

July 20, 2016

VIA ECFS

Ms. 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 Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593

Dear Ms. Dortch:

On July 19, 2016, on behalf of Level 3 Communications, LLC and Windstream Services, LLC, Eugene Orlov of FTI Consulting and I spoke by telephone with Irina Asoskov, William Layton, Joseph Price, Dina Rabinovitz, Eric Ralph, and Deena Shetler of the Wireline Competition Bureau and Tracy Waldon of the Media Bureau.

During that conversation I explained why it would be inappropriate for the Commission to presume that markets for business data services with connections above 50 Mbps perform competitively when developing new rules governing those services, even though Prof. Rysman reported that he did not detect an effect of competition on ILEC prices at high bandwidths when analyzing the FCC's business data services data. I explained that, after making reasonable refinements to Prof. Rysman's approach, I found a large effect of rivalry on high-bandwidth ILEC prices. In particular, the estimates detailed in the most recent declaration I submitted in this proceeding show that rivalry lowers high-bandwidth prices by amounts ranging from 25% to 43%. I explained further that these estimates show that the ILECs exercise substantial market power at bandwidths above 50 Mbps, at least to 1 Gbps.¹ I also referenced submissions from Level 3 and Windstream indicating that it is almost never economically feasible to

¹ The estimates are detailed in Declaration of Jonathan B. Baker on Competition and Market Power in the Provision of Business Data Services (dated June 28, 2016), attached to Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593 (filed as revised July 14, 2016) (originally filed June 28, 2016).

build new connections to serve a customer location when the customer demands a connection with a bandwidth at or below 100 Mbps, and that it is often not economically feasible to build new connections to serve a customer location even when the customer demands a connection with a bandwidth substantially above 100 Mbps, up to and including at least 1 Gbps.²

Please contact me at 202-274-4315 if you have any questions regarding this submission.

Sincerely yours,

/s/ Jonathan B. Baker

Jonathan B. Baker

FTI Consulting

Outside Consultant to Level 3, LLC and Windstream Services, LLC

cc: Irina Asoskov
William Layton
Joseph Price
Dina Rabinovitz
Eric Ralph
Deena Shetler
Tracy Waldon

² See Letter from Thomas Jones, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, & 05-25, RM 10593, at 1-2 (filed July 14, 2016); Declaration of John Merriman on Behalf of Level 3 Communications, LLC, attached as an Appendix to Comments of Birch Communications, Inc., EarthLink, Inc., and Level 3 Communications, LLC, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593 (filed June 28, 2016); Declaration of David Schirack and Mike Baer, attached as an Appendix to Comments of Windstream Services, LLC, WC Docket Nos. 16-143 & 05-25, RM-10593 (filed June 28, 2016); Letter from John T. Nakahata, Counsel for Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM 10593, at 2 (filed April 21, 2016); Declaration of John Merriman on Behalf of Level 3 Communications, LLC, attached as an Appendix to Reply Comments of Birch Communications, Inc., EarthLink, Inc., and Level 3 Communications, LLC, WC Docket No. 05-25, RM-10593 (filed Feb. 19, 2016).