REDACTED — FOR PUBLIC INSPECTION

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VIA ECFS ***EX PARTE***

September 26, 2014

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

Re: *GN Docket No. 13-5, Technology Transitions; GN Docket No. 12-353, AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; WC Docket No. 05-25, In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; RM-10593, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*

Dear Ms. Dortch:

In accordance with the Second Protective Orders for the above-referenced proceedings, Windstream Corporation ("Windstream") hereby submits a redacted version of the attached Notice of Ex Parte in connection with discussions held with FCC staff on September 24, 2014.

Windstream seeks highly confidential treatment of marked portions of the attached Notice pursuant to the Second Protective Orders in the above-referenced proceedings and subsequent clarification by Delegated Authority.[1] Highly confidential treatment is required to protect information about Windstream's wholesale expenses.[2]

Pursuant to the two Second Protective Orders, this redacted version is being filed in the above-referenced dockets via ECFS. Windstream is filing a copy of the highly confidential version with the Secretary, and sending two copies each to the Wireline Competition Bureau's Jonathan Reel (Competition Policy Division) and Marvin Sacks (Pricing Policy Division).

Please contact me if you have any questions.

Sincerely yours,

/s/ Jennie B. Chandra

Jennie B. Chandra

Attachment

cc: Jonathan Reel
Marvin Sacks

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[1] *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5 and 12-353, Second Protective Order, DA 14-273 (rel. Feb. 27, 2014) (IP Transition Second Protective Order). Special Access; *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd. 17725 (2010) ("Special Access Second Protective Order"). *See also Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA-12-199 (dated Feb. 13, 2012) ("Letter to Donna Epps") (further supplementing the *Second Protective Order*).

[2] *See* IP Transition Second Protective Order at Appendix A, number 3 (declaring eligible for highly confidential treatment "information that provides granular information about a Submitting Party's current or future costs, revenues, marginal revenues or market share"); Letter to Donna Epps at 2 (declaring eligible for highly confidential treatment "expenditures, including dollar volumes of purchases of intrastate and interstate DS1 and DS3 services, and expenditures under certain rate structures and discount plans").

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Dear Ms. Dortch:

On September 24, 2014, Malena Barzilai and I, from Windstream Corporation, and Windstream's counsel, John Nakahata and Randy Sifers, of Harris, Wiltshire & Grannis, LLP (hereinafter "Windstream") met with the following staff from the Wireline Competition Bureau: Matthew DelNero, Eric Ralph, Deena Shetler, Pam Arluk, Randy Clarke, William Layton, and Daniel Kahn. Madeleine Findley from the Office of General Counsel also was present.

Windstream presented charts (attached) referencing GeoResults data on non-residential, multilocation customers using wireline communications. The first chart provides the number of multilocation customer sites (in thousands) using wireline communications, broken down into six categories by number of employees per location.[1] This chart shows there are a significant number of non-residential customers with multiple locations, and scores of these multilocation customer sites encompass a relatively small number of employees. It is reasonable to infer that many multilocation customer sites with a small number of employees – which include pizza

[1] Multilocation customers encompass customers operating in a single state as well as those operating across multiple states. The vast majority of multilocation customer sites, however, are a part of customer operations spanning multiple states: GeoResults data indicate that multilocation customer sites contained within a single state only represent approximately 4 percent of all multilocation customer sites. GeoResults, Third Quarter 2014.

parlors, hardware stores, and other main street businesses – have relatively low bandwidth needs. In response to a question asked at the meeting, Windstream also has attached a second chart that provides the same data for single site customers using wireline communications.

The third chart, presented at the meeting, addresses total estimated monthly wireline communications expenditures by multilocation customers, for each location segment and among provider types. This chart shows total multilocation customer spend on sites with less than 19 employees is comparable to total spend on sites with more than 250 employees. It also indicates that subscribership by provider type varies significantly with the number of employees at the location. In particular, the information shows competitive local exchange carriers ("CLECs") serve as an especially effective competitive choice for a significant proportion of non-residential customers, particularly for locations with employee counts above five, and cable usually is not an effective market competitor for multilocation customer sites with more than five employees.

The fourth chart presents information for non-residential, single location customers in the same manner as the third chart. This chart provides evidence that CLECs also serve as an effective competitive choice for a significant proportion of single location customers. In contrast, cable's competitive role tails substantially as the number of employees per site grows.

These GeoResults data highlight that CLECs, unlike cable providers, often offer communications services that are attractive to multilocation customers – particularly those with locations requiring low-to-moderate bandwidth levels. To deliver these services, CLECs usually must lease incumbent carrier last-mile facilities, because it is not economically feasible for competitors to overbuild these facilities to address a lower level of demand. This is a reality Congress anticipated and provided for when enacting the Telecommunications Act of 1996.

Windstream observed that cable providers likely will continue to be limited in their ability to compete against CLECs when aiming to serve non-residential, multilocation customers. A major cable provider often cannot provide a single network solution for a business customer with multiple locations over a wide geographic area, because the cable provider generally only offers service within the confines of its incumbent cable service territory. On a conference call with reporters this week, Comcast executive David Cohen acknowledged these facts are unlikely to change: According to Cohen, "the cable part of this industry has never competed against each other…. [G]iven the expense to build in any particular community, I think no cable company, or only rarely would a cable company choose to compete against another cable company."[2] In light

[2] *See* Jon Brodkin, "Comcast Says It's Too Expensive to Compete Against Other Cable Companies," ARS Technica (Sept. 24, 2014), http://arstechnica.com/business/ 2014/09/comcast-says-its-too-expensive-to-compete-against-other-cable-companies/. Cohen also noted that the Commission and U.S. Department of Justice "have addressed this question of what they would call potential competition on multiple occasions before" and likewise "have concluded on multiple occasions that not only do cable companies like Comcast and Time Warner Cable not compete against each other but that they are also not potential competitors to each other." *Id*.

of these conditions, the cable industry, at best, offers one alternative to the incumbent telephone provider in a market – and no alternative for a multilocation customer seeking fully unified network connectivity crossing cable service area boundaries. In addition, Windstream observed that CLECs have invested significant sums to offer differentiated, personalized product and service offerings that are distinct from the more generic offerings of the incumbent telephone and cable providers. For example, Windstream's integrated, advanced services approach to mid-market customers includes customizing service offerings with input from a variety of product experts, such as sales engineers and data center and equipment specialists, and dedicated account representatives and a VIP network operations center, rather than call center representatives who lack awareness of a customer's individual needs.

Windstream next presented information to demonstrate the extent to which its current wholesale expenses may be impacted by ILEC IP transition plans. Windstream stated that it currently spends the following monthly amounts on competitive access: ****BEGIN HIGHLY CONFIDENTIAL****

	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

****END HIGHLY CONFIDENTIAL****

To place this expense in context, Windstream added that nearly ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL**** earned by its CLEC operations currently goes to pay for last-mile access. Windstream also noted that its total annual net income (for combined ILEC and CLEC operations) last year was $241 million, while the company is on track this year to spend more than ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****.

If prices for last-mile capacity offered via TDM special access and UNEs were to increase to the level of AT&T Ethernet rates, Windstream warned that its last-mile costs would

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See also Comcast Corporation and Time Warner Cable Inc. Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57 at 177 (filed Sept. 23, 2014) ("Despite claims by certain commenters, Comcast and TWC have never had plans to expand into each other's territory and overbuild each other. Indeed, no incumbent cable operator ever has.").

increase significantly. The last mile is an enduring competitive bottleneck for serving multilocation and smaller enterprises. While preferring to migrate more customers to Ethernet, Windstream often has no choice but to purchase last-mile access from incumbent carriers, and incumbents' significant price differentials between regulated and deregulated last-mile products impair Windstream's ability to migrate smaller and multilocation customers to IP connectivity.

To address this market failure, Windstream urged the Commission to act *now* to establish TDM-based products must be replaced with, at a minimum, comparable IP products at equivalent rates before Section 214 discontinuances of TDM-based products are granted.[3] Windstream and other competitors must today make contractual commitments to retail business customers in the absence of commensurate commercial assurances from wholesale providers that last-mile access to comparable services at equivalent rates will be available to deliver on the full term of those obligations. This "hope-for-the best" approach to business planning produces increasingly greater risk, as competitors must make more promises to retail customers implicating dates without assurance regarding last-mile access and rates. And if CLECs – the most important source of competition to ILECs in the business services market – ultimately are rendered unable to compete, business, government, and nonprofit customers will have access to fewer innovative service offerings and will be more vulnerable to ILEC price increases.

In light of these concerns, Windstream noted that the Commission has endorsed a comparable policy framework in the context of service-based IP transition experiments. Specifically the *Technology Transitions Order* states that the Commission "expect[s]" that any valid wholesale trial would provide for the "replace[ment of] wholesale inputs with services that offer substantially similar wholesale access to the applicant's network."[4] Windstream urged the Commission to build upon this framework and apply it to the benefit of all business, government, and nonprofit customers, rather than just those in sites designated for IP transition experiments.

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[3] Windstream's discussion was consistent with recent ex parte communications on the same topic. *See, e.g.*, Letter from Malena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5 and 12-353, WC Docket No. 05-25 and RM-10593 (August 22, 2014); Letter from Jennie B. Chandra, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5 and 12-353 (August 7, 2014) (August 7 Ex Parte); Letter from Malena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, GN Docket Nos. 13-5, 12-353 (June 9, 2014); Letter from Malena F. Barzilai, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5 and 12-353 (May 20, 2014); Letter from Eric Einhorn et al., representing Windstream Corporation, to Julie Veach, Chief, Wireline Competition Bureau, FCC, and Jonathan Sallet, General Counsel, FCC, GN Docket Nos. 13-5 and 12-353 (April 28, 2014) (April 28 Ex Parte).

[4] *See Technology Transitions, et al.*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, FCC 14-5, 29 FCC Rcd. 1433, 1454 ¶ 59 (2014) ("*Technology Transitions Order*").

Windstream distributed a proposal (attached) with six guiding principles for a Section 214 standard that would ensure, before any discontinuance approval is granted, TDM special access products are replaced, at a minimum, with comparable IP products offering up to 50 Mbps at equivalent rates. *First*, the price per Mbps of the IP replacement product shall not exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable service at 50 Mbps or below.[5] *Second*, an incumbent's wholesale rates for the IP replacement product shall not exceed its retail rates for the equivalent offering. *Third*, the wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase. For example, a 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest Ethernet option available. *Fourth*, wholesale bandwidth options shall not be reduced relative to what the incumbent is offering in the retail market. In other words, wholesale bandwidth options must include, at a minimum, the options that the incumbent offers to its retail business service customers. *Fifth*, the incumbent cannot engage in backdoor price increases (e.g., via network-to-network interface ("NNI") charges, lock-up provisions, early termination fees, special construction charges) to circumvent the comparable rates at equivalent prices requirement. *Sixth*, there shall be no impairment to service quality or delivery. For service quality, this means the IP replacement product must offer service equivalent to what is provided for TDM inputs at time of discontinuance. For service delivery, installation intervals and other elements affecting service delivery merely must to be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates' operations, given a new Ethernet connection may require more time to establish than an existing TDM circuit.

Windstream's intent in advancing this balanced approach is not to suggest a starting point for negotiations, but rather a reasonable *end point* for Section 214 ground rules. As a company with interests relatively evenly weighted between incumbent and competitive operations, Windstream brings a unique and balanced perspective to competitive access discussions. Accordingly, Windstream's proposal would provide certainty, while application of the guiding principles would provide flexibility without causing competitive harm. Incumbents would have significant discretion to design IP service options that best meet business service customers' needs, and the ability to continue engaging in individualized negotiations with CLECs.

Windstream also called upon the Commission to act in the near term on proposals to reform terms and conditions applying to special access services.[6] In particular, Windstream asked the Commission to require carriers that offer volume-based discounts commitments

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[5] Specifically, the per-Mbps price for the IP replacement product shall not exceed the DS1 per-Mbps rate for service at/below 12 Mbps, or the DS3 per-Mbps rate for service above 12 Mbps. It is not technologically feasible to bond DS1 special access circuits to provide more than 12 Mbps in capacity, so if a wholesale purchaser seeks to deliver more than 12 Mbps service to a customer location, the only viable TDM special access option is DS3 service.

[6] *See* Letter from Angie Kronenberg and Karen Reidy, COMPTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25 (filed Sept. 10, 2014).

(including minimum revenue commitments) or thresholds for early termination fee relief for TDM special access services to permit customers to meet those commitments or thresholds using Ethernet services as well as their purchases from TDM special access services. This reform could be adopted in a simple rule in short order. The measure would focus only on the rates for tariffed services, and not address the price for Ethernet services. Thus, it would not contradict whatever action the Commission might take with respect to forbearance addressing packet-switched special access services. Such reform is necessary to promote the public interest in the IP transition, which would be frustrated if entities are forced to purchase legacy DS1 and DS3 services solely to meet spend or circuit commitments on a declining base of TDM offerings.

Finally, Windstream briefly reviewed several issues with special construction that should be included as part of guidelines adopted for the IP transition. This discussion was consistent with concerns addressed in previous Windstream ex parte submissions.[7]

Please contact me if you have any questions.

Sincerely,

/s/ Jennie B. Chandra

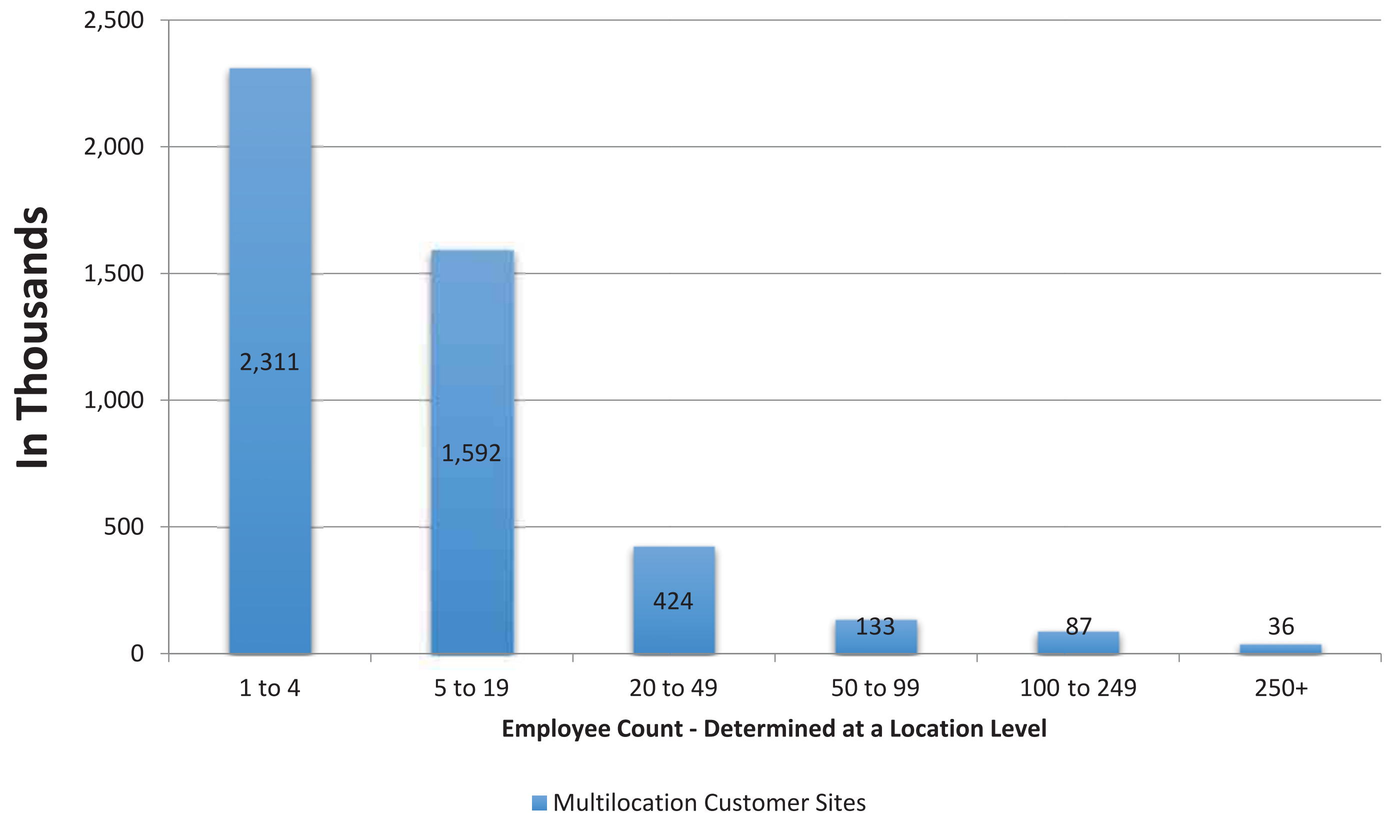
Jennie B. Chandra

Attachments

cc:	Pam Arluk	Daniel Kahn
	Randy Clarke	William Layton
	Matthew DelNero	Eric Ralph
	Madeleine Findley	Deena Shetler

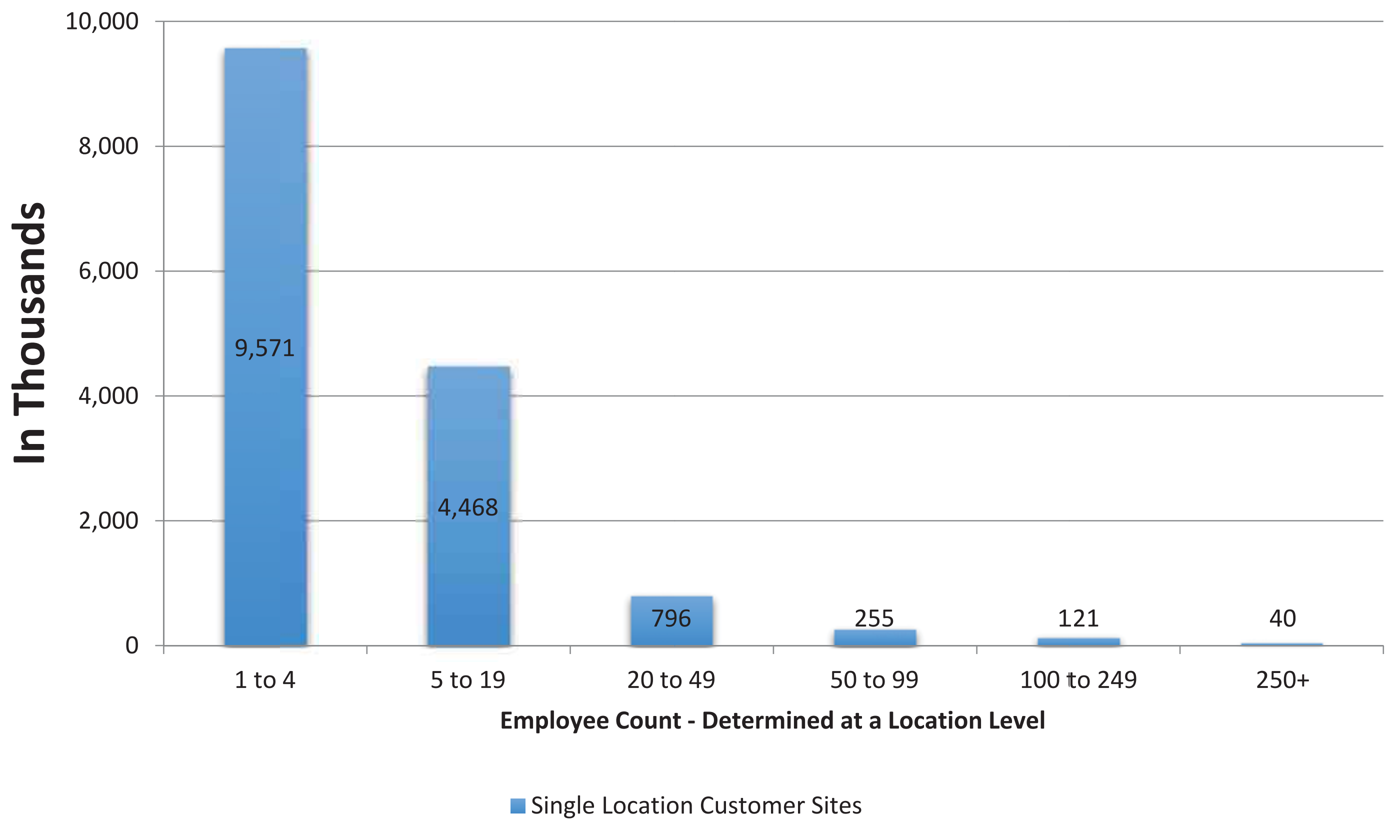
[7] *See* April 28 Ex Parte at 14-15; August 7 Ex Parte at 4.

Number of Multilocation Customer Sites Using Wireline Communications, By Employees Per Location



Source: Estimated for wireline communications during 3rd Quarter of 2014, as compiled by the independent market research firm GeoResults.

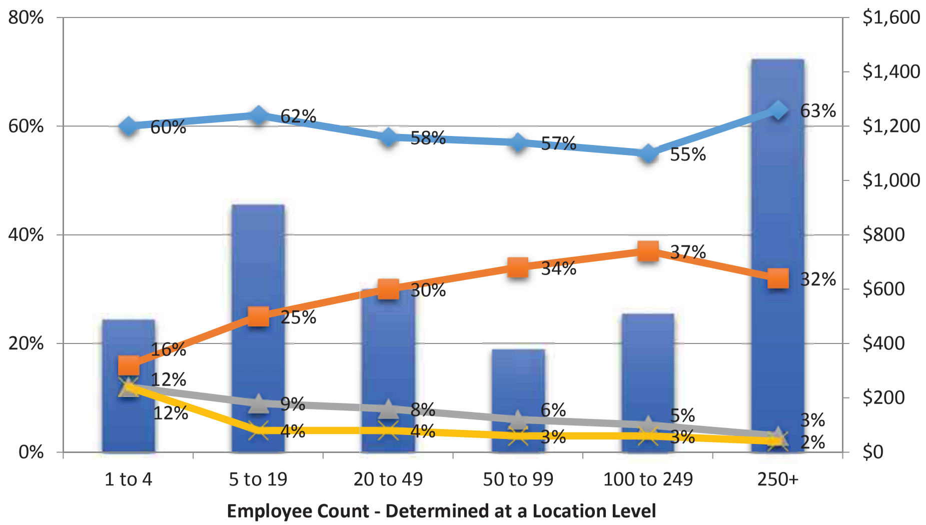
Number of Single Location Customer Sites Using Wireline Communications, By Employees Per Location



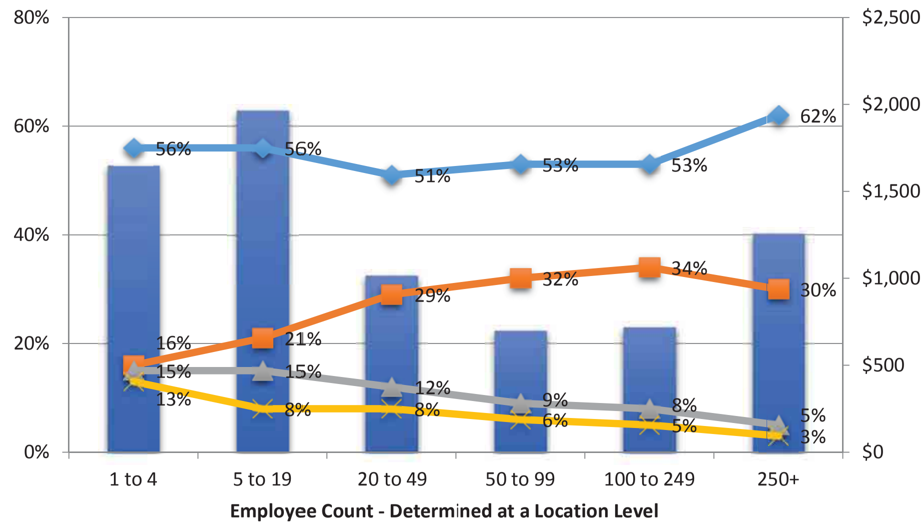
Source: Estimated for wireline communications during 3rd Quarter of 2014, as compiled by the independent market research firm GeoResults.

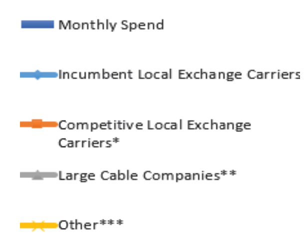
Windstream
09/24/14

Monthly Non-Residential, Multilocation Customer Expenditures on Wireline Communications



Monthly Non-Residential, Single Location Customer Expenditures on Wireline Communications





Source: Estimated for wireline communications during 3rd Quarter of 2014, as compiled by the independent market research firm GeoResults.

* "Competitive Local Exchange Carriers" includes revenues from services both over CLECs' network facilities as well as last-mile facilities leased from incumbent LECs.

** "Large Cable Companies" are the top 15 cable providers, which together address more than 90% of non-residential locations in cable service areas. A de minimis market share is held by smaller cable companies, and the data source groups these into the "Competitive Local Exchange Carriers" category.

*** This category primarily includes wireless providers offering business phone line service.

Windstream
Sept. 24, 2014

Proposed Standard To Govern
Section 214 Discontinuances of TDM-Based Products

- **General Standard**: Before discontinuance is granted, TDM products must be replaced with, at minimum, comparable IP products at equivalent rates.

- **Guiding Principles for Applying Standard:**

  1. **Price per Mbps Shall Not Increase.** The price per Mbps of the IP replacement product shall not exceed the price per Mbps of the TDM product that otherwise would have been used to provide comparable special access service at 50 Mbps or below.[1]

  2. **A Provider's Wholesale Rates Shall Not Exceed Its Retail Rates.** An incumbent's wholesale charges for the IP replacement product shall not exceed its retail rates for the equivalent offering.

  3. **Basic Service Pricing Shall Not Increase.** The wholesale price of the lowest capacity level of special access service at or above the DS1 level shall not increase (e.g., 2 Mbps Ethernet price shall not exceed the DS1 price when 2 Mbps is the lowest Ethernet option available).

  4. **Bandwidth Options Shall Not Be Reduced**: Wholesale bandwidth options must, at a minimum, include the options that the incumbent offers to its retail business service customers.

  5. **No Backdoor Price Increases**: Price hikes shall not be effectuated via significant changes to charges for NNI or any other rate elements, lock-up provisions, ETFs, special construction charges, or any other measure.

  6. **No Impairment of Service Delivery or Quality**: Service functionality and quality, OSS efficiency, and other elements affecting service quality shall be equivalent to, if not better than, what is provided for TDM inputs today. Installation intervals and other elements affecting service delivery shall be equivalent to, if not better than, what the incumbent delivers for its own or its affiliates' operations.

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[1] Specifically, the per-Mbps price for the IP replacement product shall not exceed the DS1 per-Mbps rate for service at/below 12 Mbps, or the DS3 per-Mbps rate for service above 12 Mbps. It is not technologically feasible to bond DS1 special access circuits to provide more than 12 Mbps in capacity, so if a wholesale purchaser seeks to deliver more than 12 Mbps service to a customer location, the only viable TDM special access option is DS3 service.