our customers), or provide competing carriers access to brand-new networks without having borne the substantial risks of the investments funding them. By contrast, any consumer benefits of this requirement are minimal at best. Demand for narrowband services is rapidly declining, and there is no evidence that competitive LECs still seek to provide “narrowband services to the mass market”14 as a real business model. Nor is this path necessary to ensure customers access to service, in light of the rapid growth of competition.

9 Id., ¶ 25.
10 Id.
11 See Letter from VON Coalition, et al., to Chairman Martin and Commissioners, FCC, IP-Enabled Services, WC Docket No. 04-36 (Aug. 6, 2008) (asking the Commission to reaffirm that all IP-based voice services, if regulated at all, are subject to exclusive federal jurisdiction).
13 Id., ¶ 277.
14 Id.
Modification of ETC Universal Service Requirements and State COLR Requirements (where still applicable). Legacy ETC service requirements on the federal side and state COLR requirements on the state side need to change, and in many cases be eliminated. In competitive markets these requirements do not make sense. ETC and COLR service requirements often force just one provider to offer supported services throughout large designated areas, even where that provider receives no universal service support. See e.g. 47 U.S.C. § 214, 47 C.F.R. § 54.201, et seq. Particularly where consumers have multiple options from different providers and technologies it is unnecessary – and a needless drain on carrier resources – to maintain legacy service requirements designed for a monopoly environment that is long gone. There are increasingly fewer areas where the market would not reach but for universal service fund (USF) support. In those few remaining areas clearly defined service requirements that are narrowly tailored to meet the Commission’s revamped, broadband-focused universal service goals are appropriate. Elsewhere, the Commission should free up providers’ resources to upgrade their networks and deliver faster services to their customers.

There is no legitimate policy reason to require carriers to serve areas where it is not profitable to do so and where consumers have other alternatives. To address these issues the Commission should take action on its pending FNPRM, and at a minimum establish a federal policy for ETC requirements that applies service obligations in places and to providers only in exchange for actual receipt of USF funding to satisfy those obligations. The Commission should also confirm that any inconsistent state regulations such as continuing COLR obligations in certain areas are preempted.

With respect to important services offered to low-income consumers through the Lifeline program the Commission should, likewise, take a hard look at what service requirements make the most sense for consumers. Lifeline is rapidly becoming a predominantly wireless program. Many prepaid wireless providers (providers that are not traditional ETCs) with business models tailored to the needs of low-income consumers have emerged to serve Lifeline participants. And like many households that have cut the cord

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entirely or are relying predominantly on wireless voice services, Lifeline beneficiaries are rapidly switching to wireless providers.\textsuperscript{19} In fact, low-income households are among the most likely to cut the cord.\textsuperscript{20} Given these clear trends, and unmistakable consumer preferences, it makes sense to divorce traditional ETC status and the “high cost” area USF service programs from Lifeline. The low-income program should be retooled to better reflect what is actually happening in the market and what low-income consumers need and expect from Lifeline support.

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Please contact me with any questions. Thank you for your assistance.

Sincerely,

Maggie McCready

cc: Jonathan Chambers
    Gene Fullano
    Lisa Gelb
    Rebekah Goodheart
    Bill Lake
    Sean Lev
    Patrick Halley
    Charles Mathias
    Tejas Narechania
    Henning Schultrinne
    Michael Steffen
    Tim Stelzig
    Steve Wildman

\textsuperscript{19} See id.

\textsuperscript{20} See CDC Wireless Substitution Report at 3 (“Adults living in poverty (51.8%) were more likely than adults living near poverty (42.3%) and higher income adults (30.7%) to be living in households with only wireless telephones.”)