

# Morgan Lewis

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September 15, 2016

**Via ECFS**

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

Re: WC Docket No. 16-143, WC Docket No. 15-247, WC Docket No. 05-25;  
RM-10593, Notice of Ex Parte Communication

Dear Ms. Dortch:

On September 13, 2016, representatives of Lighttower Fiber Networks I, LLC (“Lighttower”), Lumos Networks Corp. (“Lumos”) and Unite Private Networks, LLC (“UPN”) (collectively, the “Competitive Fiber Providers”), along with Joshua M. Bobeck and the undersigned of Morgan Lewis, held separate meetings with (1) Commissioner Michael O’Rielly and Amy Bender, Legal Advisor; (2) Travis Litman, Legal Advisor to Commissioner Jessica Rosenworcel, (3) Nicholas Degani, Legal Advisor to Commissioner Ajit Pai; (4) Claude Aiken, Legal Advisor to Commissioner Mignon Clyburn and (5) Ambassador Philip Verveer, Senior Counsel to Chairman Tom Wheeler. The Competitive Fiber Provider representatives that participated in each of these meetings were Rob Shanahan, President & Chief Executive Officer, Eric Sandman, Chief Financial Officer, and David Mayer, Executive Vice President & General Counsel of Lighttower, Timothy Biltz, President & CEO of Lumos and Jason Adkins, President of UPN.

The representatives of the Competitive Fiber Providers discussed the proposals in the record that could subject CFPs’ prices to regulation through application of benchmarks based on the ILEC’s costs and prices and how that would harm CFPs and their efforts to build new fiber networks, including build outs for mobile wireless networks, enterprise customers and community institutions such as schools and healthcare networks. The

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Marlene H. Dortch, Secretary  
September 15, 2016  
Page 2

representatives further discussed the points made in their filed comments, reply comments and the attached written presentation.

Respectfully Submitted,

*/s/ Eric J. Branfman*

Eric J. Branfman  
Joshua M. Bobeck

Attachment

*Counsel for  
Lightower Fiber Networks I, LLC, Lumos Networks and Unite Private Networks, LLC*

cc: (Via E-Mail)

Commissioner Michael O'Rielly  
Amy Bender  
Travis Litman  
Nicholas Degani  
Claude Aiken  
Ambassador Philip Verveer

# Presentation on BDS Regulation from the Perspective of Competitive Fiber Providers-- Lighttower, Lumos, and Unite Private Networks

September 13, 2016



## REGULATION OF COMPETITIVE FIBER PROVIDER (CFP) PRICING WOULD BE BAD POLICY

- It would be ANTICOMPETITIVE and thus entirely inimical to the Commission's goal of increasing competition
  - CFPs are solving the last mile problem—we are the ones investing hundreds of millions of dollars to build new network in all types of areas—urban, suburban and rural
  - CFPs spend nearly all their cash flow and approximately 50% of revenue on building new fiber routes—versus 12% of revenue and a small fraction of cash flow for ILECs
  - Many CFP projects barely meet the minimum required return threshold that investors require; if there were regulation of CFP pricing, the resulting uncertainty, risk of litigation and transactional cost would cause many projects to be abandoned— ***this is a certainty—there would be less new infrastructure built***
  - For example, hospitals that are now getting new advanced networks to manage files and provide advanced services such as robotic surgery would no longer have this option available and would have to stay on old ILEC networks
  - And fewer school districts would be able to have a new state of the art network built to serve student needs such as increased bandwidth and distance learning

## AND IT IS UNNECESSARY TO APPLY BDS REGULATION TO CFPs

- CFPs face competition from the ILEC everywhere they operate
  - ILEC serves virtually every CFP location
  - In the infrequent case in which the ILEC does not serve a CFP location, such as a cell site, the CFP's pricing was established in a competitive bidding process in which the ILEC (and others) participated
- In almost all cases CFPs face competition from other fiber providers as well
- A CFP cannot sell at a price higher than ILEC unless it offers compensating value, such as guarantees of higher quality
- Regulation should be imposed only where absent regulation, a carrier would have the power to exploit imperfect market conditions
- If the FCC regulates ILEC prices at those locations where it deems competition to be inadequate, competitive fiber providers will never be in a position to exploit imperfect market conditions
- Pricing for CFP offerings has been falling for years—whether calculated on a per megabit or any other basis
- IRR's on new projects have fallen dramatically in the last few years and payback periods have increased

## AND IT WOULD BE ALMOST IMPOSSIBLE TO ADMINISTER REGULATION OF CFPS' PRICING

- Requiring CFPs to price based on ILEC's costs is not authorized by §§ 201 or 202.
- Many types of problems
  - CFPs have different cost structures than ILECs; CFPs pay higher franchise fees, building access fees, rights of way fees, and construction permit fees; and CFPs have higher cost of capital and cost of physical inputs; thus a different rate structure would have to be created for CFPs
  - Franchise and building access fees account for approximately 5% of Lighttower's total costs
  - Many CFP sales are Single-package sales to multi-location customers spanning different ILEC territories, with different benchmarks or price caps—for a CFP, determining whether a particular price is in compliance would be costly and almost impossible to comply with
  - Regulation of ILEC pricing is based on basket, not individual rate elements; this gives ILEC the power to make adjustments within the basket to gain competitive advantage over CFPs
  - CFPs sell solutions and not service elements, and CFPs price them as a package—regulation of CFPs' pricing simply does not and cannot fit the CFP business model

# LIGHTTOWER OVERVIEW



September 12, 2016

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# Lighttower Today

Lighttower's all-fiber network connects over 22,000 service locations, across 17 states, in the Northeast, Midwest, and Mid-Atlantic. Lighttower delivers customized, high-performance connectivity where and when you need it with the award-winning support and network performance you require.

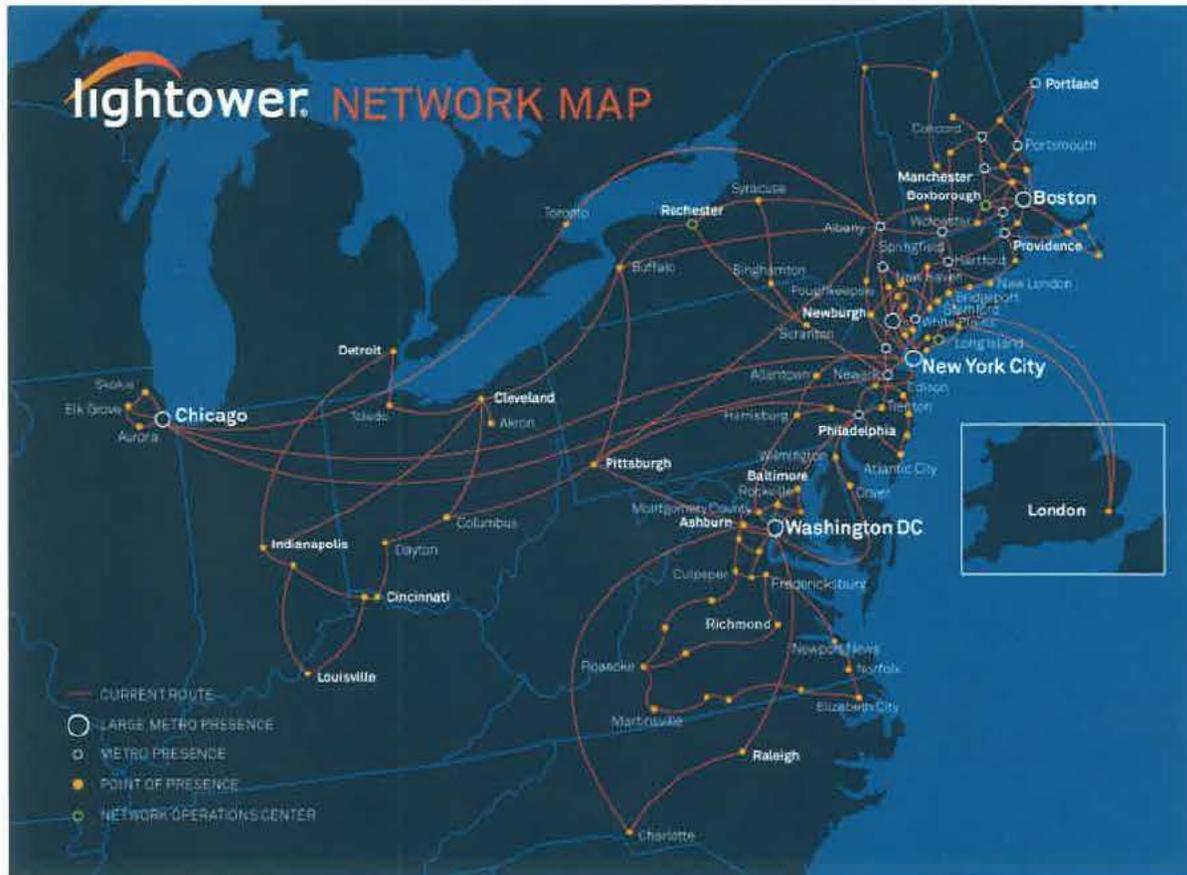
- Most prolific builder of open-access metro fiber networks over the past decade
- In-house fiber construction expertise and experience provide us with the ability to connect buildings quickly and cost effectively
- Trusted for mission-critical networking by some of the largest companies and organizations in the country, for core networking infrastructure
- Financially stable throughout our history
- Independent, privately-held company with clear go forward mission

## COMPANY SNAPSHOT

- Founded in 2007
- Headquartered in Boxborough, MA
- \$700MM+ in Revenue
- 4,000+ Customers
- 900+ Employees
- 8 Successful Acquisitions and Mergers

# We Own the Most Dense Network In The Region

We own our all-fiber network, providing our customers with faster provisioning times, award-winning provisioning, and our industry-leading customer support.



- 33,000+ Fiber Route Miles
- 22,000+ Service Locations
- 275+ Data Centers Connected
- 500+ Telco Hotels & CO's Connected
- 40+ Financial Exchanges Connected
- 7,000+ Cell Sites & Small Cells Connected
- Direct Fiber Connectivity to Major Cloud Providers
- Geographically Diverse Network Operations Centers

Dark Fiber | Ethernet | Internet Access | Private Networks | Video Transport | Data Center & Cloud Connectivity

# Lightower in Massachusetts

- **Lightower is Trusted by More than 4,000 Customers**

- Lightower is trusted by over 4,000 of the most respected colleges and universities in the nation, as well as school districts, health care networks, financial services firms, law firms, government agencies, technology and manufacturing companies, media properties and broadcasters, utilities & energy companies, e-commerce providers, ILECs, CLECs, and wireless carriers

- **Education – Lightower Enables Advanced eLearning Capabilities**

- Lightower serves over 300 leading colleges, universities, and school districts
- Lightower is an experienced E-Rate provider, including serving one of the largest school districts in the nation

- **Health Care – Renowned Providers Trust Lightower**

- Over 200 leading research hospitals and care providers depend on Lightower for critical connectivity
- Lightower helps care providers reliably and securely share patient data, including advanced imaging
- Custom-designed health care networks help accommodate changing regulatory challenges

- **Federal, State, and Local Governments Depend on Lightower**

- Lightower is an authorized vendor to federal, state, and local agencies under through established contract vehicles
- Lightower's deep network infrastructure is uniquely suited to help any government agency from local to federal

- **Wireless Providers Turn to Lightower for Fast Wireless Connectivity**

- Lightower provides Fiber-to-the-Tower and Small Cell connectivity to over 7,000 sites
- Lightower provides dark and lit fiber to towers, and also provides transport to regional MSCs for carriers

- **Carriers Depend on Lightower for Access and Backbone Infrastructure**

- Lightower works with CLECs to provide last mile access to our 22,000+ service locations
- Lightower also provides backbone augmentation services to CLECs to expand their networks

- **Lightower is Committed to Our Customers**

- Lightower's history shows repeated investments in both support resources and network infrastructure, including acquisitions and network expansions, to enable us to continue to grow and serve our customers even better

## LUMOS NETWORKS

- Lumos Networks was created as a “spin off” from NTELOS on November 1, 2011 and is a public company that trades on NASDAQ.
- Lumos has a total of 8,985 fiber route miles/436,000 total strand miles in a Virginia, West Virginia and Pennsylvania. We have 3,215 total “on-net” locations and over 100,000 locations that are “near net” (within ½ mile of our fiber network).
- In its Enterprise (business) segment, Lumos targets “large locals” in 7 key verticals: government (city, county, state), education, finance, healthcare, media, manufacturing and professional services. Large locals are customers in which the preponderance of their total locations are in the Lumos fiber footprint.
- Lumos provides customized fiber network solutions to wireless carriers (“FTTC”). The company has built fiber to almost 1,300 wireless cell sites. Lumos provides over 1,600 BDS circuits to these cell sites
- Lumos also targets sales to other carriers who need “last mile” facilities to reach their own Enterprise Customers. Lumos supplies carriers with the lists of its “on-net” and “near net” locations. We update the lists frequently as we build more network.
- Since 2012, we have invested approximately \$375m in building out fiber networks -- more than 100% of our free cash flow. In 2014, our capital expenditures were 42% of our revenue; in 2015, they were 57% of the total revenue.
- Lumos’ recent 822 mile fiber build in Tidewater Virginia increases our total Enterprise addressable market by ~\$221m, up ~67% vs. existing markets. Most importantly it enables LUMOS to be more competitive in its offerings to multi location enterprises across its footprint that would otherwise have to engage multiple ILECs and negotiate stand-alone pricing by location.

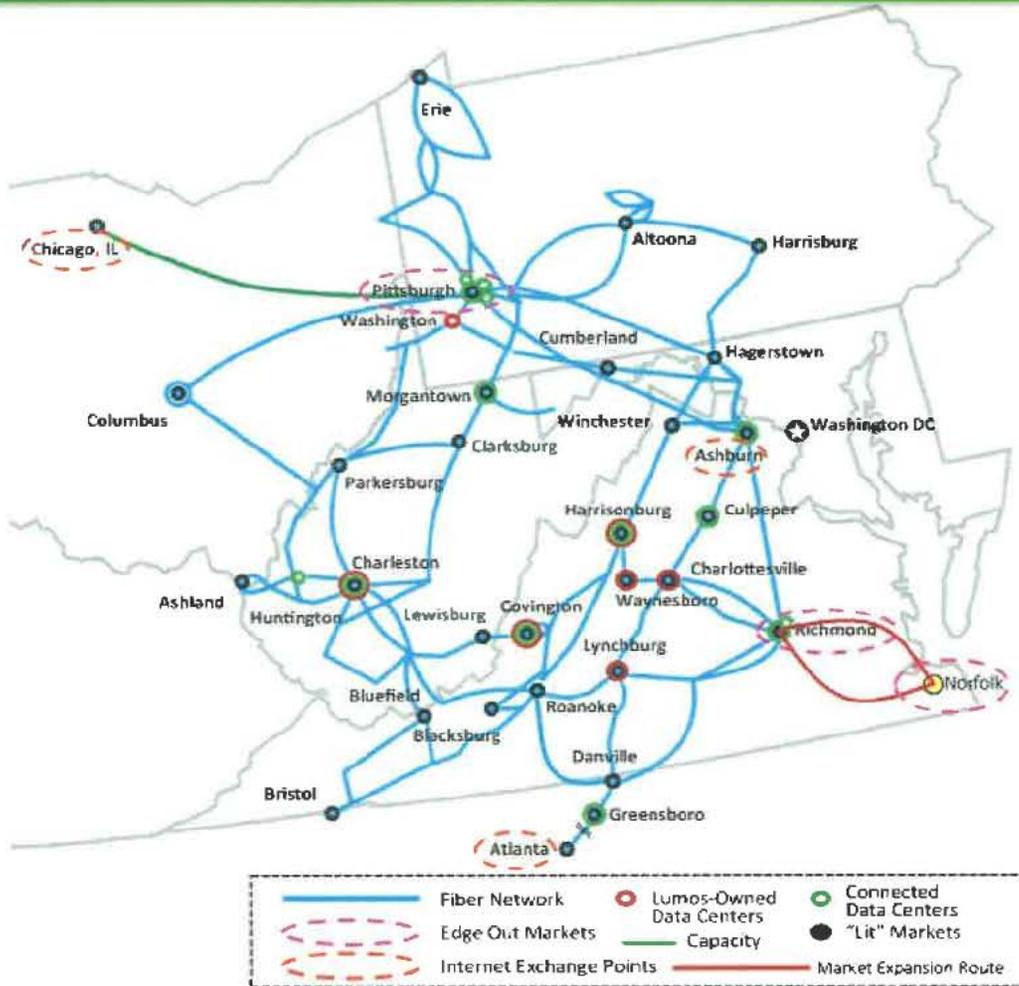
### Lumos Networks Transformation

|                                   |                |               |             |
|-----------------------------------|----------------|---------------|-------------|
| • Total On-Net Locations          | ~1,200         | 3,217         | +168%       |
| • Lit Buildings                   | 1,051          | 1,922         | +83%        |
| • Fiber Route Miles               | 5,800          | 8,985         | +55%        |
| • Broadband Revenue               | \$21m          | \$31.0m       | +47%        |
| • Unique FTTC Towers              | 70             | 1,295         | +900%       |
| • Annualized FTTC/Ent. Rev        | ~\$41m         | ~\$88.2m      | +115%       |
| • <b>UNE-Based CLEC Customers</b> | <b>122,046</b> | <b>69,728</b> | <b>-43%</b> |



# Lumos at a Glance

**8,985 Fiber Route Miles; 436,451 Total Fiber Strand Miles  
48-49 Avg Strand Count; 69% of Strand Miles: Lumos-owned**



## Attractive Fundamentals

- Total data contract value of ~\$350m with avg. length of ~4 years
- Combined FTTC/Enterprise '16 growth tgt of 20%+
- Annualized Data Contribution Margin: ~98m (79% mrg)
- Targeted 15-20%+ ROI on fiber deals
- FTTC/Enterprise revenue run rate is ~95% non-TDM
- 4G Data growth driving wireless backhaul demand
- On-net focus: 60% Data EBITDA margin target<sup>1</sup>
- Network Expansion to increase Addressable Market by ~\$221m or ~67%

## Revenue Opportunities

|                              | Current <sup>2</sup> | Market Opportunity <sup>3</sup> |
|------------------------------|----------------------|---------------------------------|
| FTTC Unique Sites            | 1,295                | 9,540                           |
| On-Net Buildings             | 1,922                | 104,000                         |
| Total Connected Data Centers | 36                   | 100+                            |

<sup>1</sup> Goals highlighted herein are long-term in nature and are subject to various risks and uncertainties, one or more of which could cause goals to be unattainable. You should not regard the inclusion of a goal in this presentation as a representation by any person that the results will be achieved

<sup>2</sup> As of 6/30/2016

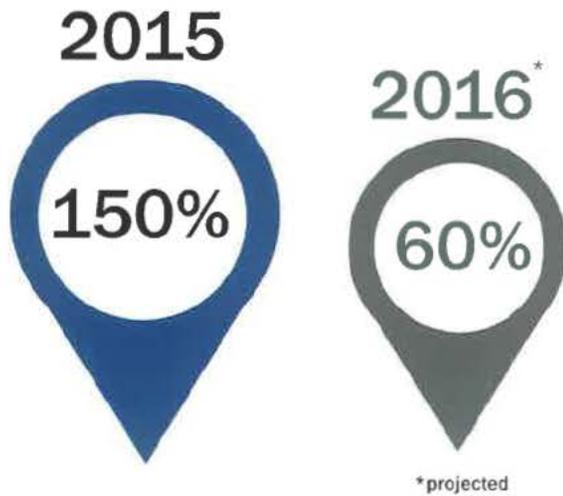
<sup>3</sup> Based on Lumos Networks' internal research and analysis of data from research, surveys and studies conducted by third parties, such as Altman Vilandrie and Tower Source (for FTTC sites), Equifax Telecom and Stratsoft (for On-Net buildings) and public records databases (for data centers). Market Opportunity denotes wireless cell sites within 3 miles and buildings within 1/2 mile of the Lumos Networks fiber footprint and includes recently completed market expansion in Richmond and Norfolk



# Unite Private Networks

*at a glance*

## Percentage of revenue spent on CAPEX



We serve over 3,750 on-net buildings across the US



Our network footprint spans over 6,200 route miles



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