HWG | HARRIS, WILTSHIRE & GRANNIS LLP

April 17, 2017

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,

Windstream Services, LLC ("Windstream") and Sprint Corporation ("Sprint") hereby respond to AT&T's ex parte[1] as permitted by Section 1.1206(b)(2)(iv) of the Commission's rules.

In an April 13, 2017 ex parte letter, AT&T urged the FCC to eliminate rules designed to protect American businesses—especially small businesses—from monopolist rates for DS1 and DS3 business data services ("BDS"). AT&T contended that after a recent insurgence by the cable industry, alternatives to incumbent BDS are now available in practically every business location in the country.[2] AT&T further claimed that this new market check on the ILECs' historic industry dominance not only forecloses AT&T's ability to charge monopolist BDS rates,[3] but also threatens the continued viability of AT&T's DS1 and DS3 business altogether.[4]

The very next day, AT&T announced a 15 percent price increase for intrastate private line DS3 services to take effect "on or after"[5] the date of the Commission's scheduled vote on a broadly deregulatory BDS order.[6] The states affected by AT&T's price increase—Ohio, Indiana,

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1 Letter from James P. Young, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed Apr. 13, 2017) ("AT&T April 13 Ex Parte").

2 *Id.* at 2-3, 10-14.

3 *See id.* at 2-3, 10-16.

4 *Id.* at 15.

5 *Price Change Notification, AT&T US Domestic Access Channels*, AT&T, http://serviceguidenew.att.com/apex/sg_landingpage?tgtPg=sg_nonArchivedFilePreviewer&testid=0681A0000030EbnQAE, appended hereto as Exhibit 1 at 1.

6 *See generally Business Data Services in an Internet Protocol Environment*; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*;

Wisconsin, Missouri, Texas, Illinois, and Arkansas—cover a substantial portion of the country, and are home to many businesses located outside the nation's urban cores in areas that will be hardest hit by the Commission's deregulatory proposal.[7]

AT&T's brazen price increase in retail private line services is the canary in the coal mine for the BDS marketplace after deregulation. It shows that even in the retail private line market, actual and potential competition from the cable industry is not nearly as vigorous as AT&T claims in its ex parte letter, and that the near-nationwide deregulation being contemplated by the Commission at AT&T's behest rests on incorrect or overstated assumptions about BDS competition. It also demonstrates that in just four days' time, the Commission's search for a "balanced approach" on BDS could conclude with final rules that transfer an enormous amount of wealth from the thousands of American businesses that buy dedicated broadband to a small group of large telecommunications incumbents, chief among them AT&T, while failing to promote competition.

With this submission, because of the extremely short time period permitted for response to AT&T's eleventh-hour filing, Sprint and Windstream do not respond to each argument raised by AT&T's April 13 letter. Sprint and Windstream here respond to a particular set of indefensible factual and policy positions championed by AT&T—positions that the Commission cannot lawfully adopt on this record, and that would violate Congress's clear statutory directives in any event.

I. Cable Hybrid Fiber-Coaxial Networks Cannot Provide Ubiquitous BDS Competition.

AT&T argues that the Commission should treat cable hybrid fiber-coaxial ("HFC") facilities used to provide *residential customers* with non-dedicated *best efforts* video and internet access services as *BDS* facilities in its competitive market test ("CMT").[8] As part of its argument, AT&T claims that "[u]pgrading HFC facilities to provide Ethernet services does not require replacing the wired cable infrastructure, but merely upgrading the electronics," and suggests that cable companies therefore can provide BDS to nearly any nearby customer location "in a matter of days, if not hours."[9] As explained below, AT&T's argument is incorrect, and contradicts record evidence provided by the cable providers themselves in this proceeding.

First, because cable HFC networks do not reach every BDS customer location, cable operators often must construct a last-mile coaxial line from the last node on their networks to the

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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*, Draft Report and Order, FCC-CIRC1704-04, WC Docket Nos. 16-143, 05-25, GN Docket No. 13-5, RM-10593 (rel. Mar. 30, 2017) ("*Draft Order*").

7 *See* Exhibit 1.

8 AT&T April 13 Ex Parte at 10-14.

9 *Id.* at 11-12.

customer location—a project that involves much more than the mere "upgrading of electronics."[10] As cable operators explain, these builds are costly, and therefore subject to a *case-by-case* investment evaluation of whether each proposed expansion would be cost-justified.[11] As a result, the Commission cannot reasonably assume that a cable operator will extend HFC facilities to *all* ILEC-served BDS locations simply because the cable operator provides video and internet access services to a nearby residential consumer.

Second, even if cable operators could extend their HFC networks to all BDS customer locations, they would not be able to deliver a BDS product to those customers. As an initial matter, to the extent Ethernet over HFC ("EoHFC") services approximate a BDS substitute at all, they do so for, at most, a narrow segment of the BDS marketplace, as cable operators have explained.[12] Moreover, the shared architecture of cable HFC networks further constrains the cable industry's already limited ability to offer a BDS product over HFC lines, as guaranteeing bandwidth to business customers would cannibalize the residential video and internet access services that form the cable industry's core business.[13] As emphasized repeatedly by the cable industry, these constraints ensure that EoHFC products will continue to "represent[] a very small

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[10] Comments of Comcast Corporation at 18 n.59, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed June 28, 2016) ("Comcast June 28 Comments") ("Unlike ILEC facilities, cable facilities tend to be less prevalent in business-dense urban areas than in suburban locations (due to the fact that many cable facilities were first constructed to support residential video services)").

[11] *See id.* at 19 ("As the FNPRM recognizes, Comcast and other competing providers also frequently face a lack of a timely potential for a positive return on investment, particularly in areas of low BDS demand, which would include most suburban and rural areas") (internal quotation marks and alteration omitted). *See also* Letter from Mathew A. Brill, Counsel to Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (filed Mar. 25, 2016).

[12] *See, e.g.*, Comcast June 28 Comments at 20 ("Comcast's Ethernet services provided over its HFC network are not competitive substitutes for the vast majority of BDS customers; even where HFC facilities are present, demand for HFC-based services has been limited."); Letter from Michael H. Pryor, Counsel to Cox, to Marlene H. Dortch, Secretary, FCC, at 1, WC Docket Nos. 05-25, 16-143 (filed Mar. 24, 2017) ("Cox March 24 Ex Parte") (confirming that Ethernet over HFC services "are not BDS"); Letter from Samuel L. Feder, Counsel to Charter, to Marlene H. Dortch, Secretary, FCC, at 4 n.18, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed Oct. 3, 2016) (noting "the significant record evidence that Ethernet over coax is not a comparable service" to fiber-based BDS); Comments of the National Cable and Telecommunications Association at 28, WC Docket Nos. 16-143, 05-25 (filed June 28, 2016) (EoHFC performance objectives, to the extent they are even offered at all, "often are well below the performance commitments offered with TDM or fiber-based Ethernet services.").

[13] Comments of the American Cable Association at 28, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed June 28, 2016); Comments of Cox Communications, Inc. at 4, 17, WC Docket Nos. 16-143, 05-25 (filed June 28, 2016); Comcast June 28 Comments at 31.

segment of the market with little potential for significant growth,"[14] and foreclose the Commission from concluding that cable operators can use their HFC networks to provide ubiquitous BDS competition.

II. The Commission Cannot Adopt a BDS Framework That Assumes Monopolist Rates Will Encourage Investment.

Building on the *Draft Order*'s assumption that "competitors will be particularly likely to build out to locations where incumbents have priced supracompetitively,"[15] AT&T claims that "the fact that numerous competitive providers have built alternative networks" demonstrates that "*ex ante* rate regulation . . . would discourage entry and investment."[16] Incredibly, AT&T goes on to claim that the Commission would violate Sections 201 and 202 of the Communications Act if it acted to constrain rates even in areas where competitive options are not currently available. These arguments are baseless. As explained below, AT&T (1) ignores that monopolist rates do not encourage investment where entry barriers foreclose overbuilding the incumbent network, (2) fails to account for the many ways that monopolist rates discourage investment by competitive providers and American businesses that pay unnecessarily high rates for BDS, and (3) turns the Commission's statutory mandate on its head.

A. Monopolist Rates Discourage Investment.

AT&T believes that the Commission should deregulate areas controlled by incumbent monopolists, even if doing so would harm business customers that rely on DS1 and DS3 services, because continued regulation would deter competitive entry. Yet at the same time, AT&T claims that the success of entry under the current regime warrants deregulation.

On their face, these two positions are mutually exclusive, and incapable of supporting a rational BDS framework. More fundamentally, they fail to account for the many non-regulatory barriers to entry in the BDS marketplace—barriers that the Commission, its outside economic expert, and nearly every participant in this proceeding have repeatedly acknowledged.[17] Because of these barriers, 86 percent of DS1- and DS3-level BDS customer locations continue to be served by the ILEC alone,[18] and the pace of expansion of competitive networks is not remotely

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[14] Comcast June 28 Comments at 31; *see also* Cox March 24 Ex Parte at 1 (cable operators do "not have the facilities to ubiquitously offer BDS services").

[15] *Draft Order* ¶ 43.

[16] AT&T April 13 Ex Parte at 2.

[17] *See* Letter from Paul Margie, Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, at 7-11, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed Mar. 22, 2017) (discussing record evidence of entry barriers); Letter from John Nakahata, Counsel, Windstream, to Marlene H. Dortch, Secretary, FCC, at 17-21, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Mar. 27, 2017) ("Windstream March 27 Ex Parte") (same).

[18] *See* Letter from John T. Nakahata, Counsel to Windstream, to Marlene H. Dortch, Secretary, FCC, at 3, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Oct. 21, 2016).

fast enough to provide an ILEC alternative to even a small fraction of these customers.[19] More importantly, in many of these locations, the Commission cannot assume that competitive entry will *ever* occur in response to monopolist rates charged by the incumbent. The record is clear that entry cannot occur in areas where overbuilding the incumbent's network is not cost-justified—an analysis driven by on-the-ground realities of buildout costs, risk, and reward, and not the regulatory framework that happens to apply to the incumbent.[20] As a result, the Commission cannot conclude that protecting BDS customers from monopolist rates would discourage investment in the many locations that cannot economically support entry by a competitive provider. Nor can the Commission assume that these locations will one day become competitive in the absence of pricing regulation.

AT&T also ignores the enormous costs that monopolist DS1 and DS3 rates impose on the economy in the form of diminished investment by job creators of all types—incumbents, competitors, and BDS end-user businesses alike. With respect to incumbents, the continued ability of ILECs to charge monopolist rates for legacy DS1 and DS3 services discourages their own investment in more efficient and more capable fiber-based facilities—investments that would become more economically rational if ILECs were required to charge competitive rates for legacy services.[21] Moreover, because ILEC BDS is an essential input into wireless and wireline broadband services provided by competitive providers, monopolist rates for ILEC services discourage competitive investment in broadband infrastructure and innovative enterprise and consumer communications solutions that rely on BDS connectivity.[22] Finally, monopolist

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[19] The *Draft Order* implicitly recognizes this fact by documenting the number of buildings connected to the networks of the largest cable providers. *See Draft Order* ¶¶ 56-59. *See also* Comcast June 28 Comments at 20 (describing cable's limited footprint in comparison to the ILECs).

[20] *See supra* note 17. *See also 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*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, 31 FCC Rcd. 4723, 4822 ¶¶ 224-237 (2016) ("*Order and Further Notice*").

[21] *See, e.g.*, Letter from Paul Margie, Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, at 10, WC Docket Nos. 16-143, 15-247, 05-25 & RM-10593 (filed Nov. 9, 2016); Letter from John T. Nakahata, Counsel to Windstream, and Christopher J. Wright, Counsel to Sprint, to Marlene H. Dortch, Secretary, FCC, at 15-16, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed Apr. 13, 2017); Comments of XO Communications, LLC at 8-10, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) ("XO January 2016 Comments").

[22] *See* Reply Comments of Windstream Services, LLC on the Further Notice of Proposed Rulemaking at 29-30, WC Docket Nos. 16-143, 05-25, RM-10593 ("Windstream Aug. 9 Reply Comments"); Declaration of Robert D. Willig, appended as Attachment B to Windstream Aug. 9 Reply Comments ¶ 26 (explaining that the availability of BDS inputs "boosts incentives to invest in the provision of better and more cost effective retail services, as well perhaps as investment in infrastructure").

rates—and the rate increases that already have been signaled by AT&T's recent announcements—drain the resources that end users need to grow their businesses and create more American jobs.[23] The Commission cannot ignore these harms as it weighs the costs of deregulating areas that are insufficiently competitive.

B. The Commission Has a Statutory Obligation to Ensure Just and Reasonable Prices Where Competition Is Lacking.

AT&T argues that the Commission would face "a host of legal hurdles" were it to adopt price cap regulations in geographic markets where, *even under the Commission's own competitive market test*, there is insufficient competition.[24] This assertion turns Section 201 of the Communications Act, which mandates that charges be "just and reasonable," on its head.[25] It is precisely in those markets where competition is lacking that Commission action is most needed to ensure just and reasonable prices.[26] Likewise, adopting targeted price cap regulation in noncompetitive markets fulfills the Commission's duty under Section 706 to promote the availability of advanced telecommunications services to "*all* Americans."[27] The Commission cannot, consistent with its statutory obligations, simply abandon American businesses, schools, nonprofits, and other BDS customers in noncompetitive areas, whether these areas are entire "grandfathered" counties,[28] or areas that are noncompetitive but deemed otherwise under the *Draft Order*'s unreasonably overinclusive CMT.

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[23] *See* Comments of Windstream Services, LLC at 3, WC Docket Nos. 05-25, 15-247, 16-143, RM-10593 (filed June 28, 2016) ("[The] cost of leaving supracompetitive rates in place is extraordinary. Over five years, a failure to establish just and reasonable Ethernet rates results in . . . [a] loss of $11 billion for business consumers, and [a] loss of $30 billion for the economy as a whole. WIK also showed that lower Ethernet prices would have triggered higher demand, adding revenue to, at least in part, offset the impact on ILECs of lower prices. The Consumer Federation of America estimates the losses to American consumers are even higher—at $150 billion since 2010.").

[24] *See* AT&T April 13 Ex Parte at 16; *see also id.* at 7 (arguing that the Commission should deregulate TDM transport services even for geographic markets "without the immediate prospect of competitive transport options").

[25] 47 U.S.C. § 201(b).

[26] *See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(C) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, FCC 07-212, 22 FCC Rcd. 21,293, 21,311 ¶ 33("Specifically, we find that the evidence of competition in this record is insufficient to demonstrate that the application of dominant carrier regulation to the services at issue is unnecessary . . . .").

[27] 47 U.S.C. § 1302(a) (emphasis added).

[28] *See* AT&T April 13 Ex Parte at 15-17 (supporting the *Draft Order*'s refusal to adopt price cap regulation in noncompetitive counties in MSAs that had previously received Phase II pricing flexibility).

AT&T also overstates the practical burdens of adopting price cap regulations in noncompetitive counties that are part of MSAs that had been granted Phase II pricing flexibility.[29] First, AT&T offers no reason why, given the current background of Metropolitan Statistical Area ("MSA")-level regulation, adopting price caps at the county level should be any more burdensome or confusing than deregulating at the county level. Indeed, as noted above, AT&T already has the ability to set customer-specific prices.[30] Second, AT&T does not explain how multi-year contracts in Phase II counties preclude adopting price cap regulations, given that the *Draft Order*'s deregulation must also be harmonized with existing contracts based on price cap rates. Regulation in noncompetitive counties would at least limit AT&T's ability to raise TDM rates drastically on short notice.[31] It would be arbitrary and capricious for the Commission to refuse to adopt protections for customers in noncompetitive areas simply because it cannot be bothered to figure out how to do so.

III. Deregulating Transport Services Nationwide Would Be Arbitrary, Capricious, and Violate Fundamental Notice-and-Comment Requirements.

A. The Record Does Not Support Nationwide Transport Regulation.

AT&T's arguments defending the *Draft Order*'s deregulation of transport services do not provide a substitute for reasoned decision-making. First, AT&T ignores basic realities of geography by arguing that the presence of competitive facilities anywhere within an entire MSA means that the markets for transport services everywhere in that MSA are competitive.[32] As explained elsewhere in the record,[33] and as the Commission recognized in the 2012 *Suspension Order*,[34] MSAs are too large and geographically diverse to serve as a relevant geographic market. The existence of even multiple competitive fiber routes in one part of an MSA does not mean that any of routes are able to serve BDS customers located in another part of the same MSA. For example, the Washington, DC-area MSA includes rural Maryland between Frederick

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29 *See id.* at 15.

30 *See infra* note 45; *see also* Windstream March 27 Ex Parte at 10 (noting that AT&T has had five years since the *Suspension Order* to prepare to upgrade it systems in anticipation of a new regulatory regime).

31 *See supra* note 5. Contrary to AT&T's prediction, it is unlikely that protections against sudden and dramatic rate increases would lead to "customer confusion and complaints." AT&T April 13 Ex Parte at 15.

32 *See* AT&T April 13 Ex Parte at 4-5.

33 *See* Windstream March 27 Ex Parte at 4-7.

34 *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*, Report and Order, FCC 12-92, 27 FCC Rcd. 10,557, 10,574 ¶ 36 (2012) ("*Suspension Order*") ("Our review of the evidence suggests that demand varies significantly within any MSA, with highly concentrated demand in areas far smaller than the MSA.").

and the Pennsylvania border in the north, and rural Spotsylvania County in the south. It is preposterous to suggest that competitive transport fiber in Washington, DC itself says anything about the transport markets in those rural communities. Indeed, even within any given county analyzed by the *Draft Order*'s CMT for channel terminations, there is significant variability in business density and other factors that affect the likelihood of competitive entry along a relevant transport route. For example, within Fairfax County, Virginia, the zip codes covering McLean and Vienna include 1,755 businesses and 1,726 businesses, respectively, while the zip code covering Clifton includes only 276 businesses.[35]

Second, in order for a BDS customer that purchases channel terminations from an incumbent—who is the only supplier in the vast majority of locations with DS1 and DS3 demand—to be able to use a competitive alternative for transport service, the competitive provider must be able to accept the customer's data traffic from the incumbent's network at some point of interconnection.[36] Indeed, AT&T acknowledges that competitive providers that are not collocated at an incumbent's end office closest to the customer would need to "accept[] that traffic from a different hand-off point."[37] However, neither AT&T nor the *Draft Order* point to any evidence in the record about the prevalence and distribution of these traffic hand-off points that would enable other providers to compete with the incumbents for transport service. While AT&T asserts that the entry barriers for transport service are lower than they are for channel terminations, the Commission cannot plausibly assume that these barriers are trivial. Thus, the Commission cannot deregulate transport services on a nationwide basis without considering the evidence of competition at a geographically more granular level.

Third, AT&T takes various statements from competitive providers out of their context in the record in support of its assertion that "CLECs have generally conceded that they have access to competitive transport facilities."[38] However, situated in their contexts, these statements do not support nationwide deregulation of transport services. A declaration from an XO executive, cited by AT&T,[39] states that competition for transport services is present "within central business districts ("CBDs") and the initial near-CBD ring of suburbs," but also notes that "outside the CBD and first ring of suburbs, the availability of competitive transport *falls off dramatically* and

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35 American FactFinder, *ZIP Code Business Statistics: 2014 Business Patterns*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml ?src=bkmk.

36 *See* Windstream March 27 Ex Parte at 24-25.

37 AT&T April 13 Ex Parte at 7 n.22. Thus, AT&T's assertion that "[n]or is collocation the *sine qua non* of competition" and its citation to the *Pricing Flexibility Order* are beside the point. *See id.* at 7. Collocation is relevant not because it is a proxy for the existence of competitive fiber nearby, but because any competitive transport provider must have sufficient numbers of and suitably located interconnection points.

38 *Id.* at 4.

39 *Id.*; Letter from James P. Young, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, at 7, WC Docket Nos. 16-143, 05-25, 15-247, RM-10593 (filed Mar. 13, 2017) ("AT&T March 13 Ex Parte").

XO is often forced to use the ILEC as the only choice."[40] Similarly, a Windstream declaration cited by AT&T notes that Windstream is often able to provide transport from "the NNI [network-to-network interface] where the traffic is handed off to Windstream's own fiber network."[41] However, that declaration discussed *Ethernet service*, not TDM transport, and emphasized the significant costs of transporting the BDS customer's traffic over an ILEC's network from the customer premises to the NNI,[42] which in a TDM context would include mileage charges from the ILEC end office to an interconnection point on Windstream's network.

Finally, AT&T argues that even if customers located in parts of a county lack competitive alternatives for transport service, as long as there are competitive providers elsewhere in the county, "price cap LECs must provide competitive mileage prices and terms" to win customers' traffic, "thus ensuring competitive outcomes."[43] This is a variant of the argument AT&T has raised in favor of deregulating channel termination prices at an MSA-level, and rests on the incorrect assumption that an ILEC is unable to price to individual customers.[44] As Windstream has explained, incumbents like AT&T can readily set prices based on the level of competition they face, down to the level of individual buildings.[45]

B. Nationwide Transport Deregulation Has Not Been Adequately Noticed.

AT&T claims that the *Order and Further Notice* provided adequate notice of the *Draft Order*'s effort to deregulate TDM transport services on a nationwide basis. In support of its argument, AT&T quotes from paragraph 278 of the *Order and Further Notice*, where the Commission "'propose[d] to abandon the collocation-based competition showings for channel terminations and other dedicated transport services for determining regulatory relief for incumbent LECs.'"[46]

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[40] Declaration of Michael Chambless ¶ 10 (emphasis added), attached to XO January 2016 Comments.

[41] Declaration of David Schirack and Mike Baer ¶ 11, appended as Attachment A to Windstream Comments.

[42] *See id.* ¶ 12.

[43] AT&T April 13 Ex Parte at 6-7.

[44] *See* AT&T March 13 Ex Parte at 13 (asserting that "pricing almost always occurs on an MSA-wide (or even larger-area) basis").

[45] *See* Windstream March 27 Ex Parte at 9, 17 ("[T]he existence of uniform published rates does not preclude AT&T from achieving customer-level pricing by offering individually contracted discounts."); Letter from Thomas Jones, Counsel for EarthLink, to Marlene H. Dortch, Secretary, FCC, at 3, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (filed July 21, 2016) ("[I]t is standard business practice for buyers and sellers of Business Data Services to buy and sell services on a building-by-building basis.").

[46] AT&T April 13 Ex Parte at 8-9, quoting *Order and Further Notice* ¶ 278.

AT&T's argument is self-defeating, as the very provision of the *Order and Further Notice* cited by AT&T simply reinforces the *Draft Order*'s overreach. Indeed, AT&T fails to appreciate that the Commission proposed to "abandon" the suspended collocation-based competition triggers *and replace them* with "a new Competitive Market Test."[47] Moreover, AT&T ignores that the fundamental purpose of the CMT proposed in the *Order and Further Notice* is to improve the overbroad and inaccurate competition findings generated by the collocation triggers—which functioned as a "poor proxy for predicting the entry of facilities-based competition"—by adopting a framework for reaching more specific and more accurate competition findings.[48] In direct contradiction to the Commission's pending proposal, however, the *Draft Order* does not adopt a CMT for transport services *at all*—and bluntly deregulates such services across the entire country.

Sincerely,

Paul Margie
V. Shiva Goel

Counsel for Sprint

John T. Nakahata
Henry Shi

Counsel for Windstream

[47] *Order and Further Notice* ¶ 278.

[48] *Id.* ¶ 275.

Exhibit 1

Price Change Notification

AT&T US Domestic Access Channels

Effective on or after April 20, 2017, AT&T rates will change for select speeds of US Domestic Access Channels.

US Domestic Access Channels

T3 Access Channel rates on Schedule A will increase an average of 15%.

T3 Access Channel rates on Schedule B will increase an average of 10%.

AT&T

Accessible

Date: **April 14, 2017** Number: **CLEC17-030**

Effective Date: **June 1, 2017** Category: **Resale**

Subject: **(RATE CHANGES) DS3 Service - AR, MO, TX (17SW16834)**

Related Letters: **NA** Attachment: **NA**

States Impacted: **Arkansas, Missouri, Texas**

Issuing AT&T ILECS: **AT&T Arkansas, AT&T Missouri, and AT&T Texas (collectively referred to for purposes of this Accessible Letter as "AT&T Southwest Region")**

Response Deadline: **NA** Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southwest Region is providing notice of its intent to post guidebook revisions to change the pricing for DS3 Service month-to-month rates. The current and proposed rates shown below are retail rates and the applicable resale discount will apply. The proposed effective date for these price changes is June 1, 2017.

State	Product Name	Product's USOC/FID	Current Retail Rate	Proposed Retail Rate
AR, MO, TX	Local Distribution Channel Termination	TZUP1	$4,393.00	$5,051.00
AR, MO, TX	Local Distribution Channel Termination	TZUP2	$4,556.00	$5,239.00
AR, MO, TX	Local Distribution Channel Termination	TZUP3	$5,045.00	$5,801.00
AR, MO, TX	Channel Mileage Termination - Fixed	CZ4X1	$1,790.00	$2,058.00
AR, MO, TX	Channel Mileage Termination - Fixed	CZ4X2	$1,952.00	$2,244.00
AR, MO, TX	Channel Mileage Termination - Fixed	CZ4X3	$2,116.00	$2,433.00
AR, MO, TX	Channel Mileage – Variable, per mile	1YZX1	$277.00	$318.00
AR, MO, TX	Channel Mileage – Variable, per mile	1YZX2	$317.00	$364.00
AR, MO, TX	Channel Mileage – Variable, per mile	1YZX3	$358.00	$411.00

AT&T Southwest Region reserves the right to make any modifications to the information set forth herein and/or to cancel the information set forth herein. In the event of any modifications to or cancellation of the information set forth herein, carriers will be notified via a subsequent Accessible Letter. AT&T Southwest Region shall incur no liability to any carrier if the information set forth herein is modified or cancelled by AT&T Southwest Region.

For filings made at the Public Utility Commission of Texas (i.e. switched access, 911, etc.), you will find a copy and any accompanying tariff sheets (if applicable) at the following website, typically on the effective date of the changes. http://cpr.att.com/pdf/tx/filings/txfiling.htm. Changes to guidebooks (typically for retail services) will not be filed at the Public Utility Commission of Texas, but can be viewed at http://att.com/servicepublications (Select Texas, State Guidebooks, Updates to Guidebook), typically on the effective date of the changes.

AT&T

Accessible

Date: **April 14, 2017** Number: **CLECAM17-031**

Effective Date: **June 1, 2017** Category: **Resale**

Subject: **(RATE CHANGES) DS3 Service Increases - WI (17MW16835)**

Related Letters: **NA** Attachment: **NA**

States Impacted: **Wisconsin**

Response Deadline: **NA** Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Wisconsin is providing notice of its intent to post guidebook revisions to change the month-to-month pricing for DS3 Service. The current and proposed rates shown below are retail rates and the applicable resale discount will apply. The proposed effective date for these price changes is June 1, 2017.

Product Name	Product USOC	Current Retail Rate	Proposed Retail Rate
Local Distribution Channel	TZUP1	$6,660.00	$7,660.00
Local Distribution Channel	TZUP2	$6,960.00	$8,000.00
Local Distribution Channel	TZUP3	$7,580.00	$8,720.00
Channel Mileage Termination	CZ4X1	$920.00	$1,060.00
Channel Mileage Termination	CZ4X2	$920.00	$1,060.00
Channel Mileage Termination	CZ4X3	$920.00	$1,060.00
Channel Mileage, per mile	1YZX1	$260.00	$300.00
Channel Mileage, per mile	1YZX2	$260.00	$300.00
Channel Mileage, per mile	1YZX3	$260.00	$300.00

AT&T Wisconsin reserves the right to make any modifications to or to cancel the above information prior to the effective date. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Wisconsin will send additional notification at the time of cancellation. AT&T Wisconsin will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Wisconsin or is not ultimately put into effect.

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Date: **April 14, 2017**

Number: **CLECAM17-032**

Effective Date: **June 1, 2017**

Category: **Resale**

Subject: **(RATE CHANGES) DS3 Service - IL (17MW16836)**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Illinois**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Illinois is providing notice of its intent to post guidebook revisions to change the month-to-month pricing for DS3 Service. The current and proposed rates shown below are retail rates and the applicable resale discount will apply. The proposed effective date for these price changes is June 1, 2017.

Product Name	Product USOC	Current Retail Rate	Proposed Retail Rate
Local Distribution Channel	TZUPA	$6,660.00	$7,660.00
Local Distribution Channel	TZUPB	$6,960.00	$8,000.00
Local Distribution Channel	TZUPC	$7,580.00	$8,720.00
Channel Mileage Termination	CZ4XA	$920.00	$1,060.00
Channel Mileage Termination	CZ4XA	$920.00	$1,060.00
Channel Mileage Termination	CZ4XA	$920.00	$1,060.00
Channel Mileage, per mile	1YZXA	$260.00	$300.00
Channel Mileage, per mile	1YZXB	$260.00	$300.00
Channel Mileage, per mile	1YZXC	$260.00	$300.00

AT&T Illinois reserves the right to make any modifications to or to cancel the above information prior to the effective date. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Illinois will send additional notification at the time of cancellation. AT&T Illinois will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Illinois or is not ultimately put into effect.

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Date: **April 14, 2017** Number: **CLECAM17-033**

Effective Date: **June 1, 2017** Category: **Resale**

Subject: **(RATE CHANGES) DS3 Service Rate Increases - IN (17MW16838)**

Related Letters: **NA** Attachment: **NA**

States Impacted: **Indiana**

Response Deadline: **NA** Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Indiana is providing notice of its intent to post guidebook revisions to change the month-to-month pricing for DS3 Service. The current and proposed rates shown below are retail rates and the applicable resale discount will apply. The proposed effective date for these price changes is June 1, 2017.

Product Name	Product USOC	Current Retail Rate	Proposed Retail Rate
Channel Termination	TZUP1	$6,660.00	$7,660.00
Channel Termination	TZUP2	$6,960.00	$8,000.00
Channel Termination	TZUP3	$7,580.00	$8,720.00
Channel Mileage Termination	CZ4X1	$920.00	$1,060.00
Channel Mileage Termination	CZ4X2	$920.00	$1,060.00
Channel Mileage Termination	CZ4X3	$920.00	$1,060.00
Channel Mileage	1YZX1	$260.00	$300.00
Channel Mileage	1YZX2	$260.00	$300.00
Channel Mileage	1YZX3	$260.00	$300.00

AT&T Indiana reserves the right to make any modifications to or to cancel the above information prior to the effective date. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Indiana will send additional notification at the time of cancellation. AT&T Indiana will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Indiana or is not ultimately put into effect.

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Date: **April 14, 2017** Number: **CLECAM17-034**

Effective Date: **June 1, 2017** Category: **Resale**

Subject: **(RATE CHANGES) DS3 Service - OH (17MW16839)**

Related Letters: **NA** Attachment: **NA**

States Impacted: **Ohio**

Response Deadline: **NA** Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Ohio is providing notice of its intent to post guidebook revisions to change the month-to-month pricing for DS3 Service. The current and proposed rates shown below are retail rates and the applicable resale discount will apply. The proposed effective date for these price changes is June 1, 2017.

Product Name	Product USOC	Current Retail Rate	Proposed Retail Rate
Local Distribution Channel	TZUP1	$6,660.00	$7,660.00
Local Distribution Channel	TZUP2	$6,960.00	$8,000.00
Local Distribution Channel	TZUP3	$7,580.00	$8,720.00
Channel Mileage Termination	CZ4X1	$920.00	$1,060.00
Channel Mileage Termination	CZ4X2	$920.00	$1,060.00
Channel Mileage Termination	CZ4X3	$920.00	$1,060.00
Channel Mileage, per mile	1YZX1	$260.00	$300.00
Channel Mileage, per mile	1YZX2	$260.00	$300.00
Channel Mileage, per mile	1YZX3	$260.00	$300.00

AT&T Ohio reserves the right to make any modifications to or to cancel the above information prior to the effective date. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Ohio will send additional notification at the time of cancellation. AT&T Ohio will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Ohio or is not ultimately put into effect.