Morgan Lewis

Eric J. Branfman
Joshua M. Bobeck
+1.202.373.6000
Eric.branfman@morganlewis.com
joshua.bobeck@morganlewis.com

November 3, 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 November 1, 2016, David Mayer, Executive Vice President & General Counsel of Lightower Fiber Networks I, LLC and affiliates ("Lightower"); Mary McDermott, Senior Vice President-Legal and Regulatory Affairs and Secretary of Lumos Networks Corp. ("Lumos") and Matt Wiltanger of Unite Private Networks ("UPN") (collectively, the "Competitive Fiber Providers"), along with Joshua M. Bobeck and the undersigned of Morgan Lewis, held separate meetings with (1) Amy Bender, Legal Advisor to Commissioner Michael O'Rielly; (2) Ambassador Philip Verveer, Senior Counsel, Stephanie Weiner, Legal Advisor and Lisa Hone, Legal Advisor to Chairman Tom Wheeler; (3) Matthew DelNero, Chief, Deena Shetler, Eric Ralph, Pamela Arluk, William Kehoe, David Zesiger, Christopher Koves, Justin Faulb, Christine Sanquist and Richard Benson of the Wireline Competitive Bureau; (4) Nicholas Degani, Legal Advisor to Commissioner Ajit Pai; (5) Claude Aiken, Legal Advisor to Commissioner Mignon Clyburn; and (6) Travis Litman, Legal Advisor to Commissioner Jessica Rosenworcel, to discuss the business data services ("BDS") proceeding, the Chairman's proposal as summarized in the fact sheet released on October 7 and to present new data in response to issues raised by other parties. Mr. Wiltanger did not participate in meetings (4) – (6).

In each meeting, the Competitive Fiber Providers discussed concerns regarding filings added to the record since the release of the Chairman's Fact Sheet that propose ex ante price regulation of ILEC packet-based BDS below 50 Mbps, but do not clearly explain whether the proponents seek regulation of CFP prices for packet BDS.[1] The Competitive Fiber Providers thus urged the Commission to ensure that to the extent it adopted any ex ante regulation of packet-based BDS prices, that it maintain for competitive fiber providers the light touch regulatory regime summarized in the fact sheet. Imposing price regulation on competitive fiber providers, even on a "benchmark" basis limited to packet-based BDS below 50 Mbps would harm competitive fiber providers' efforts to provide continued competition to the ILEC by expanding the availability of fiber networks. Regulating Competitive Fiber Providers would be particularly detrimental in areas of the country that lack broadband choice and where the terrain and lack of population density present unique challenges for deploying broadband.

The Competitive Fiber Providers also discussed the reference in the Chairman's Fact Sheet to the complaint process, stating that "rates of new entrants and parties with smaller market shares are unlikely to be questioned." The representatives stressed their continued opposition to the definition of "new entrant" proposed by Verizon as arbitrary, explaining that when Competitive Fiber Providers deploy fiber optics in new markets they are building an entirely new network, including the core, from scratch. The Competitive Fiber Providers further stressed their opposition to AT&T's claim that it and other ILECs are "new entrants,"[2] discussing in detail the significant advantages ILECs have in terms of access to a ubiquitous fiber network, an entrenched base of customers providing revenue for funding capital expansion that are locked into take or pay contracts for TDM BDS under which they would have to pay penalties if they switch to Ethernet provided by another provider, advantages in building access and costs of rights-of-way as well as lower costs of capital. The Competitive Fiber Providers thus reiterated their view that the Commission should continue to distinguish between carriers that possess market power - such as the ILECs - and those that do not.

The Competitive Fiber Providers further discussed the points made in their filed comments, reply comments and prior ex parte letters.

Please contact the undersigned with any questions regarding this filing.

---

[1] *See e.g.*, Letter from T. Jones, Counsel for Level 3 Communications, at p. 4 (filed Oct. 20, 2016); Letter from T. Jones, Counsel for Level 3 Communications, at p. 1 (filed Oct. 18, 2016).

[2] Letter from James P. Young, Counsel for AT&T, at pp. 21-22 (filed Oct. 25, 2016).

Respectfully Submitted,

/s/ Eric J. Branfman

Eric J. Branfman
Joshua M. Bobeck

Counsel for
Lightower Fiber Networks I, LLC, et al., Lumos Networks Corp. and Unite Private Networks

cc: (via email)
Ambassador Philip Verveer
Stephanie Weiner
Lisa Hone
Claude Aiken
Travis Litman
Amy Bender
Nicholas Degani
Matthew DelNero
Deena Shetler
Eric Ralph
Pamela Arluk
William Kehoe
David Zesiger
Christopher Koves
Justin Faulb
Christine Sanquist
Richard Benson