

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
US TELEPACIFIC CORP., <i>ET AL.</i>	)	WC Docket No. 12-353
	)	
REQUESTING COMMISSION TO REFRESH	)	RM-11358
RECORD AND TAKE EXPEDITED ACTION	)	
TO UPDATE COPPER RETIREMENT	)	
RULES	)	

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Public Notice<sup>1</sup> issued by the Federal Communications Commission (“FCC” or “Commission”) seeking input regarding the January 25, 2013 request of US Telepacific Corp. and others (“US Telepacific, *et al.*”) that the Commission refresh the record and take expedited action to update its copper retirement rules.<sup>2</sup>

**BACKGROUND AND SUMMARY**

In their request, US Telepacific, *et al.* repeat tired arguments that the Commission should revisit its long-standing copper retirement policies established in the *Triennial Review Order* (“TRO”),<sup>3</sup> despite overwhelming evidence that a regulatory regime allowing incumbent local

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<sup>1</sup> “Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission’s Copper Retirement Rules,” Public Notice, DA 13-147, WC Docket No. 12-353; RM-11358 (rel. Feb. 4, 2013).

<sup>2</sup> Letter of US Telepacific Corp., *et al.*, Requesting Commission to Refresh Record and Take Expedited Action to Update Copper Retirement Rules, WC Docket Nos. 10-188, 12-353; GN Docket Nos. 09-51, 13-5; RM-11358 (filed Jan. 25, 2013) (“US Telepacific, *et al.* Letter”). Also included on the request were Mpower Communications Corp., ACN Communications Services, Inc., Level 3 Communications, LLC, TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc.

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) (“TRO”).

exchange carriers (“ILECs”) to retire duplicative copper facilities (subject to network disclosure requirements) following the deployment of all-fiber networks has encouraged more widespread availability of next-generation broadband networks for consumers.<sup>4</sup>

As explained below, US Telepacific, *et al.* have raised no new arguments or rationale that would justify departure from the Commission’s long-standing copper retirement policies.

Instead, they continue to make extreme demands that are flatly inconsistent with current law that should be rejected because the existing regulatory regime is accomplishing its stated goals.

Contrary to the arguments raised by USTelepacific, *et al.*, competitive local exchange carriers (“CLECs”) are not impaired without access to copper loops for the provision of broadband services. Nor has the public interest been harmed by the Commission’s current copper retirement rules. Rather, those rules provide incentives for both ILECs and their competitors to invest in the deployment of fiber, providing consumers with additional service options and faster broadband speeds that can more readily keep pace with consumer demand.

Over the past decade, ILECs have invested billions of dollars in next-generation networks and services in direct reliance on these policies, and consumers have reaped the benefits of the

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<sup>4</sup> Specifically, US Telepacific, *et al.* request that the FCC: (1) revise its rules to ensure that copper routes supporting at least one customer currently receiving broadband over copper are preserved; (2) reverse its “deemed denied” standard and require an affirmative finding by the FCC that the disabling or removal of copper being used to provide broadband to existing customers is in the public interest; (3) clarify that permission to retire copper does not permit physical removal from the ground (or poles), and that any action short of physical removal does not terminate the obligation to provide unbundled access to loop elements over copper; (4) separately define removal and allow it only in very limited circumstances; (5) apply the copper retirement rules to the feeder portion of the loop, in addition to other portions of the loop; and (6) clarify that states may adopt restrictions regarding copper retirement that are stronger than the FCC’s rules. US Telepacific, *et al.* Letter at 22-23. US Telepacific, *et al.* also ask the Commission to suspend its copper retirement rules pending completion of the rulemaking and only permit ILECs to retire copper loops in emergency circumstances. *Id.*

Commission's forward-looking approach regarding copper retirement.<sup>5</sup> Although most ITTA members have not undertaken fiber deployment projects on the same massive scale as some larger providers, they have been at the forefront of the transition to IP-enabled services and are deploying fiber deeper into their networks to increase broadband capacity, expand broadband availability, improve network quality and the customer experience, and position themselves for future product innovation.

There is no dispute that the Commission's incentive-based broadband framework has been a success. According to the Commission's statistics, there were 23.5 million high-speed lines in service nationwide at the end of June 2003, just before the *TRO*'s copper retirement rules took effect.<sup>6</sup> In mid-2011, there were more than 206.1 million such lines.<sup>7</sup> Growth in fiber-optic lines has been particularly dramatic: In June 2003, there were roughly 576,000 such lines, but in June 2011, there were nearly 5.5 million – more than 10 times as many.<sup>8</sup>

For the Commission to change its copper retirement rules now would saddle ILECs with obligations to maintain duplicative facilities at the expense of continued investment in new networks and technologies that would benefit consumers and subject ILECs to disproportionate regulatory burdens compared to competing providers of voice and broadband services. The

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<sup>5</sup> See, e.g., Letter from Donna Epps, Verizon, to Marlene Dortch, FCC Secretary, GN Docket No. 9-51 (filed Feb. 12, 2010) (explaining that “[s]ince the Commission’s decisions eliminating unbundling requirements for FTTP and refusing to restrict the ability of companies deploying fiber facilities to retire redundant copper network facilities, Verizon alone has committed more than \$23 billion in investment to its all-fiber FiOS network”).

<sup>6</sup> Report, High-Speed Services for Internet Access: Status as of June 30, 2003, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at Table 1 (rel. Dec. 2003) (“*June 2003 Report*”).

<sup>7</sup> Report, Internet Access Services: Status as of June 30, 2011, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at Table 7 (rel. June 2012) (“*June 2011 Report*”).

<sup>8</sup> *June 2003 Report* at Table 1; *June 2011 Report* at Table 7.

Commission must reject proposals calling for action that would contradict its broadband deployment goals and its stated preference for competitively neutral regulations.

## DISCUSSION

The Commission's current copper retirement rules arose from its determination, more than a decade ago, that the freedom for ILECs to retire copper when they overbuild their networks with fiber provides an incentive for both ILECs and their competitors to deploy next generation networks. The policies adopted in the *TRO* lowered barriers to investment for ILECs by rejecting requirements that ILECs continue to provide legacy plant for use by CLECs at Total Element Long Run Incremental Cost ("TELRIC") rates following fiber overbuilds or provide CLECs with unbundled access to replacement next generation facilities.<sup>9</sup> Similarly, the Commission created incentives for CLECs to deploy their own fiber with the knowledge that ILECs would not be forced to maintain duplicative facilities and equipment for the sole use of their competitors or offer access to next generation networks on an unbundled basis.<sup>10</sup>

As broadband deployment and adoption have become a primary focus of the Commission's regulatory agenda, the Commission's policies have continued to recognize the need to pursue a regulatory approach that facilitates the fundamental shift away from traditional wireline voice-centric technologies to next generation networks and services. As the Commission recognized in the National Broadband Plan, legacy regulations that require ILECs to maintain POTS are "not sustainable" because they reduce incentives for ILECs to deploy next generation facilities, "siphon[] investments away from new networks and services," and result in significant "stranded" investment in outdated facilities and technologies.<sup>11</sup> In outlining steps the

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<sup>9</sup> See *TRO* at ¶ 272, 281.

<sup>10</sup> See *id.*

<sup>11</sup> "Connecting America: The National Broadband Plan," at 59 (2010), available at: <http://www.broadband.gov/> ("National Broadband Plan").

Commission should take to promote universal broadband access for consumers, the National Broadband Plan cautioned the Commission to ensure “that legacy regulations and services did not become a drag on the transition to a more modern and efficient use of resources... or make it difficult to achieve certain public policy goals.”<sup>12</sup>

Consistent with these aims, the Commission recently established the Technology Transitions Policy Task Force to provide recommendations on modernizing the Commission’s policies to encourage the nation’s broadband transition, in which “communications networks are increasingly migrating from special purpose to general purpose, from circuit-switched to packet-switched, and from copper to fiber and wireless-based networks.”<sup>13</sup> As Chairman Genachowski stated, the task force will assist the Commission in answering what he identified as “the fundamental policy question for communications in the 21st century: In a broadband world, how can we best ensure that our nation’s communications policies continue to drive a virtuous cycle of innovation and investment, promote competition, and protect consumers?”<sup>14</sup>

The Commission must resist proposals that would undermine its long-standing and important broadband policy objectives. Modifications like those suggested by US Telepacific, *et*

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<sup>12</sup> *Id.*

<sup>13</sup> “FCC Chairman Julius Genachowski Announced Formation of ‘Technology Transitions Policy Task Force,’” News Release, *available at*: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db1210/DOC-317837A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1210/DOC-317837A1.pdf) (rel. Dec. 10, 2012).

<sup>14</sup> *Id.* Establishing the Technology Transitions Policy Task Force is only one of the recent Commission endeavors to review and update policies that were formulated for a different technological and market landscape. Other examples include its revolutionary transformation of the universal service and intercarrier compensation regimes to reflect the current communications marketplace and ongoing efforts to unleash new spectrum to meet skyrocketing wireless demand. *See, e.g., In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”); *In the Matter of Revision of Part 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, FCC 13-22, Notice of Proposed Rulemaking (rel. Feb. 20, 2013).

*al.* already have been rejected by the Commission. Indeed, the changes they seek would constitute a reversal of the *TRO*'s explicit findings regarding unbundling and notice obligations following a fiber overbuild (findings that were upheld on appeal by the D.C. Circuit).<sup>15</sup>

Specifically, the Commission found in the *TRO* that CLECs were only impaired in the provision of *narrowband* service following fiber overbuilds.<sup>16</sup> With respect to broadband service, the Commission determined that CLECs and ILECs face relatively similar obstacles in entering the market, such that CLECs are entirely capable of deploying their own broadband facilities.<sup>17</sup> Therefore, all that the *TRO* requires of ILECs with respect to copper retirement is “continued access to a local loop suitable for providing narrowband services to the mass market.”<sup>18</sup> In addition, the Commission concluded that ILECs should not have to obtain regulatory approval prior to loop retirement because the Commission’s existing notice of network change requirements “serve as adequate safeguards.”<sup>19</sup>

Not only are US TelePacific, *et al.*'s proposals patently inconsistent with the Commission’s previous findings, they also fail to further the FCC’s general broadband policy goal to bring broadband to consumers, particularly those in rural and high-cost areas who lack such access today, by focusing on broadband competition in areas where it already exists.

Moreover, adopting proposals such as those advanced by US TelePacific, *et al.* would place ILECs at a competitive disadvantage in comparison to other providers who would not be subject to such rules. As part of the Commission’s efforts to modernize its regulations to reduce regulatory burdens and facilitate investment in new networks and services, the FCC has

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<sup>15</sup> *United States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

<sup>16</sup> *TRO* at ¶ 277.

<sup>17</sup> *Id.* at ¶¶ 275-76.

<sup>18</sup> *Id.* at ¶ 277.

<sup>19</sup> *Id.* at ¶ 281.

articulated a clear policy preference for eliminating or refraining from adopting regulations that create competitive distortions in the marketplace.<sup>20</sup> The proposals advanced by US Telepacific, *et al.* would do nothing to further this goal, and instead would introduce competitive disparities by applying unnecessary regulations exclusively to ILECs.

The Commission must reject proposals that would prevent it from achieving its broadband and competition policy objectives. As the Commission has recognized, “[a]ccess to robust broadband service is “crucial to our nation’s economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education.”<sup>21</sup> Indeed, the job opportunities broadband access makes available “are critical to our nation’s economic recovery and long term economic health, particularly in small towns... [and] rural and insular areas.”<sup>22</sup>

US Telepacific, *et al.* have raised no new arguments that would justify turning back the clock on the Commission’s incentive-based broadband framework – a framework whose success has been proven time and again by ongoing and significant private investment in, as well as the continued growth of, high speed data lines over the past 10 years. The modifications proposed by US Telepacific, *et al.* would create disincentives for broader investment in next-generation networks and services, promote inefficient allocation of scarce investment dollars, and exacerbate marketplace distortions. The Commission must dismiss US Telepacific, *et al.*’s proposals and continue on its path to “accelerate the transition from circuit-switched to IP

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<sup>20</sup> See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, ¶ 53 (2007).

<sup>21</sup> *USF/ICC Transformation Order* at ¶ 3 (internal citations omitted).

<sup>22</sup> *Id.*

networks, with voice ultimately one of many applications running over fixed and mobile broadband networks.”<sup>23</sup>

### CONCLUSION

For all of the foregoing reasons, the Commission should reject the proposals of US Telepacific, *et al.* and others that would compromise the FCC’s goals to promote universal broadband access for all Americans.

Respectfully submitted,

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<sup>23</sup> *Id.* at ¶ 11.