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December 3, 2014

*Via Electronic Filing*  
Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

*EX PARTE LETTER*

**RE: *WC Docket No. 05-25, RM 10593, GN Dkt. No. 13-5, RM 11358, PS Dkt No. 14-174***

Dear Secretary Dortch:

On December 1, 2014, BT met with Julie Veach, Pam Arluk, William Layton, David Zesiger, Deena Shetler and Eric Ralph of the Wireline Competition Bureau. Representing BT were Bas Burger, President of BT in the Americas, Sheba Chacko, Senior Counsel and Head, Americas Regulation and Global Telecoms Policy, and Jennifer Taylor Hodges, Vice President, Government Relations, US.

BT explained that onerous terms and conditions in non-tariffed agreements with suppliers also lead to the anticompetitive effects described in the ex parte filed by Level 3 and others on October 28, 2014 in WC Dkt No. 05-25 ("Level 3 letter"). BT agrees with the proposed solutions offered in this ex parte and would like to emphasize that the Commission should require to be filed as contract tariffs those commercial agreements entered into by ILECs and/or their affiliates which affect a customer's costs associated with the purchase of a category of services that include special access services.

During the meeting, BT highlighted that it is dependent on AT&T and Verizon for enterprise access, and, in order to secure appropriate discounts on access services to compete against AT&T and Verizon in global enterprise services markets, BT must commit to certain spend levels which force BT to purchase not only in-region services, but also out-of-region and competitive services from these providers. Such provisions leave little left over to spend on competing wholesale access and other services. In addition, the shortfall penalties for failing to meet incumbents' spend level commitments are excessive and further dis-incentivize spend with competing wholesale access service providers. If purchasers like BT fail to meet spend commitments, incumbents benefit because they receive not only the shortfall penalties from purchasers of wholesale access, but also receive access revenue for their bottleneck circuits by selling either directly or indirectly to retail customers. Furthermore, at least one major supplier

has conditioned discounts and shortfall payments on BT continuing to spend with that supplier the majority of the previous contract term's spend which practice ties up demand and prevents competition from emerging and flourishing. BT asked that minimum revenue commitments ("MRCs") be capped at no more than fifty percent of historic spend and terms and conditions be prohibited that restrict the types of spend that count towards meeting MRCs. BT urges the Commission to declare noncompliant contract terms null and void as against public policy.

BT also asked the Commission to expeditiously determine where incumbents have market power and to regulate in such cases to ensure competitively priced TDM and Ethernet access services. This would prevent incumbents from engaging in anticompetitive behavior such as price squeezes in downstream markets. BT urged the Commission to promptly re-regulate and set competitive prices for Ethernet access services so that the right price signals incentivize BT's customers and other enterprises to transition quickly off TDM and onto Ethernet access services. However, BT advised the Commission not to allow forced quick transitions to all-IP networks by incumbents that could trigger a sharp spike in demand for Ethernet access services. In such case enterprises, which are already experiencing greater delays with the delivery of Ethernet access than TDM access services, will experience additional delays and chaos. BT is also concerned that it will experience discrimination in the provisioning of Ethernet access services and that suppliers will demand "expedite fees" and "special construction costs" for delivery of Ethernet access services to BT's customers.

Finally, BT was asked about its views on Centurylink's petition for forbearance from regulation and its claims that it cannot compete effectively against major competitors like AT&T and Verizon whose Ethernet access services have been deregulated. BT's view is that if Centurylink is competing against Verizon and AT&T to win contracts from enterprises that need Ethernet access services nationally, Centurylink could be disadvantaged if it has to offer regulated, cost-oriented, in-region Ethernet access inputs services to AT&T and Verizon for their bids to enterprise customers, but has itself to purchase monopoly Ethernet access inputs from AT&T and Verizon in their incumbent regions at supranormal prices for its competing bids. With minimal or nonexistent constraints against discrimination, it is possible that Centurylink could be squeezed by AT&T and Verizon in the national Ethernet access services market. However, the solution is not to deregulate the Ethernet access services of providers where they are dominant in the provision of Ethernet access services, but to re-regulate such services to ensure innovative services and competitive pricing for customers.

If you have any questions regarding any matters discussed herein please contact the undersigned.

Sincerely,



Sheba Chacko  
Senior Counsel and Head, Americas Regulation and Global  
Telecoms Policy, BT Americas Inc.

cc: Julie Veach

William Layton  
Pam Arluk  
Deena Shetler  
David Zesiger  
Eric Ralph