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VIA ECFS

Ex Parte Notice

September 30, 2016

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
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 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*, WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

CenturyLink and others have explained that the "benchmarking" regime advanced by Verizon and INCOMPAS for purposes of re-regulating rates for ILEC-provisioned Ethernet services (the "Proposal") is flawed in numerous respects and should be rejected.[1] It was clearly developed to benefit Verizon at the expense of other BDS competitors and their customers,[2] with little or no understanding of or concern for the impacts on investment, jobs, and broadband deployment in some of the most challenging to serve territories in the country. As shown below, rate reductions of these proportions would be ruinous for continued investment. The economic incentives to pursue new infrastructure deployment are hard enough as it is. Slashing rates in the manner envisioned by this proposal would make any business case all the more difficult. Thus, these price reductions would lead to less competition and less broadband investment, not more.

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[1] *See, e.g.*, Letter from Russell P. Hanser, Counsel to CenturyLink, Frontier Communications, FairPoint Communications, and Consolidated Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143 *et al.* (filed Aug. 29, 2016); *see also* Letter from Kathleen Grillo, Senior Vice President, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Aug. 9, 2016) ("August 9 Letter").

[2] Letter from Christopher T. Shenk, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143 *et al*. (filed Sept. 23, 2016).

These impacts may come as a surprise to some. The severity and magnitude of the Verizon/INCOMPAS reductions certainly were a surprise to CenturyLink. We strongly believe that the FCC should not undertake any pricing reductions unless and until the outcomes and the impacts of those reductions are fully understood. As the Communications Workers of America (CWA) noted in a recent ex parte, "FCC action in this proceeding that would push business data service prices so low that carriers would look to cut labor costs and capital outlays in fiber networks would subvert the very goals the FCC aims to achieve in this proceeding."[3]

This submission identifies additional problems with the methodology underlying Verizon/INCOMPAS' proposed Ethernet benchmarks and the extreme consequences that would follow their adoption. As described by Verizon and INCOMPAS, their Proposal would operate as follows. Without any justification for doing so, the Proposal would establish a three-year benchmark rate for each price cap carrier's slowest Ethernet service (*i.e.*, 2 or 3 Mbps) intended to be equal to that carrier's tariffed 1.544 Mbps DS1 rate for a three-year term, "after applying the full one-time adjustment and annual X-factor...of 4.4 percent minus inflation."[4] The DS1 circuit rate used to set this benchmark would include rate elements for one channel termination, one fixed mile, five variable miles, and 1/20 of a DS3/DS1 multiplexing arrangement.[5] To the extent that a carrier's rates vary by zone, Verizon and INCOMPAS propose to use the rates from the carrier's least dense zone as a proxy for noncompetitive areas.[6] The Proposal would then set rate benchmarks for the price cap LEC's Ethernet services above its slowest Ethernet services based on the relationship of the carrier's pricing of Ethernet services in "competitive" areas.[7]

The Verizon/INCOMPAS Benchmarking Proposal Relies on Unjustified and Unreasonable Assumptions, While Jeopardizing the Availability of Next-Generation Services in Rural Areas

The Proposal's benchmarking scheme suffers from multiple serious problems that would undermine the public interest. First, Verizon and INCOMPAS provide no justification for assuming that a price cap carrier's rate for a 2 or 3 Mbps Ethernet service should equal that of a DS1 offering. By definition, a 3 Mbps Ethernet service offers the customer twice the bandwidth of the DS1 service, and it provides scalability and other superior functionality not available from a DS1. Moreover, even before the extreme one-time adjustment proposed by Verizon and

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[3] Letter from Christopher M. Shelton, President, CWA, to Tom Wheeler, Chairman, FCC, WC Docket Nos. 16-143 *et al*., at 2 (filed Sept. 14, 2016).

[4] August 9 Letter at 1-2. This language appears to propose that the benchmarked DS1 rate would reflect a one-time 15% reduction and the annual X-factor reduction. *See id.* The analysis below assumes that to be the case.

[5] *Id.* at 2.

[6] *See* Letter from Maggie McCready, Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25, RM-10593, at 1 (filed Aug. 5, 2016).

[7] *See id.* at 2.

INCOMPAS, CenturyLink's TDM rates are *already* set below its forward-looking economic costs in many of its rural markets today, which would uniformly be deemed "noncompetitive," with respect to DSn services, under the unjustified competitive market test sought by Verizon and INCOMPAS.[8] These rate structures further the public interest with respect to universal service, yet are feasible only because rates across the service territory are structured to allow the company to recoup its costs. The Ethernet benchmarking proposal would force rates in these rural areas (the markets least likely to satisfy whatever competitive market test the Commission might adopt) even further below cost, disrupting CenturyLink's ability to recoup its costs. Moreover, CenturyLink would not be able to offset such losses by increasing rates in other areas, given the presence of competitors in those lower-cost areas. The Proposal would exacerbate this perilous situation by extending Verizon/INCOMPAS' unreasonable rate cuts to price cap LECs' Ethernet services as well, upending the carriers' Ethernet revenue models and undermining their ability economically to provide next-generation services in high-cost areas.

Second, the Proposal relies on the false assumption that unlike services are alike in relevant ways. Specifically, the elements of DS1 service to which Verizon and INCOMPAS propose to benchmark Ethernet rates do not correlate with a complete Ethernet service. As a general matter, CenturyLink is unaware of any context in which the rate for one service is used to set the rate for a different service – which is not surprising, as any mismatch between services precludes using one as a proxy for the other for rate-setting purposes.[9] To aid the Commission in its consideration of the Verizon/INCOMPAS proposal, the diagrams below illustrate the differences between the elements of the DS1 circuit rate used in the benchmarking methodology

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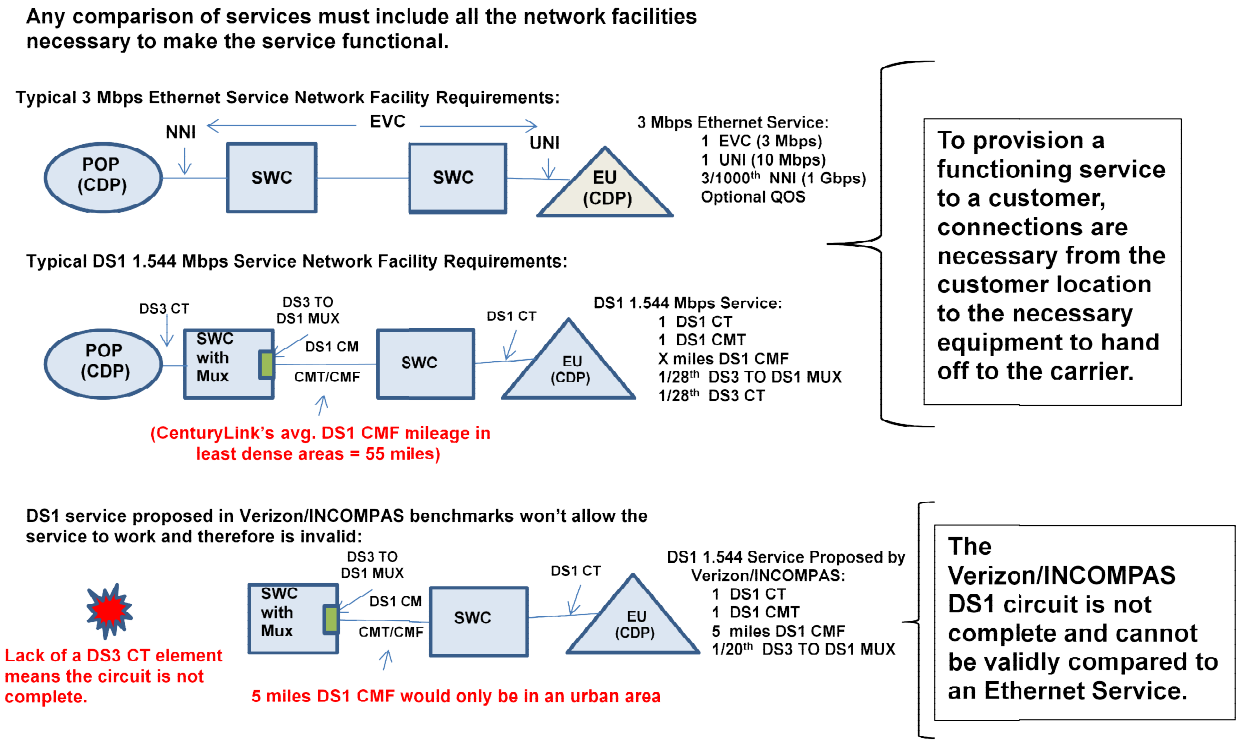
[8] Like many price cap ILECs, CenturyLink utilizes averaged rates, resulting in below-cost rates in many rural areas. *See* Ex Parte Notice from Melissa E. Newman, Vice President, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, as attached to the letter from Craig J. Brown, Senior Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC (Sept. 27, 2016) (showing that CenturyLink's DS1 rates in legacy CenturyTel areas potentially deemed "non-competitive" are already below applicable price floors in 16 of the 18 CenturyTel states with DS1 demand and in legacy Embarq or Qwest areas in 11 states). As CenturyLink has stated previously, consideration of forward-looking costs is not appropriate in the context of BDS rate-setting. However, because other parties have referred to such costs, and because rates set below forward-looking costs would be indisputably unlawful, CenturyLink believes it is worth noting here that this is exactly what would result from the Verizon/INCOMPAS approach.

[9] CenturyLink recognizes that the Commission established an "interim rule" requiring ILECs to provide CLECs with reasonably comparable wholesale access on reasonably comparable rates, terms, and conditions, when discontinuing BDS at DS1 speed and above and/or commercial wholesale services. *See Technology Transition Order*, GN Docket Nos. 13-5, *et al*., 30 FCC Rcd 9372, 9443-44 ¶ 132 (2015). However, this *temporary* condition will expire when the FCC implements new "rules and/or policies" to ensure that "rates, terms, and conditions for special access services are just and reasonable." *See id.* & at 9448 n.467; *United States Telecom Association v. FCC, No. 15-1414*, Brief for Respondents, at 19 (D.C. Cir. filed Aug. 15, 2016) (https://apps.fcc.gov/edocs_public/attachmatch/DOC-340811A1.pdf).

proposed by Verizon and INCOMPAS and the elements of complete DS1 and equivalent Ethernet services.

As shown below, the Proposal includes only one channel termination for the DS1 circuit used to set the Ethernet benchmarks, even though a complete circuit requires *two* connections, whether used to provide DS1 or Ethernet service. For DS1 service, there must be one channel termination at the end user location and another channel termination at the carrier's point of presence, as Verizon and INCOMPAS should well know. These channel terminations are frequently provided as individual channels on a DS3 circuit. For Ethernet service, there is a user-to-network interface at the end user location and a network-to-network interface at the carrier's point of presence. Because the Proposal fails to include two connections in the DS1 circuit used to establish the Ethernet benchmark, it excludes a portion of the DS3 channel termination necessary for a DS1 service and thereby underestimates the rate to provide that service and the corresponding benchmarking for the 2 or 3 Mbps Ethernet service. Thus, in the event the Commission adopts a benchmarking framework for use in regulating Ethernet rates (a result that would be both unwise and unlawful, as CenturyLink has previously explained), it should increase the DS1 rate to include the charge for 1/28 of a DS3 channel termination. (Relatedly, CenturyLink recognizes that the rate element for the DS3/DS1 multiplexing arrangement in the Proposal should be *reduced* to reflect multiplexing for 1/28 of a termination rather than multiplexing for 1/20 of the channel termination.)[10]



[10] *See* August 9 Letter at 2.

CDP – Customer Designated Premises
CMF – Channel Mileage Facility
CMT – Channel Mileage Termination
CT – Channel Termination
DS1 – Digital Signal 1 (1.544 Mbps)
EU – End User
EVC – Ethernet Virtual Connection
EVPL – Ethernet Virtual Private Line
MUX HUB – Multiplexing and Hub Routing Switch
NNI – Network-to-Network Interface
POP – Point of Presence
QOS – Quality of Service (i.e., SLA)[11]
SWC – Serving Wire Center
UNI – User-to-Network Interface

The Proposal also significantly understates the average length of a channel mileage facility ("CMF") between these two connections. CenturyLink has calculated the average mileage for its DS1 facilities using 2015 data, as reflected in the analysis in Attachment A.[12] For its least dense zones (which would be the best proxy for "noncompetitive" areas under the Proposal), CenturyLink's actual average mileage for DS1 circuits ranges between 16 and 66 miles, with an overall average of 55 miles.[13] Clearly, this figure far exceeds (and, in fact, is eleven times as large as) the Proposal's presumed five variable miles for a DS1 circuit.

The Verizon/INCOMPAS Benchmarking Proposal Would Result in Extreme and Arbitrary Reductions in CenturyLink's Ethernet Rates

As CenturyLink has explained to Commission staff, the Proposal's various flaws would result in extreme and arbitrary rate reductions that will distort and deter competition in the BDS market.[14] Specifically, CenturyLink estimates that the Proposal would slash the standard Ethernet rates in the company's eight interstate service guides by between 37 percent and 89 percent,[15] with a company-wide weighted average reduction of these standard rates of 49 percent.[16]

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[11] *See* August 9 Letter n.2 ("The parties are working to further define the Ethernet service level closest to TDM-based DS1 special access and related issues, but agree it should be associated with one of the highest levels of Business Data Services quality of service a provider offers.").

[12] *See* Attachment A [Excel spreadsheet/Average Mileage tab].

[13] *See id.* This average mileage figure was calculated using 2015 filed Channel Mileage Facility ("CMF") and Channel Mileage Termination ("CMT") figures by dividing total CMF and total CMT.

[14] *See* Letter from Melissa Newman, Vice President-Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (Aug. 2, 2016).

[15] *See* Attachment B (reporting results on a CenturyLink Operating Company ("CLOC") basis) [Excel spreadsheet/Summary and Inputs tab]. The 89 percent rate reduction would occur in one of our rural high-cost legacy CenturyTel Markets (identified as CLOC 8 in Attachment A [Excel spreadsheet/Average Mileage tab]).

[16] *See* Attachment B [Excel spreadsheet/Summary and Inputs tab].

In CenturyLink's legacy Qwest service territory the Proposal would cut CenturyLink's standard Ethernet rates by more than half.[17] CenturyLink derived this estimate by applying the following steps in the Verizon/INCOMPAS framework. First, it determined how its DS1 circuit rates would fare under the Verizon/INCOMPAS TDM proposal, as follows:

DS1 Circuit Charges under VZ/INCOMPAS Proposal (Qwest Territory):

DS1 Channel Termination	$123.98
DS1 Channel Mileage Termination	$59.50
DS1 Channel Mileage Facility (5 miles)	$38.25
DS3 to DS1 Multiplexing	$13.50
Total "Current" Rate	$235.23
Total Rate after "One-Time" Adjustments[18]	$193.35

Next, CenturyLink estimated its current standard charges for a complete and equivalent 3 Mbps Metro Ethernet circuit in the Qwest Territory, as follows:

3 Mbps Ethernet Circuit Charges (Qwest Territory):

Ethernet Virtual Connection (3 Mbps)	$50.00
User-to-Network Interface (10 Mbps)	$307.00
Network-to-Network Interface (3/1000)	$17.34
Quality of Service (*i.e.*, SLA)	$34.00
Total	$408.34

Based on these estimates, the difference between the DS1 circuit rate after the "one-time" price reductions in the Proposal are fully implemented and CenturyLink's standard rate for a 3 Mbps Ethernet service would be $214.99 (*i.e.*, $408.34 minus $193.35). Accordingly, if the Proposal were adopted, CenturyLink would have to reduce its standard Ethernet rates in its largest service territory by about *53 percent*. Moreover, these price cuts don't account for the fact that the customer purchasing a 3 Mbps Ethernet service is receiving twice as much capacity than is provided with a DS1 and therefore should expect to pay significantly more than for a DS1.

The Proposal would apply this same percentage rate cut to CenturyLink's higher speed Ethernet services as well. Making matters worse, the proposed Verizon/INCOMPAS rate reductions would cascade through CenturyLink's Ethernet rate structure by applying a "price

[17] *See id.* (column L-Q CLOC 11).

[18] This rate also includes the additional X-factor reductions proposed by Verizon and INCOMPAS.

curve" to higher speed Ethernet services, even further eviscerating the company's ability to recoup its investment and to continue providing high-quality services in rural areas.[19]

The economic incentives to pursue new infrastructure deployment are already challenging given the competitive nature of the Ethernet marketplace, which creates uncertain return on that investment. Slashing rates in the manner envisioned by the Proposal would make that business case all the more difficult, contravening the Commission's broadband objectives and, as noted above, undermining important universal service goals as well. For these reasons, and those set forth elsewhere in the record, the Commission should reject the Verizon-INCOMPAS benchmarking Proposal.

Pursuant to section 1.1206(b) of the Commission's rules, this notice is being filed in the above-referenced dockets. Please contact the undersigned with any questions.

Sincerely,

/s/ Melissa Newman

Enclosures

cc: Matthew DelNero
Deena Shetler
Pamela Arluk
David Zesiger
William Kehoe
William Dever

[19] August 9 Letter at 2.

Attachment A-Average Mileage Tab

Average CMF Mileage for DS1 Circuit, Least Dense Zone:

2015 Quantity:	L-Q Zone 3 (0-8 miles)	L-Q Zone 3 (8-25 miles)	L-Q Zone 3 (25-50 miles)	L-Q Zone 3 (Ov 50 miles)
CMF Source: TRP Filing	251093	1871135	3100432	11130191
CMT Source: TRP Filing	38244	80512	67156	61005
Average Mileage	6.57	23.24	46.17	182.45

Overall Weighted Average Mileage, Least Dense Zones:

55.05

Attachment A-Average Mileage Tab

L-Q Zone 3 All	L-E Zone 4	L-CT CL 1 CNOH	L-CT CL 2 CNAS	L-CT CL 3 CNAN	L-CT CL 6 CNSA	L-CT CL 7 CNMT	L-CT CL 8 CNTU	L-CT All
16352851	754140	24825	168829	118462	948	4306	1420072	1737442
246917	25172	5829	11302	12518	64	1410	78150	109273
66.23	29.96	4.26	14.94	9.46	14.81	3.05	18.17	15.90

Attachment B-Summary and Inputs Tab

CENTURYLINK
Regulatory Operations
Verizon/INCOMAS Proposal

Summary of Impact

CenturyLink Company Tariff or Interstate Service Guide	CLOC 11	CLOC 9	CLOC 1	CLOC 2	CLOC 3	CLOC 6	CLOC 7	CLOC 8
DS1 Service VZ/I Proposal								
DS1 CT - 1	$123.98	$239.00	$215.91	$287.70	$175.00	$173.49	$153.95	$46.30
DS1 CMT	$59.50	$105.00	$51.84	$29.50	$42.40	$61.63	$83.21	$2.35
DS1 CMF - Based upon 5 Miles - not realistic	$38.25	$30.50	$60.75	$52.45	$66.15	$59.35	$85.95	$6.65
DS3 TO DS1 MUX - 1/20th	$13.50	$16.50	$25.43	$16.68	$22.81	$20.00	$20.83	$11.31
DS3 CT - 1 - Not in VZ/I Proposal	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
TOTAL DS1 SERVICE PER VZ/I Proposal (A)	**$235.23**	**$391.00**	**$353.93**	**$386.33**	**$306.36**	**$314.47**	**$343.94**	**$66.61**
Total DS1 Services after Reset (A) less 15% Reset (B)	$199.95	$332.35	$300.84	$328.38	$260.41	$267.30	$292.34	$56.62
ETHERNET BENCHMARK After Productivity (B) less 3.3% (C)	**$193.35**	**$321.38**	**$290.91**	**$317.54**	**$251.81**	**$258.48**	**$282.70**	**$54.75**
3M Ethernet Service VZ/I Proposal:								
1 EVC (3M)	$50.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00
1 UNI (10M)	$307.00	$315.00	$315.00	$315.00	$315.00	$315.00	$315.00	$315.00
1 NNI (1G) (3/1000)	$17.34	$3.47	$3.47	$3.47	$3.47	$3.47	$3.47	$3.47
Highest QOS	$34.00	$117.00	$117.00	$117.00	$117.00	$117.00	$117.00	$117.00
TOTAL ETHERNET SERVICE Per VZ/I Proposal (D)	**$408.34**	**$510.47**	**$510.47**	**$510.47**	**$510.47**	**$510.47**	**$510.47**	**$510.47**
DIFFERENCE (D) less (C)	**$214.99**	**$189.08**	**$219.55**	**$192.93**	**$258.65**	**$251.98**	**$227.77**	**$455.71**
% REDUCTION	**52.65%**	**37.04%**	**43.01%**	**37.79%**	**50.67%**	**49.36%**	**44.62%**	**89.27%**
Overall Weighted Percentage Reduction	**49%**							