Declaration of Jason Adkins

REDACTED - FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
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	)	WC Docket No. 05-25
Exchange Carriers	)	
	)	
AT&T Corporation Petition for Rulemaking	)	RM-10593
To Reform Regulation of Incumbent Local	)	
Exchange Carrier Rates for Interstate Special	)	
Access Services	)	

REDACTED DECLARATION OF JASON ADKINS ON BEHALF OF UNITE PRIVATE NETWORKS

1. My name is Jason Adkins, and I am President of Unite Private Networks("UPN"). UPN provides high-bandwidth, fiber-based communications networks and related services to schools, governments, carriers, data centers, hospitals, and enterprise business customers throughout the United States. Service offerings include dark and lit fiber, private line, optical Ethernet, Internet access, data center services, and other customized solutions. In my capacity as President, I oversee virtually every aspect of UPN from initial contact through our sales team to final delivery of service through our construction team. I understand that the Federal Communications Commission ("FCC" or "Commission") is considering a proposal that would establish benchmark prices that would be applicable to all providers of packet-switched business

data services ("BDS") in those geographic markets that the Commission deemed non-competitive. I further understand that such benchmarks would be based on the tariffed BDS rates for DS1s of the incumbent LEC and that they would establish a safe harbor at or below which a price for BDS would be presumed to be just and reasonable and not subject to challenge. I understand that prices above the benchmark would be subject to challenge as unjust and unreasonable, but the provider would have the opportunity to demonstrate that the price is just and reasonable.

2. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

3. The foregoing benchmark pricing proposal, if adopted, would seriously impede UPN's efforts to compete in the market for Ethernet BDS and, more importantly, to expand such competition to areas currently underserved by fiber. To begin, there is not a one-to-one relationship between the services that we provide to our customers and the tariffed TDM BDS

circuits ILECs provide. UPN does not sell circuits; it sells solutions to customer problems, and those solutions cannot necessarily be mapped against tariffed TDM BDS circuits the ILECs sell.

4. For example, ILEC pricing is based on various components that come from years of selling TDM circuits, such as costs to connect to their central offices or to aggregate in certain areas to provide bandwidth downstream. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

5. Currently, UPN competes with the ILEC and the cable company in every market it is in and where it plans to expand. Applying a benchmark based on ILEC TDM pricing structures would be almost impossible considering that UPN's pricing structure is based on the individual needs of the customer rather than the components offered by the ILEC. In addition, UPN provides solutions to customers that require connections between locations that cross ILEC territories. Ensuring that the correct benchmark is used in each area and that the correct pricing structure is followed would be extremely difficult and administratively burdensome for a company of UPN's size.

6. These examples show that we would never have certainty as to the appropriate benchmark price applicable to the service we offer to customers. Uncertainty creates business problems for us. At present, to make a sale, we only have to arrive at a price that is satisfactory to both us and our customer. If the benchmark pricing regulation proposal is adopted by the FCC, the resulting uncertainty as to whether a price complies with the FCC's rules would create risks that we do not currently face. Primarily, there is the risk that the price might be found to be out of compliance with the FCC's benchmark. In addition, even if the price is ultimately found to be in compliance, having to defend it before the FCC or a court would result in expense and distraction from our core mission of building fiber-based networks and providing BDS and other fiber-based services.

7. The business of providing competitive BDS is highly capital intensive. Those with capital to invest or lend disdain risk. UPN's lender base reviews our contract base and projections and then makes a determination as to whether to lend based on the length and terms of our current contracts and our prospects for future contracts. If UPN's ability to secure future contracts is affected by the pricing uncertainty noted above, UPN may have difficulty raising capital for future projects.

8. The additional risk described above is likely to increase our cost of capital. This will reduce the number of competitive projects we can build and may make it impossible for us to offer service to many customers, consistent with our need to provide investors and lenders with the return on their capital that they demand.

9. In addition, regardless of whether the service we sell can be mapped against ILEC tariffed TDM circuits, the benchmark creates further uncertainty because of the nature and quality of the solutions our customers demand.

10. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL** If benchmark regulation is enacted and applied to CFPs, UPN would not be able to provide innovative and diverse solutions to its customers as it is highly likely that UPN would not be able to recoup its added costs under the benchmark model.

11. As discussed in ¶ 432 of the FCC's NPRM, the FCC might consider making allowance for providers offering an enhanced quality of service. Failing to allow for enhanced quality of service would be tantamount to disallowing it, as enhanced quality of service costs a provider money. No provider is likely to be willing to provide enhanced quality of service at

higher cost without compensation. Even if allowance is made for enhanced quality of service, there is no unambiguously correct method of calculating the appropriate adjustment for it. Therefore, even if we were to charge what we believe in good faith is an appropriate increased amount to account for increased quality of service, we would be running the risk of having our price challenged as in violation of the FCC's rules. This risk is detrimental for the reasons discussed in ¶¶ 6-8, above.

12. In addition, if the purpose of the benchmark is to set a level above which pricing would be presumed to be unjust and unreasonable, the benchmark level would have to be adjusted for differences in cost between the ILEC and the competitive provider. I am not aware of any suggestion on the part of the FCC that it would allow adjustment for cost differences. Among the reasons why our costs may exceed the costs of the ILEC are:

a. Higher cost of capital, as discussed above.

b. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

c. **BEGIN HIGHLY CONFIDENTIAL** [redacted]

[redacted] **END HIGHLY CONFIDENTIAL**

d. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

e. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

13. In this paragraph, I present two examples of fees charged to us as a CFP that were not and/or are not being charged to the ILEC in the area.

a. **BEGIN HIGHLY CONFIDENTIAL** [redacted]

[redacted] **END HIGHLY CONFIDENTIAL**

b. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

c. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

14. It might be possible for the FCC to fashion a benchmark rule that allowed for some or all of these factors, but the rule could not spell out exactly how much of an adjustment should be made. For example, UPN can estimate its own cost of capital — certain our cost of capital is higher than any of the price cap ILECs — but we are unaware how much higher our cost of capital is than each ILEC with which it competes. In a proceeding challenging our prices, we would not know how much of an adjustment should be made for increased cost of capital, even assuming that the FCC's rule made clear that such an adjustment was appropriate.

15. The proposed benchmark approach would also restrict UPN's ability to compete with the ILEC via creative pricing. For example, ILECs typically recover the costs of new fiber construction through an upfront NRC ("special construction"). Our customers typically prefer not to pay upfront charges. In such situations, UPN instead charges nothing upfront, but recovers the cost of new construction through MRCs over the life of the contract. Therefore, wherever

new construction is involved, which is almost always the case in our projects, our MRCs are likely to exceed the benchmark, opening us up to potential challenge.

16. Even if the FCC allows a CFP to justify any above-benchmark MRCs by showing that its NRC is lower than the ILEC's, that does not eliminate the problem. Translating an NRC into an MRC is not an exact science. As I noted above, we add a charge for the cost of the money that we advance on behalf of our customer. While we include a reasonable rate of interest, a customer may dispute our calculation. The result, again, is risk of the expense and disruption of a claim that we are not meeting the benchmark would bring.

17. UPN offers Software Defined Networking ("SDN") and other "burstable" solutions. The bandwidth provided by these services can vary from day to day or one moment to the next based on the needs of the customer's network. With SDN, a customer's 50 Mbps circuit could one day support 1 Gbps, but support 100 Mbps a week later. Because the proposed benchmarks are directly dependent on the bandwidth provided, it is unclear how the benchmark would apply. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

18. Further, UPN frequently builds Ethernet BDS solutions for customers with multiple locations as a single package at a single price. The customer's locations may span the territories of two or more price cap ILECs, each of which employs different rates and a different rate structure for its tariffed BDS. I anticipate that we will have great difficulty attempting to fashion contracts for such customers that we are confident can comply with the benchmarks in the territories of multiple price cap LECs.

19. The uncertainty resulting from benchmarks, as discussed above, would reduce the number of competitive buildouts we undertake, reducing competition in the locations that we would otherwise serve.

[Signature on following page]

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I declare under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief.

Jason Adkins

Dated: October 3, 2016