



October 5, 2016

VIA HAND DELIVERY

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

Re: Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; WC Docket Nos. 16-143, 15-247 & 05-25, RM-10593

Dear Ms. Dortch:

Pursuant to the Commission’s June 24, 2016 *Order* (“*June 24 Order*”), which “extends the procedures for submitting and accessing Confidential Information adopted in the business data services protective orders in WC Docket No. 05-25 to Confidential Information filed in the record in WC Docket No. 16-143,”¹ Sprint Corporation (“Sprint”) hereby submits a highly confidential version of the attached letter, which contains highly confidential information protected under the following protective orders adopted by the Commission:

- *Modified Protective Order*² in WC Docket No. 05-25, RM-10593
- *Second Protective Order*³ in WC Docket No. 05-25, RM-10593
- *Data Collection Protective Order*⁴ in WC Docket No. 05-25, RM-10593

¹ *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, and 05-25, RM-10593, Order, DA 16-722 (rel. June 24, 2016).

² *See Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, DA 10-2075, 25 FCC Rcd. 15,168 (Wireline Comp. Bur. 2010).

³ *See Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, DA 10-2419, 25 FCC Rcd. 17,725 (Wireline Comp. Bur. 2010) (“*Second Protective Order*”).

⁴ *See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, DA 14-1424, 29 FCC

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- *Business Data Services Data Collection Protective Order*⁵ in WC Docket Nos. 15-247 & 05-25, RM-10593
- *Tariff Investigation Protective Order*⁶ in WC Docket Nos. 15-247 & 05-25, RM-10593

Highly confidential treatment of the respectively marked portions of the attached document is required to protect information subject to the above-mentioned protective orders, including information regarding:

- The “types of customers companies serve and the types of special access-type services demanded by those customers”;⁷
- The “terms and conditions of or strategy related to . . . most sensitive business negotiations or contracts”;⁸
- The “nature or contents of private non-tariffed commercial agreements”;⁹ and
- “Descriptions of CLEC or out-of-region ILEC sales, pricing structures and discounts” and “expenditures” under “certain rate structures and discount plans.”¹⁰

The marked information is not available from public sources, and, “if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.”¹¹

In accordance with the protective orders in WC Docket No. 05-25, extended to WC Docket No. 16-143 by the *June 24 Order*, Sprint will file a redacted version of the attached document electronically via ECFS, and will submit one original and two hardcopies without

Rcd. 11,657 (Wireline Comp. Bur. 2014) (“*Data Collection Protective Order*”). See also *Public Statements Derived from Highly Confidential Data Filed in Response to the Business Data Services (Special Access) Data Collection*, Public Notice, DA 16-368, 31 FCC Rcd. 3420 (2016) (clarifying the confidential treatment of data derived from the data collection).

⁵ See *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Protective Orders, DA 15-1387, 30 FCC Rcd. 13,680, App. A (Wireline Comp. Bur. 2015).

⁶ See *id.* App. B (“*Tariff Investigation Protective Order*”).

⁷ *Id.*

⁸ *Tariff Investigation Protective Order* at 13,704.

⁹ *Id.*

¹⁰ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA 12-199, 27 FCC Rcd. 1545, 1548 (Feb. 13, 2012) (supplementing the *Second Protective Order*) (“*Second Supplement to Second Protective Order*”).

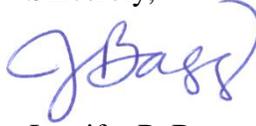
¹¹ *Second Protective Order* ¶ 3; *First Supplement to Second Protective Order* at 6571; *Second Supplement to Second Protective Order* at 1546; *Data Collection Protective Order* ¶ 5.

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redaction to the Secretary's Office. Sprint will also submit one CD copy without redaction to Christopher Koves, Pricing Policy Division, Wireline Competition Bureau.

Please contact me if you have any questions or require any additional information.

Sincerely,



Jennifer P. Bagg
Counsel to Sprint Corporation

cc: Meeting participants

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October 5, 2016

Ex Parte

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

Re: *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service*, RM-10593.

Dear Ms. Dortch:

On October 3, 2016, Karen Reidy and Angie Kronenberg of INCOMPAS, John T. Nakahata of Harris, Wiltshire & Grannis LLP, counsel for Windstream Services, LLC, and the undersigned, counsel for Sprint Corporation, met with Pam Arluk, Richard Benson, Bill Kehoe, Joseph Price, Christine Sanquist, Deena Shetler, and David Zesiger of the Wireline Competition Bureau, and Bill Dever of the Office of General Counsel.

We discussed the Verizon-INCOMPAS proposal to reform the Business Data Services (“BDS”) marketplace¹ and the reasons it presents an administrable framework for the Commission to meet its statutory obligation to ensure that rates, terms, and conditions for all BDS services are just, reasonable, and not unreasonably discriminatory. We also discussed CenturyLink’s recent claim that the framework raises “[c]omplex . . . [i]mplementation [i]ssues,” primarily because it would require the Commission to analyze competition at the level of a census block for high-bandwidth services.² As explained in more detail below, CenturyLink’s claims are incorrect.

¹ See Letter from Kathleen Grillo, Senior Vice President, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143 (filed Aug. 9, 2016) (“August 2016 Joint Verizon-INCOMPAS Letter”).

² Letter from Russell P. Hanser, Counsel for CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143, at 3 (filed Sept. 28, 2016) (“CenturyLink Implementation Ex Parte”).

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First, CenturyLink fundamentally miscomprehends the operation of the Verizon-INCOMPAS framework and creates the illusion of complexity where none exists:

- *DS1s, DS3s, and Ethernet services at or below 50 Mbps fall outside the scope of CenturyLink’s primary critique.* Given almost no customers have a significant choice in low-bandwidth BDS providers, Verizon and INCOMPAS propose that the Commission presume that all BDS at or below 50 Mbps are offered on a non-competitive basis. As a result, the Verizon-INCOMPAS framework could not require incumbent local exchange carriers (“ILECs”) to “[c]hang[e] the geographic unit from a wire center to a census block, census block group or census tract” when setting prices for DS1s, DS3s, and Ethernet services at or below 50 Mbps, as CenturyLink suggests.³ Indeed, the proposal would streamline compliance relative to the Commission’s existing framework by eliminating the need for sellers to determine the level of pricing flexibility, if any, applicable to a particular low-bandwidth BDS offering.
- *Sellers need not price BDS by the geographic unit employed by the Commission’s competitive market test.* Even for the higher-bandwidth services that would be subject to a competitive market test (“CMT”) under the Verizon-INCOMPAS proposal, CenturyLink falsely assumes that the Commission’s decision to *apply the CMT* at a census block level will require sellers to *price BDS* at a census block level. Nothing in the Verizon-INCOMPAS proposal would compel this result. The use of a benchmark to discipline rates in non-competitive markets provides sellers with substantial flexibility to set rates. As a result, under the proposed framework, carriers remain free to price BDS across any geographic area they deem fit, and to charge any set of customers the exact same rate, even if some are located in competitive areas and others are not. The only situation in which an ILEC would need to determine the competitive status of a census block before quoting a rate is if the ILEC wished to charge *higher* rates in competitive areas than in non-competitive areas. These pricing scenarios should be exceedingly rare, as competitive market forces will serve to discourage such pricing behavior in competitive areas.
- *“Circuit audits” are simply unnecessary.* CenturyLink claims that a “lengthy circuit audit will likely be required” in order to implement BDS reform, because the path of a BDS circuit subject to the CMT may cross both competitive and non-competitive census blocks.⁴ Though imaginative, this criticism ignores the operation of the marketplace for packet-based services as well as the proposed benchmark system. In

³ *Id.* at 3.

⁴ *Id.* at 5.

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the marketplace, Ethernet rates are determined based on the location of the end-user—not the location of each segment of the transport route. The same is true of the proposed benchmark. Indeed, by proposing that the benchmark rate “cover charges for the carrier handoff point to the end user premises,” the Verizon-INCOMPAS proposal explicitly avoids the complications suggested by CenturyLink.⁵

- *The comparison to Connect America Fund Phase II implementation requirements underscores the administrability of BDS reforms.* CenturyLink suggests that BDS reform raises similar administrative hurdles as the Commission’s implementation of Connect America Fund Phase II (“CAF Phase II”) support. This is incorrect. Unlike CAF Phase II, which required the Commission to coordinate with and formalize the role of the Universal Service Administrative Company (“USAC”) and develop a cost model to determine support amounts, the Verizon-INCOMPAS proposal leverages data already available, does not require coordination with USAC, and does not require development of a cost model. Indeed, because the CAF Phase II compliance relies on census block-level determinations of service availability, CenturyLink’s comparison only underscores the Commission’s evolution towards a level of policymaking precision consistent with BDS reform proposals. It also underscores the ability of CenturyLink—as the Nation’s largest recipient of CAF support and an active participant in the CAF challenge process—to use geocoding to track its deployments and analyze telecommunications markets at the level of a census block.

Second, CenturyLink already supports unique ordering at levels more granular than the ILEC wire center, and can therefore implement census block-based pricing to the limited extent it may become necessary. Contrary to CenturyLink’s claims,⁶ CenturyLink’s own website demonstrates that the company can determine service availability for its fiber network at the level of the individual customer location—not the wire center.⁷ Moreover, under existing pricing flexibility rules, CenturyLink can offer BDS on a customer-specific basis; indeed, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED] **[END HIGHLY CONFIDENTIAL]**. This practice necessarily requires CenturyLink to price BDS at the level of the individual customer location

⁵ August 2016 Joint Verizon-INCOMPAS Letter at 2; *see also* Letter from John T. Nakahata, Counsel to Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, at 2 (filed Aug. 22, 2016) (explaining the need for the Commission to specify “that all charges up to and including the carrier handoff point are part of the benchmark rate”).

⁶ CenturyLink Implementation Ex Parte at 4.

⁷ *See CenturyLink | Fiber Internet | 1 Gigabit High Speed Internet*, <https://www.centurylink.com/fiber/>.

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rather than the wire center. The same conclusion follows from CenturyLink’s practice of serving large enterprise customers under a single contract rate.⁸ Because these enterprise customers purchase BDS across many locations served by a number of different wire centers, CenturyLink must be able to price BDS delivered from the same wire center at different rates depending on the end-user’s location. Sprint’s experience soliciting BDS services confirms this existing capability, as [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]. The sales practices of Verizon and AT&T, both of which currently publish lists of BDS rates that vary by building, further establish that the industry will be perfectly capable of adjusting prices on a granular geographic basis in short order.⁹

Third, to the extent CenturyLink truly needs to put systems in place that would allow it to price BDS based on the competitive status of granular geographic areas, that hardly provides reason to delay BDS reform. As an initial matter, any seller in a competitive market should be capable of adjusting rates in response to local competition. Thus, if it truly is the case that CenturyLink has yet to implement systems designed to accommodate granular pricing—notwithstanding its enormous profitability and concerted efforts to unleash billions in post-merger synergies¹⁰—that deficiency would only underscore the lack of BDS competition within

⁸ See Letter from Russell P. Hanser, Counsel for CenturyLink et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143, at 9 (filed Aug. 29, 2016) (discussing the ILECs’ “many multi-location deals [that], for purposes of convenience, apply the same averaged rates in all locations”).

⁹ See Supplemental Reply Declaration of Jonathan B. Baker on Competition and Market Power in the Provision of Business Data Services, WC Docket No. 16-143, ¶ 7 (filed Sept. 21, 2016); see also [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]. To the extent smaller ILECs need to absorb the financial impact of the Commission’s new rules over time, the proper solution is the modified transition mechanism supported by Frontier, Sprint, and Windstream—and not a delay in the effective date of the Commission’s long-awaited reform framework. See Letter from Kathleen Q. Abernathy, Executive Vice President – External Affairs, Frontier Communications, Charles W. McKee, Vice President – Government Affairs, Federal and State Regulatory, Sprint Corporation, and Eric N. Einhorn, Senior Vice President of Government Affairs, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143 (filed Oct. 3, 2016).

¹⁰ See Letter from Karen Reidy, Vice President, Regulatory, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143 (filed Aug. 25, 2016); Letter from Malena

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CenturyLink’s incumbent territory and the urgency of regulatory relief. And if CenturyLink has developed a capability for more granular pricing for retail customers, but not wholesale, that choice reflects an attempt to execute price squeezes against wholesale purchasers, and the costs of correcting such discriminatory treatment should not weigh against reform.

Equally important, the burdens of compliance simply cannot be as onerous as CenturyLink suggests. As CenturyLink readily admits, existing billing and provisioning systems, tariffs, and tariff review process filings already distinguish between regulated and unregulated rates and services.¹¹ Moreover, as explained above, CenturyLink routinely uses geocoding to document compliance with CAF Phase II conditions. Indeed, CenturyLink provides no explanation of how compliance with BDS rules would prove any more difficult than the complex rate structures managed by industry and overseen by the Commission today.¹² CenturyLink also chooses to ignore the most straightforward means of complying with updated pricing rules, such as publishing downward rate adjustments in pricing schedules while keeping non-rate terms and conditions intact.

Fourth, CenturyLink’s vague suggestion that BDS customers, including “PSAP’s, hospitals and schools,” will suffer service interruptions as a result of reform should be dismissed out of hand.¹³ The proposed framework merely requires sellers to price BDS lawfully, and would not require any change in service delivery to these customers. To the extent very large buyers of BDS will need to update their ordering and verification systems, the benefits to competition of increased access to BDS at competitive rates will more than offset these transition-related expenses. Indeed, while CenturyLink is quick to note the “ripple effects” of implementation costs, it makes no effort to address the “ripple effects” of implementation benefits to consumers, competition, and the economy at large—which will amount to billions of dollars in increased output each year.¹⁴

* * *

F. Barzilai, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143 (filed Sept. 22, 2016).

¹¹ CenturyLink Implementation Ex Parte at 9.

¹² See NECA Access Service FCC Tariff No. 5 (establishing numerous rate bands for various regulated and non-regulated services delivered by hundreds of participating ILECs).

¹³ CenturyLink Implementation Ex Parte at 4.

¹⁴ See Letter from Karen Reidy, Vice President, Regulatory Affairs, INCOMPAS, to Tom Wheeler, Chairman, FCC, WC Docket No. 16-143 (filed July 28, 2016) (attaching WIK-Consult Report demonstrating that BDS price reductions would have “spill-over effects that multiply the benefits to the broader society”).

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Upon closer examination, CenturyLink's criticism about the administratibility of the Verizon-INCOMPAS proposal greatly exaggerates the compliance burdens of reform, and only serves to reinforce the need for prompt action to remedy the broken BDS marketplace. Accordingly, the Commission should adopt rules based on the framework proposed by Verizon and INCOMPAS and make them effective without delay.

Pursuant to the Commission's rules, I have filed a copy of this for inclusion in the public record of the above-referenced proceedings. Please contact the undersigned with any questions.

Sincerely,



Jennifer P. Bagg
Counsel for Sprint Corporation

cc: Meeting participants