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August 8, 2016

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Via ECFS

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

***Re: WC Docket Nos. 16-143, 15-247, 05-25; RM-10593: Public Version of AT&T's
Ex Parte Filing***

Dear Ms. Dortch:

On August 4, 2016, Frank Simone, Gary Phillips, Keith Krom and the undersigned, all of AT&T, and Chris Shenk of Sidley Austin LLP, met with Deena Shetler, Eric Ralph (via telephone), Pamela Arluk, Marv Sacks, David Zesiger, Andrew Field, Jeremy Greenberg, Justin Faulb, Irina Asoskov, Christopher Koves, William Kehoe, William Layton, Rhonda Lien, and Joseph Price, all of the Wireline Competition Bureau. During the meeting we discussed the attached PowerPoint deck, which is the **public version** of presentation and is submitted in accordance with the applicable Protective Order.¹

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

/s/ Caroline Van Wie

¹ See Order, *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, 05-25, RM-10593 (rel. Jun. 24, 2016).

Marlene Dortch, Secretary

August 8, 2016

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Attachment

cc: Deena Shetler
Eric Ralph
Pamela Arluk
Marv Sacks
David Zesiger
Andrew Field
Jeremy Greenberg
Justin Faulb
Irina Asoskov
Christopher Koves
William Kehoe
William Layton
Rhonda Lien
Joseph Price

Business Data Services

AT&T

August 4, 2016

Executive Summary



- The Commission should adopt a Competitive Market Test that finds a census tract competitive for services < 50 Mbps where there are at least 2 facilities-based competitors within the census tract or 2,000 feet
- The Commission should not impose any rate regulation on Ethernet services, either through benchmarking or through a retail-wholesale relationship
- If the Commission adopts a new forward-looking X-factor, it should be based on the BLM KLEMS data; there is no need to impose a one-time price cap reduction

Any Competitive Market Test Must be Administrable and Accurate

Proposed CMT - A census tract should be deemed competitive for services <50 Mbps if 2+ providers have deployed facilities in or within 2,000 feet

- The 2013 data show that this test accurately identifies areas where virtually all buildings and demand are within 2,000 feet of at least one competitor.
- For sub-50 Mbps ILEC connections:
 - 90%+ of buildings with sub-50 Mbps ILEC connections, and 90%+ of ILEC sub-50 Mbps BDS demand (bandwidth) is within in buildings within 2,000 of a competitor.
- Overall:
 - 90%+ of all ILEC buildings with BDS demand are within 2,000 feet of another competitive provider, and these buildings account for 90%+ of BDS demand.

Any Competitive Market Test Must be Administrable and Accurate, cont'd

Number of Competitors – Two competitors are sufficient to ensure competitive results

- FCC, Courts and DOJ has long recognized that one competitor with sunk facilities investment is sufficient to ensure competitive outcomes. This is supported by the economic testimony.
- Plus, there is a natural variation in the number of BDS competitors connected to buildings of different sizes – small buildings may only support one or two additional competitors, so fewer competitors are not an indication of less rigorous competition
- Plus, the regressions intended to measure whether more than one competitor is needed to ensure competitive results (Tables 19) fail to show consistent statistically significant evidence that more than one competitor is needed.

Distance – Measuring competition within 2,000 feet of a census tract is appropriate

- Rysman found that competitive facilities within ½ mile discipline prices and CLECs have put evidence in the record showing they build out to at least that distance to serve customers
- Looking at the 2013 data, preliminary result confirms that the distance between CLEC nodes and buildings they serve are often around 2,000, even for low bandwidth connections

Granularity – Any test must be easy to administer and accurately predict areas where there is competition.

Moving to a census tract dramatically increases granularity (from about 380 MSA to more than 74,000 census tracts).

Moving from 74,000 census tracts to millions of census blocks (the majority of which have only one building with BDS demand) would dramatically reduce administrability.

And there is no need to go more granular than census tracts. As shown, the proposed census tract level test ensures that virtually all buildings in areas that pass the test within close proximity to two or more providers

There is No Basis For New Ethernet Rate Regulation

There is no evidence to support regulation of Ethernet services

- The Rysman/Staff regressions found market power above 50 Mbps
- The IRW (Drs. Israel, Rubinfeld and Woroch) regressions show no market power for sub-50 Mbps Ethernet services.
- There has never been an “incumbent” provider of Ethernet. Therefore, we see:
 - 9 providers with 4%+ port shares.
 - No provider with share exceeding 20%.
 - Level 3 is the second largest provider.
- The marketplace for Ethernet shows all hallmarks of a competitive market: skyrocketing demand/investment, and declining prices,

The Regressions Do Not Justify The Proposed New Regulatory Scheme

The regressions results do not lend support for additional regulation

- Regressions show no evidence of market power for services above 50 Mbps.
- Regressions show no evidence of market power for Ethernet services.
- What is left are DS1 and DS3 services.
- To the extent these regressions show market power, the results are mixed, self-contradictory, and often non-sensical.
- The peer reviews and other testimony identified multiple intractable problems that make the regressions unreliable, e.g., endogeneity and incorrect/incomplete pricing data.
- There remain significant question about how to properly compute standard errors when evaluating statistical significance of the results, e.g., cluster standard errors by census tract rather than by census block.
- For DS3s, using census tract clustering appears to eliminate the statistical significance of most DS3 results.
- For DS1s, the regressions appear to indicate that prices in areas with no nearby facilities are at most 3.2% above competitive levels – a *de minimis* amount that does not justify the risks and costs of the proposed regulations.

There is No Justification for a New BDS-Specific X-Factor

The only legitimate methodology to calculate productivity is the BLS KLEMS data from 2005-2013

- This is the only choice of the Commission's 3 sources which was actually intended to measure total factor productivity

The BLS KLEMS data show that there is no need for a one-time price cap adjustment

- The BLS data produces an X-Factor from 2005-2013 that is essentially equal to inflation
- The X-factor since 2005 has not been zero – it has been set equal to inflation – so there should be no baseline adjustment to the price cap

The BLS KLEMS data show that the prospective X-Factor should be set at less than 2%

The regressions do not support larger adjustments to the X-Factor

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AT&T's Experience Operating As A CLEC Out of Region

- **Lit buildings available to AT&T:** CLECS and other providers seeking to sell Ethernet services to AT&T provide AT&T with lists of building they have "lit" with Ethernet services. The number of lit buildings on these lists increased from about [REDACTED] in 2013 to nearly [REDACTED] today.
- **Number Of Non-ILEC Suppliers:** The number of non-ILEC suppliers AT&T contracts with for enterprise Ethernet services has increased from [REDACTED] in 2013 to more than [REDACTED] today.
- **Prices Paid:** Prices paid by AT&T for Ethernet have decreased dramatically since 2013 for 10, 50, 100, and 1000 Mbps services, by an average of more than [REDACTED] percent.
- **AT&T Investment:** AT&T is investing more than \$ [REDACTED] dollars to expand its out-of-region Ethernet footprint



Questions?