Declaration of Timothy Biltz

REDACTED - FOR PUBLIC INSPECTION

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

In the Matter of	)	
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	))	WC Docket No. 05-25, WC Docket No. 16-143, WC Docket No. 15-247
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)))	RM-10593

DECLARATION OF TIMOTHY BILTZ

1. My name is Timothy Biltz. I am the President and Chief Executive Officer for Lumos Networks Corporation.

2. 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 rate 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.

3. Over the last few years, Lumos has had substantial success in bringing the benefits of competition to the markets for Ethernet BDS by deploying fiber networks within the areas we serve. At present, Lumos has a total of 8,985 fiber route miles/436,000 fiber strand miles located in Virginia, West Virginia, Pennsylvania, Maryland, Ohio and Kentucky. In addition, Lumos has 3,215 total "on-net" locations and over 100,000 locations that are considered "near net" or located within one-half mile of our fiber network.

4. When Lumos was created in a November 1, 2011 in a spin-off from NTELOS, Lumos Networks competed largely by purchasing the "last mile" from the ILECs, either as UNEs or BDS. At that time, Lumos had over 122,000 such customers. (Today, that number is less than 70,000.)

5. Lumos determined that, to be successful in the marketplace, it needed to have fiber optics from end-to-end to satisfy customers' growing need for bandwidth and to be able to ensure reliability and quality for each customer location. At the time of the Spin, Lumos had a 5,800 route-mile fiber network, a majority of those had thin fiber counts under IRU's with other carriers. Today, Lumos has a fiber network of 8,985 fiber route miles and, significantly, more than 436,000 total fiber strand miles. At the time of the Spin, Lumos had built fiber to only 71 Fiber to the Cell ("FTTC") sites. Today, Lumos Networks connects 1,295 unique Fiber to the Cell sites and serves 1,636 total FTTC connections.

6. At the Spin, Lumos served only the western portion of Virginia. Lumos recently completed an 822-mile network expansion into the "Tidewater" area of Virginia, encompassing the metro areas of Norfolk, Hampton, Chesapeake, Portsmouth, Suffolk, Newport News and Virginia Beach. The expansion was completed several months ahead of the initial plan and was underpinned by a 257 unique FTTC site 13-year contract with a national US wireless operator.

7. Lumos expects that the Hampton Roads/Norfolk market will be a key contributor towards its target of doubling its annual Enterprise revenue to approximately $100 million over the next five years. In June of 2016, Lumos, in conjunction with a leading third party research firm, completed a two-month refresh analysis that demonstrated the rapid growth of the annual addressable market within one mile of the Company's network since its initial study in November of 2014. The refreshed analysis demonstrates an addressable Enterprise market of nearly $100 million within one mile of the Company's network in its Norfolk/Hampton Roads market, up about 50% since the Company's initial study. Overall, the Company's network expansion into both Hampton Roads/Norfolk and Richmond increases the company's total addressable Enterprise market by about $221 million, or a 67% increase versus Lumos "core" markets in which Lumos did business in 2011.

8. The foregoing FCC benchmark pricing proposal, if adopted, would seriously impede Lumos' 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 solution we build for our customers and the tariffed TDM BDS circuits ILECs provide that appear to form the foundation for benchmark pricing proposal discussed in the record. Lumos 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.

9. For example, Lumos recently completed a project for **BEGIN HIGHLY CONFIDENTIAL** [redacted]

[redacted]

[redacted] **END HIGHLY CONFIDENTIAL** Within our core network, Lumos provides multiple diverse paths designed to assure no single fiber cut of core fiber will cause loss of connectivity between the colleges being served. It is not clear how this type of network could be mapped against a series of point-to-point circuits.

10. HCA Virginia operates 13 hospitals and more than a dozen outpatient centers and is affiliated with 3,000 physicians in Central, Southwestern and Northern Virginia. In Central Virginia, HCA Virginia includes 4 imaging centers, 6 outpatient surgery centers, more than 50 physician practice locations and the 7 hospitals - Henrico Doctors', Parham Doctors', Retreat Doctors', West Creek Emergency Center, Chippenham, Johnston-Willis, John Randolph and Spotsylvania Regional. The customized network solutions Lumos Networks built beginning in 2000 for HCA in southwest Virginia were a great success. In 2013, HCA and Lumos Networks designed a next generation healthcare grade network in Richmond capable of handling real time access to critical patient information while providing the safety and security HCA needed. This Richmond fiber network build connects 10 key HCA Virginia facilities, satellite offices and critical care locations to its Richmond Data Center. All 10 facilities are "on-net," meaning they all are linked directly to Lumos' fiber network. Lumos Networks now serves 17 HCA Virginia facilities connected on Lumos' fiber network through advanced Ethernet services. As with the Virginia Community College System example, it is not clear how this network could be mapped against a series of point-to-point circuits.

11. DePaul Community Resources is a provider of mental health and human services in Central and Western Virginia. DePaul provides foster care, adoption, and services for

individuals with developmental disabilities. DePaul has been a customer of Lumos Networks since 2002. Over that time, Lumos Networks has customized a Wide Area Network (WAN) Ethernet solution that ties together DePaul's 17 separate locations, some of them in remote areas of Virginia. DePaul needed a system that could provide increased bandwidth and improve business efficiencies between their headquarters in Roanoke and remote locations. The customized wide area network provides a secure, fast and reliable connection for each location within the organization. As with the Virginia Community College System and HCA examples, it is not clear how this network could be mapped against a series of point-to-point circuits.

12. Similarly, Lumos has faced and successfully met challenges in deploying fiber solutions for various health care and social services providers in our service territory that required customized routing to ensure that the involved networks remain resilient and reliable. Again, it is not clear how these networks could be mapped against a series of point-to-point circuits.

13. These examples show that we would never have certainty as to the appropriate benchmark price applicable to the service we offer to our customer or potential customer. 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 experience. Primarily, there is the risk that the price might be found to be out of compliance with the FCC's Rules. In addition, even if the price is ultimately found to be in compliance, having to defend it before the FCC would result in an unnecessary expenditure of time and expense, and would needlessly distract us from our core mission of building custom fiber-based networks and providing BDS and other fiber-based services.

14. The business of providing competitive BDS is highly capital intensive. Those with capital to invest or lend are concerned about risk. Lumos is a publicly traded company, and we have received a large number of calls from shareowners – and potential shareowners – asking what impact the FCC's decision in this docket will have on Lumos.

15. The additional risk will undoubtedly reduce the number of competitive projects we can build and 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. Rural areas will be disadvantaged because build costs are higher in such areas, and they are more likely be under benchmark regulation. Lumos could not earn the return that investors and lenders demand. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL**

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

17. For example, critical networks for health care and public safety organizations need to be 100% diverse from ILEC networks so as to ensure reliability and thus prevent the potential for downtime at these life-saving facilities. This increases costs. Additionally, school districts and other educational institutions oftentimes request the development and installation of custom high-bandwidth networks. Benchmark regulation would discourage Lumos from investing in and building these types of custom fiber-based networks, which typically are more costly to build. As a result, customers would have little choice but to seek to procure these

services directly from the ILECs, which have little financial incentive to spend a significant portion of their cash flow on new network builds.

18. As discussed in ¶ 432 of the FCC's NPRM, the FCC is considering making allowance for 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 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 ¶¶ 13-15, above.

19. 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.
b. Higher cost of purchasing equipment and materials resulting from ordering in smaller quantities.
c. Higher per unit cost of installation resulting from smaller customer volumes.
d. Costs of building access that are not charged to the ILEC.
e. Costs of right-of-way that are not charged to the ILEC.

f. Costs of franchise fees that are not charged to the ILEC.

20. **BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL** This is just one example of the payments and "donations" that Lumos makes in situations where the ILEC pays nothing.

21. 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, Lumos can estimate its own cost of capital and is certain that its cost of capital is higher than any of the price cap ILECs, but is unaware how much higher our cost of capital is than each ILEC with which it competes.

22. The proposed benchmark approach would also restrict Lumos' ability to compete with the ILEC via creative pricing. For example, ILECs typically charge for special construction via non-recurring charges ("NRCs"). Our customers are frequently unwilling to pay upfront charges and that is a significant point of emphasis on many projects on which we bid. In such situations, we instead charge nothing upfront, but recover the cost of new construction through MRCs over the life of the contract, including a factor for the cost of money, which we advance and recoup over time. Therefore, wherever new construction is involved, which is almost always the case in our projects, our MRCs are likely to exceed the benchmark MRCs, opening us up to challenge.

23. The FCC should allow CFPs to justify any above-benchmark MRCs by showing that our NRC is lower than the ILEC's, but even if it does, 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 consider the rate of interest that we include to be reasonable, a customer may disagree. The result, again, is risk of the expense and disruption that a claim that we are not meeting the benchmark would bring.

24. We very frequently sell Ethernet BDS to a customer in multiple locations as a single package at a single price. Those 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 can confidently comply with the benchmarks in the territories of multiple price cap LECs.

25. In conclusion, the uncertainty resulting from the imposition of benchmarks, as discussed above, would reduce the number of competitive build-outs that Lumos would undertake, thereby reducing competition and customer options in the locations that we would otherwise serve. These results are clearly contrary to the public interest and to the Commission's long stated desire of facilitating the deployment of broadband and fiber-based services.

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

Timothy G Poltz

Dated: October 4, 2016