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**Before the
Federal Communications Commission
Washington, DC 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 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 Services)	RM-10593

**JOINT REPLY COMMENTS OF LUMOS NETWORKS CORP. AND LIGHTOWER
FIBER NETWORKS I, LLC, LIGHTOWER FIBER NETWORKS II, LLC, AND FIBER
TECHNOLOGIES NETWORKS, LLC**

Lightower Fiber Networks I, LLC, Lightower Fiber Networks II, LLC, and Fiber
Technologies Networks, LLC (collectively “Lightower”) and Lumos Networks Corp. (“Lumos”)
(Lumos and Lightower collectively “Joint Co

Background regarding Lighttower was presented in Lighttower's Initial Comments, filed June 28, 2016. Like Lighttower, Lumos is a CFP. Further background information about Lumos is provided in Appendix A. Lumos devotes extensive capital and expense dollars to its business and has limited resources for participation in regulatory proceedings. Lumos assumed that a number of fiber-based carriers competing with the incumbents to provide Business Data Services ("BDS") would be active in this docket. When Lumos reviewed the initial comments, however, it was surprised how few facilities-based fiber providers had filed. Indeed, Lighttower was the sole commenter that Lumos felt had submitted a well-researched and thoughtful set of comments reflecting the interests of CFPs. Consequently, Lumos contacted Lighttower and asked permission to join in these reply comments. Lumos noted that most of the competitive carriers that filed initial comments are, unlike Lumos and Lighttower, principally buyers of BDS rather than competitive providers of BDS. Five years ago, Lumos would also have been primarily a buyer, but has since begun a transformation of its business to a fiber carrier, including the "last mile." Lumos and Lighttower agree that it is absolutely critical that the Commission have a complete picture of the marketplace in order to address the complex issues in this docket.

In summary, Lighttower and Lumos strongly believe that applying rate regulation to competitive fiber providers would be bad policy both because it is unnecessary and because it would be highly counterproductive in that it would discourage the build-out of metro networks.

Below, Lighttower and Lumos address some of the issues raised by other parties.

I. Regulation of Packet-Based BDS Should not Extend to CFPs

One of the key questions regarding packet-based BDS is which providers should be regulated. Lighttower demonstrated in its Initial Comments that there is no need to regulate the rates of competitive providers because they are subject to competition in virtually every location they serve. If the Commission elects to regulate the rates charged by the ILEC, then clearly there

would be no need to regulate CFPs' rates because CFPs always face competition from the ILEC and cannot demand a higher price unless they offer offsetting additional value.¹ Other commenters agree.²

Verizon also seemingly agrees, admitting that “ordinarily, if there is a dominant provider of service in a market, subjecting only that provider to benchmarks would ensure just and reasonable rates” because “[i]f the dominant provider’s rates are regulated, competitive providers would be expected to match or undercut those rates in order to attract customers.”³ Verizon goes on, however, to argue that the rates of competitive providers of Ethernet should nevertheless be regulated, except for a “limited” period when they first enter a market. Verizon bases this contention on its assertion that one “major” cable provider refuses to sell Ethernet BDS to Verizon within Verizon’s ILEC territory.⁴ Verizon argues that such a refusal to deal violates the cable provider’s common carrier obligations under Sections 201 and 202. The remedy that Verizon proposes—subjecting all competitive providers to rate regulation—does not, however, fit the offense. If the problem is that one Ethernet provider engages in unjust, unreasonable and discriminatory conduct that violates Sections 201 and 202 by refusing to sell to Verizon, the appropriate remedy is for Verizon to file a formal complaint against that carrier pursuant to Section 208 and ask the Commission to impose sanctions on that provider. The violation does not justify regulating the rates of that provider, much less following Verizon’s suggestion that the rates of all competitive providers be subject to *ex ante* regulation. The refusal of one cable provider to sell Ethernet BDS to Verizon provides no basis at all for regulating the rates of other

¹ Lightower Initial Comments at 3-4, 5, 9-10.

² *E.g.*, Birch *et al.* at 59.

³ Verizon Initial Comments at 17.

⁴ *Id.*

providers that have never refused to sell to any qualified customer and that may have little or no market power. It is significant that the cable provider is an incumbent with a ubiquitous network, not a new entrant.

AT&T asserts that “when Ethernet first became available, no provider had an Ethernet network, including the incumbent LECs, and thus all

The Commission has long recognized the significant time, expense and disruption associated with fiber deployment.⁹ Such deployment is rarely economic in areas outside of densely populated business centers.¹⁰ The Commission has consistently found that competitive carriers “face extensive economic barriers” to the deployment of competitive facilities where they lack existing facilities needed to serve the customer.¹¹ These barriers include significant sunk costs along with substantial economies of scale and scope.¹² These barriers continue to make deployment of competitive last mile access facilities “costly and difficult.”¹³

This is consistent with the experience of Lighttower and Lumos. CFPs are constantly in bidding situations in which, for the ILEC, fiber to the premises is a sunk cost -- but for the CFP it is a new capital investment. As demonstrated in Lighttower’s Initial Comments,¹⁴ and as the Commission recognized in the FNPRM,¹⁵ incumbents have significant advantages over new

Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 17035-17041 ¶¶ 85-91 (2003) (“TRO”) (discussing barriers to entry) (*subseq. hist. omitted*).

⁹ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board, Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17668, 17669 ¶¶ 4-5, 7 (2011); *TRO*, 18 FCC Rcd at 16986-87 ¶ 7 (2003).

¹⁰ See *Special Access for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order, 27 FCC Rcd. 10557, 10582 ¶ 49 (2012).

¹¹ *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8670 ¶ 90 (citing *TRO* ¶¶ 85-91).

¹² *TRO*, 18 FCC Rcd at 17036-37668, 155 209.16 Tm 0.00.0013 Tw 0 0 7.98 108 214.6801 Tm (11)Tj

entrants with respect to costs such as franchise fees, building access, rights-of-way, and construction permits. Moreover, incumbents have the advantage of an embedded customer base that is already purchasing BDS from them over a TDM network that was built with funds from captive ratepayers and whose services can be easily transitioned to Ethernet

AT&T also asserts that certain non-incumbents have national market shares in Ethernet BDS in the same range as large ILECs.¹⁶ This assertion is misleading because, as the Commission has noted, the BDS market is not national. The relevant data is not AT&T's national market share, but its share of the market in its own region, or more particularly its share

regulated, regulation should be in the form of benchmarks, not price caps.²³ Ad Hoc suggests, however, that as an interim measure, price caps be employed for packet-based BDS at 50 Mbps and below.²⁴ The Commission should reject this suggestion, at least as

unreasonable, relative to that carrier's costs.²⁸ As Lighttower showed in its Initial Comments, if this type of arbitrary calculation based on an ILEC's rates at an earlier point in time is applied to a CFP, with no consideration of cost and other differences between the carriers, it fails to show that the CFP's rates in excess of the benchmark are unjust and unreasonable, and therefore the CFP's rates cannot lawfully be prohibited.²⁹

III. Separate Analysis of Customer Classes

In its Initial Comments, Lighttower explained that because wireless providers are sophisticated customers with formidable buying power at multiple locations, the offering of backhaul services to wireless carriers should always be treated as competitive, even if after a competitive bidding process, there is only one provider that actually serves the cell site.³⁰ The Competitive Carriers Association appears to suggest that wireless backhaul is not competitive, citing a Sprint filing representing that the ILEC was the only provider at 73% of locations.³¹ The Commission should not be misled by this citation, as the data cited by Sprint clearly referenced all locations at which BDS was sold, and says nothing about the subset of these locations at which wireless backhaul was sold.³²

Sprint suggests that competition for the backhaul business of wireless carriers and other groups of customers should not be analyzed separately because separate analysis "is not the most direct means of ensuring the availability of BDS to these customers."³³ Sprint appears to misunderstand the purpose the Commission had in mind when it asked if different groups of

²⁸ Lighttower Initial Comments at 11-13.

²⁹ *Id.*, at 11-15, 20.

³⁰ *Id.*, at 10, 23.

³¹ Competitive Carriers Ass'n Initial Comments at 6.

³² Sprint Initial Comments, filed January 27, 2016, at 2.

³³ *Id.* at 28.

customers should be analyzed separately.³⁴ Clearly, the Commission was focusing on whether “the nature of competition” varies across customer classes.³⁵ Sprint’s assertion regarding ensuring availability of BDS does not address that concern.

In Joint Commenters’ experience, the extraordinarily aggressive competitive bidding that typically takes place when wireless carriers solicit bids for backhaul is even more intense than the highly competitive bidding for most other BDS services, and justifies treating wireless backhaul separately. Indeed, Lumos and Lighttower, along with other CFPs, actively compete for this backhaul business. Wireless carriers typically package a large number of sites in these requests for proposals and while CFPs may decline to bid on the most remote sites, they typically bid for, and build, backhaul to sites in less dense areas in their general service area where they will not realize a return on the investment, in order to win the overall backhaul contract.

Sprint also suggests that multi-location customers should be treated as non-competitive at all locations if any one location is non-competitive.³⁶ Joint Commenters disagree, as this approach would result in unnecessary and counterproductive regulation at numerous highly competitive locations. Based on Joint Commenters’ experience, the fact that a wireless provider can buy only from the ILEC at one or a small fraction of locations does not stop the wireless provider from getting a competitive price at other locations. Lighttower and Lumos in fact serve

IV. Regulation of Lower Bandwidth Ethernet

When Lighttower met with Commission Staff on August 1, 2016, Staff inquired as to the bandwidth “sweet spot” where Lighttower competed. Some have advocated that even if there is adequate competition at higher bandwidths, it may be necessary to regulate CFPs’ offerings at lower bandwidths. Lighttower and Lumos disagree, and do not believe that the problem of regulation stifling competition is solved by limiting rate regulation of CFPs only to circuits below 50 Mbps. Nor do they believe that regulating CFP rates at these lower bandwidths is necessary.

Approximately 40 percent of the circuits provided by Lighttower are at 50 Mbps or less, and approximately 60% of circuits are at 100 Mbps or less. Regulating these services would produce the same counterproductive results and create the same compliance problems as regulating higher bandwidths.

And Lighttower and Lumos do not see materially less competition in the locations in which they operates at the lower bandwidths. Once a carrier has built its own fiber facilities to or near a location and can provide Ethernet service, the marginal cost of providing a sub-100 Mbps service is not great and the hope of seeing the customer increase its bandwidth requirements over time is, in Joint Commenters’ experience, sufficient justification for a CFP to offer the service.

Lighttower and Lumos believe that the problems that rate regulation would cause for CFPs would not be solved by limiting regulation of CFP rates to circuits below a certain bandwidth. In fact it could exacerbate the supposed lack of competition at the lower bandwidths by causing CFPs to abandon these services.

CONCLUSION

Lightower and Lumos urge the Commission not to impose any form of rate regulation on CFPs. Such regulation would reduce, rather than increase, competition, and thus have the opposite of the intended effect.

Respectfully submitted,

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Appendix A

At the Spin, Lumos covered only the western portion of Virginia. Lumos Networks recently completed an 822-mile network expansion into the Tidewater area of Virginia encompassing the metro areas of Norfolk, Hampton, Chesapeake, Eastern Shore, Suffolk, Newport News and Virginia Beach. This expansion increased Lumos Networks' subscription with large businesses and carriers by an estimated 67% (or \$221 million) compared with the opportunity in Lumos' markets at the Spin.

At the Spin, the highest speed that Lumos offers, 100 Mbps, is available to all Lumos offers speeds of up to 100 Mbps. In 2017, Lumos generated over \$114 million in Data revenue and over \$51 million in Adjusted EBITDA, over its former network. Further information regarding Lumos's transformation since the Spin is provided in the attached chart.



The Transformation in Numbers

	<u>4Q11</u>	<u>2Q16</u>	<u>Chg%</u>
Total On-Net Locations	1,200	3,217	+168%
Lit Buildings	1,051	1,922	+83%
Fiber Revenue	\$5,500m	\$9,935m	+55%
Broadband Revenue	\$210m	\$510m	+47%
Unique FTTC Towers	70	1,295	+900%
Annualized FTTC/Lite Rev	\$41m	\$69m	+15%
Quarterly FTTC Rev	\$10m	\$17m	+32%
Quarterly Enterprise Revs	\$9.3m	\$12.2m	+30%
Fiber Broadband Subs	5,365	7,098	+33%
% of Fiber Broadband Subs > 25M	0.15%	~23%	+4500%
Video Subscribers	3.734	5.817	+56%
UNE-Based CLEC Customers	122,046	69,728	-43%