



The voice of mid-size communications companies

August 15, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communications: WC Docket Nos. 16-143 and 05-25, RM-10593

Dear Ms. Dortch:

On August 11, 2016, Jeb Benedict of CenturyLink, AJ Burton of Frontier, and Genny Morelli and the undersigned of ITTA met with Nicholas Degani of the Office of Commissioner Pai, and Jeb Benedict of CenturyLink, and Genny Morelli and the undersigned of ITTA met with Travis Litman of the Office of Commissioner Rosenworcel and separately with Claude Aiken of the Office of Commissioner Clyburn, regarding the above-captioned proceedings.¹

The comments filed by ITTA and its member companies in this proceeding addressed the procedural, legal and policy shortcomings of several of the proposals contained in the FNPRM, and otherwise advocated various positions on the myriad questions posed by it.² In our meetings, we referenced these comments, and expressed opposition to the Verizon-INCOMPAS proposed regulatory framework for business data services which, contrary to those parties' claims, is not at all a "middle ground between many different perspectives."³ The bulk of the discussion then focused on the Competitive Market Test for business data services.

We began with the basic underlying principle that the Competitive Market Test should be administered in a technologically-neutral manner. We then advocated that the Commission acknowledge the significant trends in business data services competitiveness since 2013, especially from cable, and consider all forms of business data services competition – including, but not limited to, Metro Ethernet, "best efforts" cable broadband services, and UNEs – to be one

¹ *Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) (FNPRM).

² See Comments of ITTA, WC Docket Nos. 16-143 and 05-25, RM-10593 (filed June 28, 2016) (ITTA Comments); Joint Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp., WC Docket Nos. 16-143, 15-247 and 05-25, RM-10593 (filed June 28, 2016).

³ Letter from Kathleen Grillo, Senior Vice President, Verizon, and Chip Pickering, CEO, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143 and 05-25, at 3 (filed June 27, 2016); see ITTA Comments at 2-3.

product market, except for carving out a separate product market for wireless backhaul.⁴ We described anecdotally how CenturyLink often purchases business data services from cable providers when it needs connections to serve customers outside of its footprint. With respect to “best efforts” cable, we asserted that the vast majority of what was reported in the Commission’s data collection to be “best efforts” cable business services turns out to actually be cable Ethernet service – late-filed cable data showed that the four largest cable providers in 2013 were able to provide Metro Ethernet in *22 times* as many census blocks as had previously been reported.⁵

As for creating a separate product market for wireless backhaul, we discussed how that market currently is competitive axiomatically, and the Commission should treat it as such. We noted that wireless providers typically have different needs and purchase business data services differently from other large customers, and that, as the Commission observes in the *FNPRM*, they “are typically large and sophisticated buyers, with substantial capacity to leverage scale,”⁶ and with bargaining power equal to or greater than business data services providers. These same considerations likewise will apply in the future, as there should be no difference in the purchasing patterns and capacity-per-connection needs between current connections to large cellular towers and future connections to “micro” cells that may be contemplated for 5G wireless.

We further discussed how two actual or potential competitors are sufficient for a finding of competitiveness, which is supported by the finding of Dr. Marc Rysman, the econometrician engaged by the Commission, that the price effect of one competitor is “negative and significant.”⁷ In addition, we urged that the Commission find the geographical market to be larger than a census block. Putting together all of these elements of the Competitive Market Test, the Commission should find that, except in rare instances, business data services *are* competitive.⁸ We reiterated both our support for the Commission’s apparent concession in the *FNPRM* that the market for high-bandwidth business data services is competitive,⁹ and our contention that, except in such rare instances, the Commission should find that the business data services market likewise is competitive with respect to lower-bandwidth offerings.

Finally, we maintained that the Commission should find detariffing permissible, not mandatory.

⁴ See ITTA Comments at 5-7, 10-14, 19-21.

⁵ See *id.* at 12; Motion to Strike, WC Docket No. 16-143 et al., at 1-2 (filed June 17, 2016).

⁶ *FNPRM*, 31 FCC Rcd at 4812, para. 202; see ITTA Comments at 19-21.

⁷ *FNPRM*, 31 FCC Rcd at 4942, Appx. B Sec. IV.C. Dr. Rysman reached this conclusion with respect to all facilities-based competitors. See *id.*; see also *id.* at 4952, Appx. B Tbl. 19.

⁸ See ITTA Comments at 16-19.

⁹ See *FNPRM* at Sec. V.A.10. (“Evidence of Market Power in the Delivery of DS1 and DS3 Services and Lack Thereof for Higher Bandwidth Services”).

Ms. Marlene H. Dortch
August 15, 2016
Page 3

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Claude Aiken
Travis Litman
Nicholas Degani