Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans	WC Docket No. 15-247

DIRECT CASE OF VERIZON

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Traditional TDM special access offerings are declining rapidly. Cable companies and CLECs now aggressively and successfully compete to meet customers' demand for ever greater volumes of newer Ethernet services. In light of the dramatic marketplace changes this technological shift and increasing demand are driving — including the game-changing entry of cable companies with their ubiquitous, and increasingly dominant, broadband networks — this investigation into ILECs' discount plans for TDM services makes little sense. Ruling that those voluntary plans — which offer lower prices for slower services that are a declining segment of the marketplace — are unjust and unreasonable would harm consumers and hand cable companies a significant competitive advantage by imposing even more regulations on one set of competitors. The Commission should not proceed with this investigation.

First, the Commission cannot proceed here until it completes the special access rulemaking. The CLEC complaints cataloged in the *Order*[1] — that customers are purportedly forced to sign up to lengthy terms under these discount plans — are in essence complaints that ILECs' undiscounted rates reflect ILEC market power and that customers lack other sources of supply. Those complaints are meritless. Analysis of the data collected in the rulemaking

[1] Order Initiating Investigation and Designating Issues for Investigation, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, DA 15-1194 (Wireline Comp. Bur. rel. Oct. 16, 2015) ("*Order*").

proceeding and incorporated in the record here confirms that ILECs lack market power for high-capacity services. The record also shows that competition is increasing very rapidly, due in large part to aggressive and widespread competition from cable operators that are already nationwide leaders in providing Ethernet services. The Commission should not conduct a market-power analysis here, however, because it will require a full inquiry into the competitive circumstances throughout this marketplace — both today and in the future in which demand for Ethernet services continues to grow rapidly — which is a task far better suited to the Commission's industry-wide rulemaking on special access.

Second, the Verizon voluntary discount plans that the Commission designated for investigation are just and reasonable. They offer customers the benefit of high discounts normally offered — by CLECs and ILECs alike — only in exchange for a commitment to keep particular circuits in service for multi-year terms. These multi-year commitments ensure Verizon can spread the fixed up-front costs of providing circuits over a longer period and make the discounts possible. The Verizon plans under investigation permit customers to obtain multi-year discounts for circuits the customer may discontinue after as little as one year without incurring a termination or shortfall charge. This lets customers get significant discounts with greater flexibility to add and remove circuits in response to changes in demand or marketplace circumstances. Customers not only want that flexibility — or "portability" — but also they take frequent advantage of it. Yet portability dramatically changes the economics of standard circuit-specific term-discount plans, and the plans' features under investigation flow directly from portability. Those features strike a reasonable economic balance, while affording customers — particularly those that engage in prudent, forward-looking network planning — substantial flexibility to move their special access purchases not only to other suppliers but also to newer technologies. Indeed, discounts made possible by efficiencies like these are common in this and other industries, and are resoundingly procompetitive.

FACTUAL BACKGROUND[2]

Verizon offers its TDM-based special access services at undiscounted, tariffed rates that are deemed lawful, just and reasonable, and not subject to investigation here.[3] Verizon has also long offered its customers voluntary discount plans, which reduce the standard, tariffed rates by approximately 50% in exchange for specific commitments.[4] Verizon designed these discount plans in response to customer demand and rising competition in the special access marketplace. Verizon's discount plans fall into three main categories: ***standard term-discount plans***, which are not at issue here; ***term-discount plans with portability*** — such as the Commitment Discount Plan ("CDP") and National Discount Plan ("NDP");[5] and ***term-and-volume plans*** — like the DS1 Term Volume Plan and DS3 Term Volume Plan (collectively, "TVP").

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[2] In this section and the next, Verizon addresses the issues designated for investigation in the *Order*. Verizon's responses to the specific narrative questions posed, *see Order* ¶ 108, are attached to this document and also found in Appendix A, which contains further information responsive to the questions posed in Paragraph 105. Verizon is also submitting in Appendix B Excel files using the Commission's data templates, *see id.*, and in Appendix C searchable PDF files containing the provisions of the tariffed, voluntary discount plans at issue.

[3] *See*, *e.g.*, *Order* ¶¶ 1 n.2, 10 n.27.

[4] *See*, *e.g.*, Verizon FCC Tariff No. 1, § 25.3.5(B) (discounts under the National Discount Plan of approximately 50%).

[5] Although the *Order* describes the CDP and NDP as "term-and-volume plans," *Order* ¶ 34 n.82, and Verizon has done the same in some past filings, the discounts customers are receiving under these plans vary *only* with the term selected, just like standard term-discount plans. To the extent Verizon has previously described the CDP and NDP as term-and-volume discount plans, that description improperly conflated the commitment levels required under those plans with volume discounts — a term that is better used only to describe discounts that increase as the amount purchased increases. Certain portions of the NDP have discounts that vary slightly with volume, but no customers currently subscribe to those portions of the NDP.

Verizon has also in the past described these plans as offering non-circuit-specific discounts. Verizon's use of "portability" here means a customer's ability to disconnect circuits

A. Verizon's Standard, Undiscounted Rates Offer Customers Maximum Flexibility to Add and Remove Circuits Without Long-Term Commitments

Customers that want maximum flexibility to add and remove DS1 and DS3 circuits can purchase special access at Verizon's standard tariffed rates. Set in accordance with the Commission's price cap and pricing flexibility regimes, these undiscounted rates were deemed lawful, are just and reasonable, and are not the subject of investigation in this proceeding. Customers purchasing at Verizon's standard rates can disconnect a circuit after as little as one to three months without incurring early-termination fees.[6] For customers facing competitive threats, that flexibility has great value. For example, <<

>>, purchases DS1 and DS3 special access services from Verizon at standard, undiscounted rates, and has been doing so since mid-2012, when it ceased purchasing from Verizon under its CDP.[7]

B. Verizon's Voluntary, Standard Term-Discount Plans Offer Significant Discounts to Customers Willing to Commit to Maintain Specific Circuits in Service for Two Years or More

Although not under investigation here, Verizon's voluntary, standard term-discount plans — like the Term Pricing Plan ("TPP")[8] and the Service Discount Plan ("SDP")[9] — also offer customers substantial discounts (*e.g.*, 8% to 52% off standard, undiscounted rates for DS1

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under a discount plan without incurring a termination fee or shortfall charge. The Verizon discount plans offering portability allow disconnections for any reason, including switching to a competitive provider or upgrading to Ethernet, and do not impose any termination fees or shortfall charges for such disconnects so long as the customer's average demand remains at or above the agreed-to minimum commitment level over the plan's periods for measuring compliance with that commitment level (normally, six or twelve months).

[6] *See* Verizon FCC Tariff No. 14, § 3.2.4 (DS1, one month); Verizon FCC Tariff No. 1, § 7.4.4 (DS1, two months); Verizon FCC Tariff No. 11, § 7.4.4 (DS1 and DS3, three months).

[7] Declaration of Sean Sullivan ¶¶ 6-7 ("Sullivan Decl.") (Appendix D).

[8] Verizon FCC Tariff No. 1, §§ 7.4.13, 7.4.17.

[9] Verizon FCC Tariff No. 11, § 7.4.10.

services) on specific services, in exchange for term commitments of two, three, five, or seven years.[10] Discounts increase with the length of the term commitment, and in all cases customers can receive these discounts while committing to include just one circuit in the discount plan.[11] Because the term commitments and corresponding discounts are circuit-specific, a customer can choose a two-year commitment for one circuit, a five-year commitment for a second circuit, a seven-year commitment for a third circuit, and so on.[12]

The economic trade-off underlying Verizon's standard term-discount plans *without* portability is the starting point to understanding the trade-offs in term-discount plans *with* portability. When Verizon installs a new circuit, it incurs considerable up-front, incremental costs, which may include wiring at the central office, installing physical facilities to competitors' collocation arrangements, mapping circuit channel terminations, and designing circuits to function in a new configuration. In addition, once Verizon designs and installs a circuit, Verizon incurs additional costs associated with testing the circuit to ensure that it works properly. This work is labor intensive, and Verizon must scale its workforce to meet its customers' needs.[13]

Term commitments thus give Verizon the ability to spread those up-front costs over a longer term, as well as to plan its business operations more accurately. When a customer orders circuits at Verizon's undiscounted rates, absent any long-term commitment, Verizon has no way to know how many of those circuits will remain in place beyond the minimum commitment term, which ranges from one to twelve months, and so it faces substantial uncertainty in predicting the size of the labor force it may need to oversee those circuits and the revenue flow from those

[10] *See* Verizon FCC Tariff No. 1, §§ 7.4.17(B)(1), 7.5.9(B)(1), 7.5.16(D).

[11] *See, e.g., id.* § 7.5.16 (TPP).

[12] *See, e.g., id.* § 7.4.17(C) (TPP).

[13] Sullivan Decl. ¶ 4.

circuits. By contrast, if a customer purchases circuits subject to a two- or five-year term commitment, Verizon knows how long those specific circuits will remain in service and the total revenue it will receive from them, and it can plan accordingly. Through its standard term-discount plans, Verizon shares the value it obtains with customers in the form of substantial discounts.

C. Verizon's Voluntary, Term-Discount Plans with Portability Offer Customers the Same Multi-Year Discounts as Standard Term-Discount Plans While Allowing Customers to Disconnect Circuits After Only One Year

In response to demands from customers that wanted the benefit of multi-year discounts along with the flexibility to add and remove circuits during the commitment term, Verizon developed two voluntary, term-discount plans with portability — the Commitment Discount Plan ("CDP") and the National Discount Plan ("NDP").[14] These plans offer customers discounts based on the length of their commitment, but do not require the customer to commit to maintain any specific circuit for the length of the term.[15] Instead, the customer commits to maintain any individual circuit for only one year, while maintaining a minimum average number of circuits for a full commitment period.[16] In exchange, the customer receives the discount associated with the longer term for *all* of its circuits, regardless of how long each individual circuit remains in

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[14] Although the CDP appears in two Verizon tariffs, the plans are substantively identical, and Verizon, therefore, addresses them together. Similarly, although the NDP appears in four Verizon tariffs, it is a single, national plan, and Verizon addresses it as such.

[15] *See*, *e.g.*, Verizon FCC Tariff No. 1, § 25.1. The NDP is offered only over a five-year term.

[16] If a CDP or NDP customer disconnects a circuit that has not been in service for at least one year (including any time in service before the CDP or NDP took effect), the customer must pay any remaining monthly charges until that requirement is satisfied. *See id.* §§ 5.2.6, 25.1.10 (CDP), 25.3.8 (NDP).

service. These plans also do not impose large up-front installation charges for new circuits; for example, charges for such connections under the CDP are only $1.[17]

By way of example, consider a customer that purchases 1,000 DS1 circuits. Under a standard term-discount plan (*without* circuit portability), if the customer commits to buy 1,000 specific DS1 circuits over five years, it receives the five-year discount of 35% on each circuit.[18] But if the customer seeks to remove any of those circuits before that five-year term ends, the customer typically must pay an early-termination charge on each circuit removed.[19] The one limited exception is that customers will not be charged an early-termination fee if, at the same time they disconnect a circuit, they order a replacement circuit of the same speed or type.[20] In contrast, under a five-year CDP, that same customer could get that same five-year discount of 35% for its 1,000 DS1 circuits but could remove any number of those circuits after only one year in service, so long as the customer maintains an average of at least 900 DS1 circuits with Verizon during the true-up periods over each six-month period during the course of the five-year term.[21] Plans like the CDP thus give the customer significant value in the form of substantial flexibility, enabling them to tear circuits down and put up new ones, so long as the average number of circuits the customer purchases in each six-month period (or twelve months under the NDP) meets the customer's commitment level.

Customers highly value circuit portability and routinely take advantage of the flexibility it provides. For example, <<   >>, which currently subscribes to CDPs with five- and

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[17] *See, e.g.*, *id.* § 25.1.8(G) (CDP).

[18] *Id.* §§ 7.4.17(B)(3), 7.5.9(A)(1)(a), 7.5.16(C).

[19] *See id.* § 7.4.17(D)(4).

[20] *See* Verizon FCC Tariff No. 11, § 7.4.10(C)(6)(a).

[21] *See* Verizon FCC Tariff No. 1, § 25.1.4(D); *id.* §§ 7.5.9(A)(1)(a), 7.5.16(C).

seven-year terms, disconnected nearly << >> circuits subject to that plan between April 2014 and March 2015; of those, more than 20% had been in service for two years or fewer, and nearly 60% had been in service for four years or fewer.[22] Another CDP subscriber, << >>, disconnected nearly << >> circuits subject to its five- and seven-year CDPs between April 2014 and March 2015; of those, more than 20% had been in service for two years or fewer, and more than 60% had been in service for four years or fewer.[23] Similarly, << >>, which currently subscribes to the NDP with a five-year term, disconnected more than << >> circuits subject to that plan between April 2014 and March 2015; of those, nearly 35% had been in service for two years or fewer, and more than 60% had been in service for four years or fewer.[24] Yet << >> still met its commitment-level obligations and avoided any shortfall fees.

At the time a customer subscribes to the CDP or NDP, it must include within the plan all of the special access it then purchases from Verizon for the service types included in the plan. That amount becomes the customer's commitment level,[25] for its chosen term of two, three, five, or seven years.

Customers are given considerable flexibility with respect to their commitment levels. CDP customers can reduce their purchases of DS1s or DS3s below their commitment levels by 10% (to what the tariffs call a minimum commitment level), or increase those purchases by 30% above the minimum commitment level. So long as the customer stays within those ranges, it will

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[22] *See* Sullivan Decl. ¶ 9.

[23] *See id.*

[24] *See id.*

[25] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3 (CDP), 25.3.2(C) (NDP).

receive discounts for all circuits it purchases from Verizon.[26] Verizon measures compliance with that commitment using the customer's average purchases over a six-month period for the CDP and over a year for the NDP, which provides customers with even greater flexibility.[27]

Although the CDP and NDP require customers to include in the plan all their purchases from Verizon of discounted services, they do not require customers to commit to buy any percentage of their *total* special access purchases from Verizon, and a customer can choose to subscribe to the CDP only for Verizon's former NYNEX or Bell Atlantic regions (or both). Nor do the plans have such a de facto effect. To the contrary, customers are free to satisfy increased demand from other providers. And when a customer first enters into the CDP or NDP, it exercises control over its commitment level, because it can reduce its total purchases from Verizon before entering into the CDP or NDP. And once that initial, customer-chosen commitment period expires, the customer can revise its commitment level before entering into a new CDP or NDP, depending on its needs at that time. Thus, assuming the customer planned ahead, it may use Verizon's special access services for an initial period and migrate to competitive suppliers when that initial period expires. For example, << >> signed up to a CDP in 2008 in which it committed to purchase a minimum of << >>. At the end of that CDP in 2013, << >> had << >> in service. When << >> entered

[26] *Id.* §§ 25.1.3(A)(5), 25.1.7(A)(1). NDP customers may choose from three commitment levels: Standard, Premier, and Deluxe. *Id.* § 25.3.4(C). Those customers are permitted to reduce their purchases to 85%, 90%, or 92%, respectively, of their commitment level without incurring a shortfall payment. *Id.* Customers who select the higher commitment levels (Premier and Deluxe) receive higher discounts, regardless of the volume subject to those commitments, *see id.*, because of the greater certainty such commitments provide.

[27] *See, e.g.*, *id.* § 25.1.7(D). Compliance under the NDP is measured over a 12-month period, giving customers yet more flexibility. *See, e.g.*, *id.* § 25.3.7.

into its new CDP for DS1s, however, it was able to reduce its purchases from Verizon sufficiently to subscribe at a lower, minimum commitment level of only << >>.[28]

D. Verizon's Voluntary, Term-and-Volume Discount Plans Offer Customers Another Way to Obtain Substantial Discounts While Allowing Customers to Disconnect Circuits After the Minimum Period Is Satisfied

Verizon's DS1 Term Volume Plan and DS3 Term Volume Plan (collectively, "TVP") offer discounts based on customer commitments to maintain certain terms *and* volumes. The TVP also offers customers circuit portability, like the CDP and NDP.[29] Verizon offers the TVP with a wide array of volume tiers and terms, with the customer free to select the volume and term level. All customers committing to the same volume tier for the same term receive the same discount; higher volume commitments and longer terms yield larger discounts.[30] Customers signing up to the TVP for DS1s may disconnect those circuits without penalty after only one month; customers signing up to the TVP for DS3s may disconnect a circuit without penalty after it has been in service for one year.[31]

The TVP is subject to annual review to determine whether the customer has met its minimum commitment levels,[32] and no shortfall payment applies if the customer is within 3% of its commitment levels.[33] For DS1 services, even if there is a shortfall, the shortfall payment is limited to the amount of shortfall multiplied by the lowest applicable rate assessed over four

[28] Sullivan Decl. ¶ 11.

[29] Because TVP includes increasing discounts as volume commitments increase, customers do not have to include all eligible circuits in the plan.

[30] *See* Verizon FCC Tariff No. 14, §§ 5.7.18 (DS1), 5.7.22 (DS3).

[31] *See id.* §§ 3.2.4(A) (DS1), 5.6.19(M) (DS3).

[32] *Id.* §§ 5.6.14(G) (DS1), 5.6.19(E) (DS3).

[33] *Id.*

months.[34] Thus, even if the shortfall existed for the full 12-month period under review, the customer pays a shortfall for only one third of the year.

Use of the TVP is very limited. The plan is available only under Verizon FCC Tariff No. 14, which currently covers only former GTE regions in Pennsylvania, California, Florida, Virginia, North Carolina, and Texas.[35]

ARGUMENT

As the D.C. Circuit has explained, term and volume discounts are "most naturally viewed as a bargain containing terms that both benefit and burden its subscribers."[36] And the Commission has long "recognized both volume and term discounts as generally legitimate means of pricing special access facilities so as to encourage the efficiencies associated with larger traffic volumes and the certainty associated with longer-term relationships."[37] Because volume and term discounts have procompetitive effects, the Commission allows price cap carriers to include them in their tariffs.[38] The Commission has also rejected the argument that volume

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[34] *Id.* §§ 5.6.14(I) (DS1), 5.6.19(F) (DS3).

[35] Verizon also offers a plan called the Eight-and-Ten Year DS1 Term Volume Plan ("ETTVP"). Like the TVP, Verizon offers the ETTVP only in Verizon's former GTE regions. But usage of the ETTVP is even more limited: only two customers subscribe to the ETTVP, one of which is a Verizon affiliate and the other of which is << >>.

[36] *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006).

[37] Fourth Memorandum Opinion and Order on Reconsideration, *Transport Rate Structure and Pricing*, 10 FCC Rcd 12979, ¶ 13 (1995) ("*Fourth Transport Rate Order*"); *see also* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 687 (1996) ("*Local Competition Order*") (recognizing that "term discounts . . . can minimize the risk of stranded investment").

[38] Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers*, 14 FCC Rcd 14221, ¶ 123 (1999).

discounts over 20% or term discounts over 10% must be cost-justified.[39] This conclusion applies with even greater force under price caps and where ILECs receive pricing flexibility as a result of competitive circumstances, both of which further dissociate rates from costs.

The Commission's approach is consistent with court precedent, which recognizes that discounts "almost certainly mov[e] price[s] in the 'right' direction (towards the level that would be set in a competitive marketplace)."[40] Discounts benefit customers, and courts are wary of "reject[ing] such beneficial 'birds in hand' for the sake of more speculative (future low-price) 'birds in the bush.' "[41] Courts are also skeptical of the notion that non-exclusive-dealing discount contracts somehow create " 'golden handcuffs' " that render purchasers anything other than "free to walk away" from such discounts.[42] Indeed, the last time the Commission invalidated a discount plan, the D.C. Circuit unanimously vacated the Commission's decision, finding it arbitrary and capricious.[43]

Applying those principles here, Verizon's discount plans are just and reasonable. They promote economic efficiency and are procompetitive.[44] These plans allow Verizon to share with

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[39] *See* Report and Order and Notice of Proposed Rulemaking, *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, ¶¶ 190, 199-200 (1992) ("*Expanded Interconnection Order*").

[40] *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 234 (1st Cir. 1983) (Breyer, J.).

[41] *Id.*

[42] *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1063 (8th Cir. 2000).

[43] *BellSouth*, 469 F.3d at 1060 (vacating finding that 90% commitment level violated 1996 Act).

[44] *See, e.g.*, *Expanded Interconnection Order* ¶ 199; *Concord Boat*, 207 F.3d at 1062-63 (vacating jury verdict for plaintiffs in antitrust action where "Brunswick's discount programs were not exclusive dealing contracts and its customers were not required either to purchase 100% from Brunswick or to refrain from purchasing from competitors in order to receive the discount

customers the efficiencies it achieves from reduced administrative costs and greater business certainty. Discounts made possible by efficiencies like these are common in this and other industries.[45] More fundamentally, the Verizon plans at issue here offer customers discounts comparable to those under Verizon's standard term-discount plans, and they are priced *lower* than Verizon's standard tariffed rates.[46]

I. The Commission Cannot Conclude That Any of the Discount Plans Under Investigation Are Unjust and Unreasonable Without First Completing the Special Access Rulemaking

A. Complaints About Discount Plans Reduce to Complaints About Standard, Undiscounted Rates, Which the Commission Is Considering in the Special Access Rulemaking

Claims that Verizon's and the other ILECs' discount plans are unjust and unreasonable are, in essence, complaints that the tariffed, standard rates for DS1s and DS3s are too high. As the *Order* notes, CLECs assert that they are "obliged to enter into these [discount plans] to obtain competitive pricing since the incumbent LECs' non-discounted, month-to-month rates are too high to allow them to compete."[47] The *Order* similarly notes CLEC claims "that they have no choice but to enter into commitments for longer terms than they ordinarily would because, as tw telecom asserts, '[only] longer terms produce competitive pricing.' "[48]

(and in fact could purchase up to 40% of requirements from other sellers without forgoing the discount)").

[45] Declaration of Eric R. Emch, Ph.D. and Donald K. Stockdale, Jr., J.D., Ph.D. ¶¶ 46-52 ("Emch & Stockdale Decl.") (Appendix E).

[46] *Barry Wright*, 724 F.2d at 235 ("[T]he consequence of a mistake here [*i.e.*, invalidating a discount plan] is not simply to force a firm to forego legitimate business activity it wishes to pursue; rather, it is to penalize a procompetitive price cut . . . .").

[47] *Order* ¶ 32.

[48] *Id.* ¶ 85.

These claims could be true *only* if ILECs' standard rates themselves are too high — that is, unjust and unreasonable and therefore noncompetitive. If those undiscounted rates are just and reasonable — and Verizon's are — customers need not enter long-term commitments to secure competitive pricing. Instead, the decision to sign up for a discount plan would — as it should — be "most naturally viewed as a bargain containing terms that both benefit and burden its subscribers."[49]

The *Order* does *not* designate ILEC standard rates for investigation. Nor does it designate the question whether ILECs charge those rates because they have market power, an issue the *Order* recognizes is before the Commission in a separate rulemaking.[50] The Commission should decide that issue in that industry-wide proceeding, rather than one specifically focused on a handful of carriers' voluntary discount plans for slower high-capacity services that a declining number of customers buy.

Regardless, Verizon's standard rates are competitively priced. These standard rates provide consumers with the maximum flexibility to add and remove circuits, which is a significant economic benefit. Some customers believe this benefit justifies the higher costs of undiscounted rates. For example, << >> no longer subscribes to the CDP or NDP in Verizon's former Bell Atlantic territory and, instead, buys DS1s and DS3s from Verizon in that region at Verizon's standard rates and under standard term-discount plans.[51] Notably, although the *Order* cites a recent ex parte, in which <<

[49] *BellSouth*, 469 F.3d at 1060.

[50] *See Order* ¶ 1 n.2.

[51] *See* Sullivan Decl. ¶ 6.

>>[52] that ex parte makes no claim that *Verizon's* undiscounted rates force

<< >> to sign up for Verizon's discount plans. Other customers could follow <<

>> lead.

B. The Commission Must Find That an ILEC Has Market Power Before It Could Find That Any Discount Plan Is Unjust and Unreasonable, but that Question Is Best Decided in the Special Access Rulemaking

The Commission could not conclude any of the discount plans is unjust or unreasonable without first finding the ILEC offering it possesses significant market power in the relevant market. Indeed, a finding of market power is a legal and economic prerequisite to concluding that discount plans are anticompetitive.[53] The Commission itself held years ago that it must "identify areas where market power exists" before "determin[ing] whether a particular term or condition is unreasonable in a given area."[54] That is doubly true in the case of discounts, which are the signature feature (and prime consumer benefit) of competition.

Absent a finding of market power, the tariff provisions at issue here must be considered procompetitive and therefore just and reasonable.[55] Both the economic models cited in the *Order* and court precedent recognize an entity must be found to have market power before that entity's discounts can be deemed anticompetitive.[56] Therefore, under both economic theory and

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[52] << .>>

[53] Emch & Stockdale Decl. ¶ 77.

[54] Report and Order and Further Notice of Proposed Rulemaking, *Special Access for Price Cap Local Exchange Carriers*, 27 FCC Rcd 16318, ¶ 93 (2012) ("*Special Access Rulemaking Order*").

[55] *Id.*

[56] Emch & Stockdale Decl. ¶¶ 63, 65, 77 (canvassing economic literature and legal authority).

applicable antitrust precedent, if the Commission "determines that the carrier offering the pricing plan lacks substantial market power, *that should be the end of the inquiry*."[57]

Although the *Order* cites economic literature that, it suggests, identifies circumstances in which exclusive contracts and other forms of conditional pricing provisions have anticompetitive effects,[58] that economic literature sets forth strict conditions that must be present to find a discount plan anticompetitive.[59] In addition to a requirement that the seller possess substantial market power, those conditions are not present here. The models require that sellers are able either to discriminate among buyers or to negotiate sequentially with them.[60] ILECs can do neither — their tariffs are publicly filed and offered to all customers on the same terms.[61] The economic models also assume that potential competitors may enter the market only once and that they have not yet done so.[62] Neither assumption holds here, as many companies already compete in the marketplace, including both cable companies and CLECs, and they can add capacity at any time and in a gradual fashion. Nor do the economic models consider potential efficiencies from discount plans, which can be significant.[63] Most importantly, as the *Order* recognizes, the economic models analyze the effects of *exclusive* contracts, but none of the Verizon plans at

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[57] *Id.* ¶ 77 (emphasis added).

[58] *See Order* ¶ 19 n.54.

[59] Emch & Stockdale Decl. ¶ 65.

[60] *Id.*

[61] *See id.*

[62] *Id.*

[63] *Id.* ¶ 50.

issue here requires or even encourages firms to obtain all or even a set percentage of their *total* special access needs from Verizon.[64]

Nor could the Commission bypass the market power inquiry by relying on the regulatory classification of ILECs as dominant carriers. That historical classification cannot substitute for an inquiry into whether any ILEC has market power in a properly defined market *today*.[65] Indeed, the Commission initiated a massive data collection in the special access rulemaking precisely because there was "insufficient evidence in the record upon which to base general or categorical conclusions as to the competitiveness of the special access market."[66] The Commission has thus acknowledged that it cannot at present determine whether any ILEC has market power in any properly defined market for special access services. That question must be resolved in that industry-wide proceeding, before the Commission can rely on findings of market power here.

In addition, even the data the Commission collected in the special access rulemaking (and incorporated into this proceeding) are insufficient to evaluate whether any ILEC possesses market power.[67] For example, those data cover only one year (2013) that is now two years out of

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[64] *Id.* ¶ 75 ("[I]t is important to recognize that the terms and conditions under investigation differ significantly from the exclusive dealing arrangements and exclusive contracts discussed above.").

[65] *See, e.g.*, *AT&T Corp. v. FCC*, 236 F.3d 729, 736 (D.C. Cir. 2001) (Commission must analyze whether ILEC has market power based on current facts before denying forbearance from dominant carrier regulation); Memorandum Order and Opinion, *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, 23 FCC Rcd 12260, ¶ 33 (2008) (granting forbearance from dominant-carrier regulation with respect to packet-switched broadband service following analysis of current facts to determine whether ILEC has market power for these services).

[66] *Special Access Rulemaking Order* ¶ 69.

[67] Emch & Stockdale Decl. ¶¶ 83, 85.

date.[68] Because of the fast-changing nature of the marketplace for high-capacity services, those two-year-old data do not provide an accurate picture of either actual or potential competition in the marketplace as it exists today, and therefore cannot be used to assess whether ILECs possess market power. The Commission has recognized that it must assess both actual *and* potential competition, and that such an analysis would require more than one year of even the most current data and would almost certainly require time-series data,[69] none of which the Commission has in this proceeding.

Time-series data would show cable operators' aggressive expansion in the high-capacity marketplace, which represents a major and growing source of competition. These companies have extended their increasingly dominant residential broadband networks first to serve small and medium businesses, and more recently to target large businesses and other carriers such as wireless providers. As analyst IDC observes, cable companies are now "a disruptive wild card that may choose to bring enormous pressure on pricing in order to realize quick market share gains."[70] Indeed, the enterprise-focused units of the largest cable operators — Time Warner Cable, Comcast, and Cox — have in just a few years become the fifth, sixth, and eighth largest

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[68] *Id.* ¶ 29. In addition, the Commission has not afforded ILECs sufficient time to review the data and to incorporate it into their direct cases.

[69] *Id.* ¶ 29 & n.19; *see also Special Access Rulemaking Order* ¶ 28 (acknowledging that collecting two years of data was critical to conduct "an analysis that controls for factors that may vary widely across geographic areas, but not within a given geographic area," whereas with "only one year's worth of data, we will be less able to associate particular factors with levels of deployment").

[70] Matt Davis, IDC, *Market Analysis: U.S. SMB Telecom Voice and Data Services, 2014-2018 Forecast*, at 6 tbl. 2 (May 2014).

providers of Ethernet services in the United States, respectively.[71] Comcast's first-quarter 2015 financial reports announced $1.1 *billion* in *quarterly* revenue for its Comcast Business Services division, representing 21.4% growth and the "highest" "absolute dollar growth . . . in the business' history."[72] The Business Services division has been the second largest contributor to Comcast's growth in cable revenue for 18 of the last 19 quarters.[73] Other cable operators also report double-digit growth in business Ethernet and related services: Time Warner's wholesale transport business saw revenue growth of 19.8% through the first three quarters of 2015.[74]

CLECs also continue to thrive in providing high-capacity services, including business Ethernet, representing yet another source of significant and growing competition in this marketplace. For example, Level 3 has now catapulted ahead of Verizon to become the second largest provider of business Ethernet services nationwide.[75] Windstream advertises that it now has "a presence in virtually every city," including an anticipated 44 markets featuring 100

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[71] Vertical Systems Group, *Mid-Year 2015 U.S. Carrier Ethernet LEADERBOARD* (Aug. 24, 2015), http://www.verticalsystems.com/vsglb/mid-year-2015-u-s-carrier-ethernet-leaderboard/.

[72] Thomson Reuters StreetEvents, *Edited Transcript: CMCSA — Q1 2015 Comcast Corp Earnings Call*, at 6 (May 4, 2015) (statement by Comcast Corporation Vice Chairman and CFO Michael Angelakis), http://files.shareholder.com/downloads/CMCSA/0x0x826056/c53b6711-299e-49e7-bbe0-fa5ccbb12142/Comcast_1Q15_Earnings_Transcript.pdf; Comcast, *1st Quarter 2015 Results*, at 5 (May 4, 2015), http://files.shareholder.com/downloads/CMCSA/1094912571x0x825864/3E0D8152-BF3B-4D9D-8A3B-5583B496D412/|1Q15_Earnings_Release_with_Tables.pdf.

[73] Comcast, *3rd Quarter 2015 Results*, at 1 (Oct. 27, 2015), http://files.shareholder.com/downloads/CMCSA/1094912571x0x856642/C83D4F35-35F2-446F-B005-5E309CDD97E4/3Q15_Earnings_Release_with_Tables.pdf.

[74] Time Warner Cable, *Time Warner Cable Reports 2015 Third-Quarter Results* (Oct. 29, 2015), http://ir.timewarnercable.com/investor-relations/investor-news/financial-release-details/2015/Time-Warner-Cable-Reports-2015-Third-Quarter-Results/default.aspx.

[75] Vertical Systems Group, *Mid-Year 2015 U.S. Carrier Ethernet LEADERBOARD* (Aug. 24, 2015), http://www.verticalsystems.com/vsglb/mid-year-2015-u-s-carrier-ethernet-leaderboard/.

Gigabits per second service to carrier customers.[76] XO, the seventh largest provider of business Ethernet services, recently launched a project to invest $500 million in expanding its nationwide network, which it claims is "[o]ne of the largest Ethernet access networks reaching more than 2 million business locations."[77] The Zayo Group operates fiber networks covering "over 300 metro markets" in 46 states, plus Washington D.C., and reports "$5.8 billion in revenue under contract with a weighted average remaining contract term of approximately 45 months."[78]

A market-power assessment must also acknowledge that the high-capacity marketplace is set to grow alongside surging demand for those services. Between 2009 and 2014, total wireless network traffic grew more than twenty-fold, and this traffic is expected to grow by another six-fold or more by 2019.[79] To meet this exploding demand, wireless providers are dramatically increasing their backhaul capacity at their cell sites, and they are looking to competitive suppliers

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[76] *Windstream Communications at Citi Internet Media & Telecommunications Conference — Final*, FD (Fair Disclosure) Wire, Transcript 030915a5637615.715 (Mar. 9, 2015) (statement by Cablevision Systems Corporation Vice Chairman Gregg Seibert); Windstream News Release, *Windstream and Infinera Partnership Drives Windstream Carrier Solutions' Leadership in the Wave Transport Market* (Aug. 12, 2015), http://news.windstream.com/article_display.cfm?article_id=1659.

[77] XO Communications, LLC, *The Fastest Nationwide Network and Exceptional Service*, http://www.xo.com/solutions/business/wholesale/; *see* Sean Buckley, *XO Takes Success-Based Approach to On-Net Fiber Buildouts*, FierceTelecom (Sept. 3, 2015), http://www.fiercetelecom.com/story/xo-takes-success-based-approach-net-fiber-buildouts/2015-09-03.

[78] Zayo Group Holdings, Inc., Form 10-K, at 1 (SEC filed Sept. 18, 2015), http://www.sec.gov/Archives/edgar/data/1608249/000156459015008052/zayo-10k_20150630.htm; Zayo Group Holdings, Inc., Form 10-Q, at 29 (SEC filed May 13, 2015), http://www.sec.gov/Archives/edgar/data/1608249/000156459015004147/zayo-10q_20150331.htm.

[79] *See* CTIA, *Annual Wireless Industry Survey* (June 2015), http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey; Thomas K. Sawanobori & Dr. Robert Roche, CTIA, *Mobile Data Demand: Growth Forecasts Met*, at 5, 7 (June 22, 2015) ("Ericsson projects traffic in 2019 will be five times the traffic in 2014, while Cisco projects traffic in 2019 will be seven times the traffic in 2014. Averaging the two indicates that traffic in 2019 will be about six times higher than the traffic in 2014.") (footnotes omitted).

to do so. T-Mobile, for example, has stated that, as a result of working with dozens of competitive backhaul providers, including cable operators (Brighthouse Networks) as well as numerous fiber-based CLECs (including FPL FiberNet, IP Networks, and Zayo Bandwidth), the company "resolved our backhaul problem for our [cell sites] several years ago."[80] On wireline networks, data traffic is likewise exploding, as customers seek higher capacity connections to support an increasing array of services, from datacenter interconnection, to video services, to accessing cloud services. Consistent with that trend, in 2011 Sprint announced a plan to move its wireless backhaul away from TDM services to modern, high-capacity services. Despite Verizon's competitive bid to provide that backhaul, it won only << >> of the total sites within the Verizon footprint.[81] That is because, as one competitor describes it, "10 Mbps Ethernet is

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[80] T-Mobile Earnings Report: Q3 2015 Conference Call Transcript (Oct. 28, 2015), http://www.thestreet.com/story/13341417/14/t-mobile-us-inc-tmus-earnings-report-q3-2015-conference-call-transcript.html (Neville Ray, EVP & CTO, T-Mobile); *see* Phil Goldstein, *T-Mobile to focus on 1900 MHz LTE deployment to expand network footprint*, FierceWireless (Sept. 24, 2014), http://www.fiercewireless.com/story/t-mobile-focus-1900-mhz-lte-deployment-expand-network-footprint/2014-09-24 (Dave Mayo, Senior Vice President of Technology, T-Mobile); T-Mobile News Release, *T-Mobile Signs New Backhaul Agreements for Six Major U.S. Markets* (Sept. 18, 2008), https://newsroom.t-mobile.com/news/t-mobile-signs-new-backhaul-agreements-for-six-major-us-markets.htm.

[81] Ex Parte Letter from Kathleen Grillo, Verizon, to Marlene Dortch, Secretary, FCC, RM-10593, WC Docket No. 05-25 (filed Sept. 12, 2012).

the new T-1."[82] As a result, the demand for Ethernet and other enterprise broadband services has been rising very rapidly, and this growth, too, is projected to continue over the next five years.[83]

The Commission has not yet analyzed the disruptive effect of cable operators and other new entrants, much less reached any conclusions about their ability to constrain prices and practices for the relevant services, which include legacy special access. The Commission should reach those conclusions on a full record, in the industry-wide special access proceeding.

Finally, even a preliminary analysis of the limited special access data suggests that the Commission's implicit assumption that the ILECs possess substantial market power is wrong. Those data show, for example, that competitive facilities are widespread and capable of serving all locations with concentrated demand for high-capacity services.[84] Competitors have deployed fiber in zip codes that contain approximately <<   >>% of the U.S. population.[85] These zip

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[82] Presentation of Stephen Webster, VP, Carrier Sales, Charter Business, to Comptel, at 6 (Mar. 17, 2014), http://files.comptelplus.org/2014Spring/Slides/Cable%20Slides%20Final%203-15-14.pdf; *see also* Cox Business, *The Ethernet Advantage*, at 2 (2011), http://xact.spiceworks.com/client_interactive/vendor_pages/cox/imgs/CS-EAAAL_Ethernet%20Advantage%20Advertorial%20-%20Alcatel%20Lucent.pdf ("Ten years ago, 1.5 megabits per second of capacity was fast, and even five years ago it was still pretty good . . . . But today 1.5 mbps is nothing. One video conference can use up a megabit per second or more just by itself.") (quoting Leigh King, Vice President, Cox Business Louisiana).

[83] *See, e.g.*, Nav Chander, IDC, *Market Analysis: U.S. Carrier Ethernet Services 2015-2019 Forecast* (Mar. 2015) ("Total Ethernet revenue is expected to grow from $7.0 billion in 2014 to $12.1 billion in 2019, a compound annual growth rate (CAGR) of 11.4%.").

[84] The following calculations reflect Verizon's analysis of the data in the NORC Data Enclave. Because of numerous issues with the Commission's data, some of which still were not resolved at the time of this filing, these calculations are subject to change. If and when they do, Verizon will provide appropriate updates.

[85] *See* II.A.4 data (excluding data reported by Verizon, AT&T, and CenturyLink; limiting results to locations where MEDIUM = Y; excluding locations served using only UNEs); CLECLocations_Geocoded crosswalk file (providing standardized zip codes for locations reported in response to Question II.A.4); U.S. Census Bureau, *2010 Decennial Census Data for Total Population by 5-Digit ZIP Code Tabulation Areas within United States and Puerto Rico*, http://factfinder.census.gov/faces/nav/jsf/pages/download_center.xhtml; U.S. Dep't of Housing

codes with competitive fiber contain approximately << >>% of all business establishments nationwide, and approximately << >>% of all business establishments within Verizon's ILEC footprint.[86] The data also show that competitive fiber has been deployed to serve census blocks that cover << >>% of the U.S. population, including << >>% of the total population in urban census blocks.[87] The record also shows that TDM special access is only a portion of the high-capacity marketplace and that the marketplace is rapidly migrating to IP-based Ethernet services, where competition is particularly intense.

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and Urban Development, HUD USPS ZIP Code Crosswalk file for ZIP-COUNTY (4th Quarter 2013), http://www.huduser.gov/portal/datasets/usps_crosswalk.html. This analysis is conservative because it excludes additional locations served by competitive fiber for which the Commission did not provide standardized zip codes, as well as competitive fiber deployed by Verizon, AT&T, or CenturyLink, outside of their respective legacy ILEC wireline footprints.

[86] *See* II.A.4 data (excluding data reported by Verizon, AT&T, and CenturyLink; limiting results to locations where MEDIUM = Y; excluding locations served using only UNEs); CLECLocations_Geocoded crosswalk file (standardized zip codes for locations reported in response to Question II.A.4); U.S. Census Bureau, County Business Patterns: 2013: Complete ZIP Code Industry Detail File, ftp://ftp.census.gov/econ2013/CBP_CSV/zbp13detail.zip (total number of establishments by zip code); SPADC Filers (122915).xlsx (company names by FRN). Verizon's ILEC footprint is based on standardized zip codes for Verizon locations that appear in the ILECLocations_Geocoded crosswalk file, based on Verizon's response to Question II.B.3.

[87] *See* CensusBlocksWithFiber crosswalk file (based on mapping data filed in response to Question II.A.5, excluding data for Verizon, AT&T, and CenturyLink); U.S. Census Bureau, 2010 Census population and topological data by census block, http://www2.census.gov/geo/tiger/TIGER2010BLKPOPHU/ and ftp://ftp2.census.gov/geo/tiger/TIGER2010/TABBLOCK/2010/; SPADC Filers (122915).xlsx (company names by FRN). These counts are conservative for several reasons: They do not include any competitive fiber deployed by Verizon, AT&T, or CenturyLink, outside of their respective legacy ILEC wireline footprints. With respect to cable companies, the data include only "middle" mile fiber routes, not fiber routes to end user locations, which the Commission did not require cable operators to report. They exclude data reported for areas outside of the 50 states and the District of Columbia.

C. The Costs of Error Are Asymmetric and Threaten to Make Customers and End Users Worse Off

Completing the market power analysis that is a prerequisite to the review of the discount plans at issue — and reaching the right conclusion about market power — is essential because invalidating the discount plans at issue would have one certain immediate effect: special access prices actually paid by customers would go up.[88] As then-Judge Breyer put it, "a legal precedent or rule of law that prevents a firm from unilaterally cutting its prices risks interference with one of the Sherman Act's most basic objectives: the low price levels that one would find in well-functioning competitive markets."[89]

ILECs have no legal obligation to offer discounts, much less discount plans that afford customers such a substantial benefit as circuit portability.[90] If the Commission were to prohibit the commitments that make these benefits possible, Verizon's discounts would decrease — if Verizon elected to continue offering plans with circuit portability at all. The result of such a decision would be either less flexibility or higher prices for customers, which would harm the ultimate end users of these special access circuits. "The antitrust laws very rarely reject such beneficial 'birds in hand' for the sake of more speculative (future low-price) 'birds in the bush.' "[91]

Finally, restricting Verizon's ability to offer discount plans with portability would also hamstring its ability to compete with cable operators. As shown above, cable companies are investing heavily to use their dominant broadband networks to compete in the marketplace for

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[88] *See Barry Wright*, 724 F.2d at 234.

[89] *Id.* at 231.

[90] *See BellSouth*, 469 F.3d at 1057.

[91] *Barry Wright*, 724 F.2d at 234.

high-capacity services. The Commission should be promoting Verizon's ability to compete against cable, not impeding it.

II. Verizon's Voluntary Discount Plans Are Just and Reasonable, Economically Efficient, and Promote Competition

A. Circuit Portability Materially Transforms the Economics of Term-Discount Plans, Requiring Additional Consideration to Warrant the Same Discount Levels as Standard Term-Discount Plans

As the *Order* recognizes, circuit portability provides customers with significant economic benefits:

> Circuit portability provides customers, particularly competitive LEC customers, flexibility to disconnect circuits and replace them with others to meet their commitments and thereby not incur early termination penalties. By most accounts, circuit portability provides a crucial non-rate benefit for competitive LECs serving retail customers whose terms of service rarely coincide with the competitive LECs' underlying pricing plan term commitments with incumbent LECs.[92]

Portability enables customers to receive the benefits of large discounts without the requirement to commit any specific circuit, to any specific customer, to a term commitment longer than one year. The customer knows that it will receive the same discount on the circuits it purchases under the CDP or NDP to serve its own retail customer, regardless of whether it can convince that retail customer to sign up to a multi-year deal. This is particularly valuable given the rapid pace of change in the high-capacity marketplace, where providers compete to win each other's customers and add new customers at an unpredictable rate.

Verizon incurs substantial costs to provide customers with this enormous flexibility, even as compared to a standard term-discount plan that offers very limited flexibility. With term-discount plans with portability, Verizon loses the assurances that it will receive a steady stream of revenues for a particular number of circuits in its inventory. Verizon also bears the costs of

[92] *See Order* ¶ 34.

physically connecting new circuits and disconnecting old ones when customers take advantage of the circuit portability feature. Verizon's plans offer portability over multi-state regions, and those costs are therefore significant. At the same time, portability reduces the time over which Verizon can recover those circuit-specific, non-recurring costs.[93]

Business practices in other industries confirm that portability — while a significant benefit to customers — also imposes substantial costs on providers. Car rental companies, for example, charge substantially higher rates if a customer does not pick up and return the rental car at the same location.[94] A recent search of prices for a five-day rental from Hertz showed a rate of $40 per day for a car picked up from and returned to Reagan National Airport; that rate increased to nearly $200 per day if the customer instead wanted to return the car at the Philadelphia or Boston airports.[95] Health clubs similarly offer customers portable memberships — usable at multiple locations rather than at a single location — at additional costs. For example, Washington Sports Clubs offers a $39.99 per-month membership for the right to attend

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[93] In addition, because Verizon is required to make its tariffs generally available, it bears additional uncertainty and costs caused by customers that are unlikely to live up to the commitments they make. Verizon cannot simply turn these customers away or discriminate against customers it views as higher risk — practices that are routine in other competitive industries. Verizon must instead account for these risks and costs in structuring its generally available terms and conditions. The Commission likewise must account for these costs and risks of providing portability to any requesting customer in evaluating whether Verizon's terms and conditions are just and reasonable.

[94] Independent Traveler.com, *One-Way Rentals and Driveaways*, http://www.independenttraveler.com/travel-tips/car-travel/one-way-car-rentals-and-driveaways ("One-way car rentals are one of the priciest propositions in the travel industry. If you drop your car off in a different place than you picked it up, your car rental company has to get the vehicle back to where it belongs — and you can be sure it will pass the associated costs on to you. One-way renters are typically penalized with high base rates or drop-off surcharges.").

[95] Comparison of the compact car rates offered for a rental from December 14 through December 18, 2015.

its F Street location, but that price rises to $69.99 per month if the customer wants the right to attend any of the My Sports Clubs locations.[96]

Because of the significant costs of providing portability, Verizon requires an additional commitment from the customer — a "commitment level" — to equilibrate the bargain so that it is economically viable for both parties. The commitment level generates efficiencies that make possible the discounts and portability available under the CDP and NDP. First, by requiring that customers include in the plan all of their purchases from Verizon for a given type of service, it reduces uncertainty concerning circuit demand, which facilitates network planning. As a result, Verizon can reasonably expect to be able to recover its non-recurring costs over an average circuit life that is multiple years long. Second, by enabling a billing process that does not require managing individual circuits, the commitment level reduces Verizon's significant administrative costs in overseeing standard, circuit-specific term-discount plans. Because measuring compliance with the commitments under these plans focuses on each customer's *average* purchases under the CDP and NDP, administrative oversight is required only during the semiannual or annual review process rather than year-round.

The *Order* ignores that offering customers circuit portability fundamentally changes the economics of a term-discount offer. Term discounts provide Verizon with "the certainty associated with longer-term relationships"[97] and "minimize the risk of stranded investment."[98] But that is true because the customers of these plans commit to maintain specific circuits in place for the entirety of the term (with some limited flexibility to disconnect circuits before the end of

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[96] Comparison of the Premier and Passport month-to-month rates at https://www.mysportsclubs.com/account/signup/options/60?trial=false.

[97] *Fourth Transport Rate Order* ¶ 13.

[98] *Local Competition Order* ¶ 687.

the term, so long as the customer at the same time orders a replacement circuit of the same speed or type). Under the CDP and NDP, however, the customer is committing to maintain individual circuits included in the plan only for one year, and after that initial term the customer has extensive flexibility to add or remove circuits, subject only to maintaining an average number of circuits that meets the customer's commitment level. And, as shown above, CDP customers are taking advantage of the benefits portability provides, terminating a significant percentage of circuits obtained under plans with five- or seven-year term commitments after only two or four years.[99] To take another example, << >> took advantage of portability to receive discounts on about << >> unique DS1 circuits under its CDPs, which was about 50% more than the << >> DS1 circuits it had committed to maintain under those plans.[100] << >> was able to avoid overage charges because, in any given six-month period, the number of circuits it was purchasing was within 30% of that minimum commitment level.

Despite the added costs that portability imposes, Verizon offers CDP and NDP customers the same discounts available under a standard term plan of the same length. As shown above, a customer committing to a five-year CDP for DS1 circuits receives the same 35% discount as a customer that commits specific DS1 circuits to a five-year term-discount plan. Many of the plan features the *Order* designates for investigation are the very features that make it possible for Verizon to offer customers the significant benefit of portability at no additional cost for the special access circuits.

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[99] *See* Sullivan Decl. ¶ 8.

[100] *See id.* ¶ 10.

First, Verizon requires that a customer include in the CDP and NDP all of its purchases from Verizon for each service type — such as DS1 or DS3 — included in the plan.[101] This requirement provides Verizon with an increased likelihood that the average in-service life of the circuits included in the plan will be multiple years so that Verizon, on average, will be able to spread the non-recurring costs of the circuits over that term. Without this requirement, a customer could include in the plan only those circuits that it expects to disconnect shortly after the one-year minimum period. In addition, this requirement reduces the significant cost, associated with standard term-discount plans, of keeping track of the individual commitment term associated with each circuit included in the discount plan.[102] Rather than dedicating resources to managing individual circuits, the CDP and NDP permit Verizon to engage in a semiannual (CDP) or annual (NDP) review of the customer's compliance with its commitment level. Administrative costs would be far higher if some DS1 circuits purchased from Verizon were included in the CDP, while others were purchased under standard term-discount plans, and still others at standard, undiscounted rates. By eliminating the substantial costs required to track each circuit's compliance with the terms of the discount plan individually and replacing it with a semiannual or annual true-up review, the CDP and NDP reduce circuit-management administrative costs by an order of magnitude.[103]

Second, the CDP and NDP also require that the customer make its commitment based on its level of purchases at the time it subscribes to either plan.[104] Although the CDP and NDP

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[101] *See Order* ¶ 30; *see, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) CDP), 25.3.3(A)(2) (NDP).

[102] *See* Sullivan Decl. ¶ 5.

[103] *See id.*

[104] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) (CDP), 25.3.3(A)(2) (NDP).

provide customers with some flexibility to reduce their purchases from Verizon — to 10% below the initial purchase commitment for DS1s and DS3s under the CDP and to as much as 15% below the initial purchase commitment for DS1s and DS3s under the NDP[105] — the *commitment* to continue purchasing services from Verizon over the course of the CDP or NDP term is necessary to justify the discount levels. Otherwise, a customer could get multi-year discounts on its initial amount of purchases, without actually making a multi-year commitment of any kind. And, because it is a commitment, the customer faces consequences if it fails to hold up its end of the bargain.

Contrary to some CLECs' claims,[106] the shortfall provisions in the CDP and NDP that enforce this commitment are not punitive. Rather, they ensure that Verizon receives the benefit of the bargain it struck with its customer.[107] As a federal court recently found, in enforcing the shortfall provision in the CDP, such provisions "fulfill a familiar function of contract law by calculating expectancy damages" and "provide[ ] a valuable tool to let Verizon calculate, and allow[ ] [the customer] to know the reach of, expectancy damages in the event of a shortfall, a permissible and reasonable goal for any service provider."[108] And shortfall payments assessed on customers have been small compared to the total purchases under these plans, equaling less than 3% of Verizon's revenue under CDP and 1% of Verizon's revenue under NDP.[109]

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[105] *See, e.g.*, *id.* §§ 25.1.3(A)(5) (CDP), 25.3.4(C)(2) (NDP).

[106] *See Order* ¶ 73.

[107] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.7(B) (CDP), 25.3.7(C)(1) (NDP).

[108] *Verizon Virginia, LLC v. XO Communications, LLC*, – F. Supp. 3d –, 2015 WL 6759473, at *11 (E.D. Va. Nov. 5, 2015), *appeals docketed*, Nos. 15-2496 & 15-2549 (4th Cir.).

[109] Calculated as the sum of amounts in the "Shortfall_Penalty" column in Table VI divided by the sum of amounts in the Discount_Rev_Total column in Table IIA for each of the CDP and NDP plans.

Third, because the CDP and NDP provide a discount for each circuit under the plans, they limit the extent to which the customer can retain those discounts on purchases that exceed its commitment level.[110] The CDP allows a customer to increase its purchases under the plan by up to 30% above its minimum commitment level.[111] The multi-year discount rate under the CDP applies to all of these excess circuits, even though the customer could disconnect each of those additional circuits one year after ordering them, and could never again exceed its minimum commitment level during the remainder of the CDP term. Circuits ordered in excess of that 30% will be billed through the overage provision at Verizon's undiscounted rates, unless the customer elects to increase its commitment level — and, thereby, actually *commit* to purchasing additional circuits for a period longer than one year.[112] Without such a provision, a customer could initially secure a low commitment level, then purchase a large number of additional circuits at the discounted rates, but keep each of them in service for only one year. The overage provisions thus discourage customers from gaming Verizon's tariffs by committing to only small volumes while receiving multi-year discounts on much greater volumes. The overage provisions also help ensure that the average circuit duration is not too low, which also facilitates network planning.

These commitment level provisions are even more reasonable — and customer friendly — because Verizon measures them over one-year periods under the NDP and six-month periods for the CDP.[113] Thus, a CDP customer can drop below its minimum commitment level or increase its purchases by more than 30% above that minimum commitment level, without facing

[110] *See Order* ¶ 79.

[111] *See*, *e.g.*, Verizon FCC Tariff No. 1, § 25.1.7(A)(1), (C).

[112] *See Order* ¶ 82; *see*, *e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A)(9), 25.1.7(D).

[113] Verizon FCC Tariff No. 1, § 25.1.7(A)(2); Verizon FCC Tariff No. 11, § 25.1.7(A)(2) (CDP); Verizon FCC Tariff No. 1, § 25.3.7; Verizon FCC Tariff No. 11, § 25.2.7 (NDP).

shortfall or overage payments, so long as — on average, over the longer period — the customer satisfies the commitment that it made to Verizon. This averaging further confirms these features of the CDP and NDP are designed to ensure that the customer has made a commitment sufficient to warrant the discounts provided and are not the punitive measures some CLECs have claimed.

CLECs' complaints about the plans at issue here are belied by their own discount-plan offerings, which include substantially similar terms and conditions. First, CLEC responses in the special access rulemaking show that term discounts are commonplace throughout the special access marketplace. For example, cable operators and CLECs acknowledging they offer discounts for customers who commit to a specified term, generally with larger discounts for longer terms, include: <<

>>[114]

Second, the responses show that some competitors enter into agreements that contain commitments based on historical purchasing levels. <<

>>[115] <<

[114] See these providers' responses to II.A.19.

[115] << >>

[116]>>

Third, competitors defend such agreements on the same grounds that Verizon does: that they <<

>> Competitors offer these discount plans <<

>>[117] <<

>>[118] <<

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>>[119] << >>[120] <<

>>[121] <<

>>[122] According to CLECs, these arrangements permit providers << >>[123] The

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fact that CLECs offer similar bargains and justify them just as Verizon does belies their self-serving complaints to the Commission here.

B. Verizon's Discount Plans Properly Offer Customers Multiple Term-Length Options and Insist That Customers Fulfill Their Commitments

As the Commission recognized, term discounts provide "the certainty associated with longer-term relationships"[124] and "minimize the risk of stranded investment."[125] Unsurprisingly, longer term lengths are associated with larger discounts, as the increased term length provides greater certainty, reduces further the risk of stranded investment, and provides a longer period over which to spread any nonrecurring costs.[126]

Once a customer has chosen to sign up for the CDP, NDP, TVP, or ETTVP and has selected a term length, however, that customer is required to live up to its end of the bargain, no different from Verizon. The early-termination provisions in these plans are not punitive but instead discourage a customer from reneging on the deal it struck after obtaining the benefits of its bargain. The CDP, for example, contains two methods of calculating the amount a customer owes if it terminates the CDP early. Verizon will "apply the method that produces the *lesser* termination liability charge."[127] The first method is to calculate the average amount the customer

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[124] *Fourth Transport Rate Order* ¶ 13.

[125] *Local Competition Order* ¶ 687.

[126] *See, e.g.*, Verizon FCC Tariff No. 1, § 25.1.4(D) (CDP).

[127] *Id.* § 25.1.9(C) (emphasis added).

was buying from Verizon on a monthly basis just before terminating its CDP, and to assess the customer only half of that amount for the months remaining in the CDP term.[128] The second method is to calculate the difference between the discounted rates the customer actually paid and the higher rates it would have paid had it signed up for a shorter term that matched the actual amount of time its CDP was in effect.[129] The first method will likely result in a lower payment for a customer that terminates early but near the end of its chosen CDP term, while the second method will likely result in a lower payment for a customer that terminates shortly after signing up for the CDP.[130]

C. Verizon's Discount Plans Do Not "Lock Up" Demand or Impede Technology Transitions

The discount plans under investigation here are voluntary. Customers subscribe to these plans by choice. Verizon does not "lock up" demand for special access.[131] This is shown most clearly by << >> — << >>[132] — which in 2012 decided *not* to renew its CDP with Verizon and, instead, to purchase those DS1s and DS3s it obtains from Verizon in the former Bell Atlantic region at undiscounted rates or under standard term-discount plans. Through this decision, << >>

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[128] *See id.* § 25.1.9(C)(1).

[129] *See id.* § 25.1.9(C)(2).

[130] The early-termination provisions of the NDP and TVP operate similarly. *See*, *e.g.*, *id.* § 25.3.13 (NDP) (assessing decreasing fractions of remaining charges based on number of plan years remaining); Verizon FCC Tariff No. 14, §§ 5.6.14(O) (DS1 TVP), 5.6.19(K) (DS3 TVP) (assessing 15% charge for remaining months after first year).

[131] *See*, *e.g.*, *Order* ¶¶ 6, 12, 31.

[132] Vertical Systems Group, *Mid-Year 2015 U.S. Carrier Ethernet LEADERBOARD* (Aug. 24, 2015), http://www.verticalsystems.com/vsglb/mid-year-2015-u-s-carrier-ethernet-leaderboard/.

has reduced its purchases of DS1s and DS3s from Verizon by << >> and << >>, respectively, as compared to its purchase levels at the time its CDP subscription ended.[133]

More generally, customers that do elect to purchase special access from the CDP, NDP, TVP, or ETTVP can control the amount of special access services they purchase from Verizon. Importantly, because the commitment levels are set based solely on the customer's purchases from Verizon — irrespective of the customer's special access purchases from providers other than Verizon — the plans do not require that a customer make a particular percentage of its *total* special access purchases from Verizon.[134] Rather, when a customer initially subscribes to the CDP or the NDP, it is required to include in the plan all of its special access purchases from Verizon at that specific moment in time for special access service types included in the plan. This amount sets the commitment level under the plan for the term the customer selects. Therefore, up until the time they subscribe, potential customers to these plans can lower their commitment level by switching purchases to other providers or to self-provisioned circuits before signing up.

Subscribing customers have similar options at the end of their chosen plan term. Indeed, customers that desire to switch from Verizon to other providers have the ability and responsibility to plan in advance, so that they will be ready to transition circuits from Verizon to other providers as their plan ends. To facilitate such planning, the plans permit customers to reduce their purchases of services from Verizon by as much as 10% or 15% below their

[133] *See* Sullivan Decl. ¶¶ 6-7.

[134] As explained above, the "lock in" claim reduces to claims that undiscounted rates are unjust and unreasonable and that ILECs have market power — two questions that are outside the scope of this proceeding. *See supra* Part I.A-B.

commitment level during the term of the plan,[135] and the CDP even offers customers an extra two months of discounts after a plan terminates to assist with that transition.[136] And, as shown above, << >> did just that when its CDP expired in 2013, renewing its CDP for DS1s at a commitment level about << >> lower than its in-service volume of DS1s at the end of its prior CDP.[137]

Because new demand is primarily for business Ethernet services and *not* the traditional DS1 and DS3 special access services covered by the CDP, NDP, TVP, and ETTVP, Verizon modified these discount plans in response to customer demands to ensure they do not impede meeting that new demand with IP-based services. The plans include technology-transition provisions, which allow a customer to convert an existing DS1 or DS3 circuit to Ethernet and count that Ethernet circuit toward meeting its commitment level.[138] Subscribers can also use circuit portability to upgrade an existing customer from a DS1 or DS3 service to Ethernet, so long as it continues to meet its commitment level by purchasing DS1 or DS3 service from Verizon to serve another customer in another location, even in another state.

Customers have used the technology-transition provisions of the plans to move to new technologies.[139] And none of these plans restricts customers from purchasing Ethernet or other

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[135] Verizon FCC Tariff No. 1, § 25.3.4(C)(2); Verizon FCC Tariff No. 11, § 25.2.4(C)(2).

[136] *See* Verizon FCC Tariff No. 1, § 25.1.8(C)(2). The NDP does not contain such a grace period, but, because commitment levels are assessed based on 12-month averages, customers enjoy significant flexibility to reduce their commitments prior to the plan's expiration under that plan as well.

[137] *See* Sullivan Decl. ¶ 11.

[138] The technology-transition provisions include protections to ensure that customers do not use those provisions as a means of evading the commitments they made in exchange for the discounts Verizon has provided. *See, e.g.*, Verizon FCC Tariff No. 1, §§ 2.9.4, 25.1.3(B), 25.1.7 (CDP).

[139] *See* Appendix B, Table V.

services to meet new demand. Thus, Verizon's plans do not inhibit the technology transition. Instead they permit customers to shift to Ethernet and new technologies as demand for those services grow.

D. Verizon Has No Untariffed Commercial Agreements That Affect Charges for Tariffed Special Access Services

The *Order* inquires whether there exist "commercial agreements for special access services [that] contain discounts, credits, waivers, refunds, or other provisions that directly or indirectly affect charges for tariffed special access services" and that are not already filed pursuant to 47 U.S.C. § 203.[140] Although Verizon has entered into contract tariffs that affect charges for tariffed special access services, those are already filed pursuant to § 203. Verizon has thoroughly reviewed its commercial agreements and has not identified any unfiled agreements that affect charges for tariffed special access services.

Nevertheless, out of an abundance of caution, in response to the *Order*, Verizon is providing eight commercial agreements between Verizon and CLECs that involve tariffed special access.[141] Verizon is providing these contracts because they include discounts or credits off the rates for Ethernet and other commercial services that depend in part on the amount of tariffed special access purchased or revenue associated with tariffed special access. These commercially negotiated terms do not affect the price paid for tariffed special access services.

CONCLUSION

The Commission should complete its special access rulemaking before addressing the issues designated for investigation in this proceeding. Once it does consider the Verizon discount plans, it should find that these voluntary plans are just and reasonable.

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[140] *Order* ¶ 102.

[141] *See* Appendix F.

Respectfully submitted,

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ANSWERS TO QUESTIONS CALLING FOR NARRATIVE RESPONSE

<u>Paragraph 63 of the Order. Table I. Variable Identifier 3.</u>

Provide a narrative description of all circuit portability provisions in the tariff pricing plan, including any additional provisions pertaining to a circuit portability option included in the tariff pricing plan. In addition, provide the actual text of these provisions.

Commitment Discount Plan (CDP) – FCC 1 & FCC 11[142]

CDP offers circuit portability. When a customer signs up for a multi-year plan, the customer does not have to maintain circuits for CDP-eligible services that are included in the plan for the full commitment term to receive the full CDP discounts. Instead, as long as a circuit is in service for one year — even if that year pre-dated in whole or in part the start of the customer's CDP — the customer may disconnect that circuit without an early-termination fee and can retain the full CDP discounts that were applied to that circuit, so long as the customer satisfies its commitment level. CDP discounts also are applied to a customer's circuits for CDP-eligible services that exceed the minimum commitment level by up to 30%.

Under CDP, it is not necessary to track or monitor activity at the individual circuit level because the plan is managed by measuring the average number of in-service circuits over a six-month period against a commitment level. If the customer's average number of in-service circuits over each six-month true-up period satisfies the commitment level, the customer will not incur a shortfall charge. In addition, each circuit under the plan has portability within the tariff region without incurring early termination liability, so long as the circuit is maintained in service for at least one year.

Under CDP, customers also can upgrade a service to a higher bandwidth service included in CDP, and commitment levels for each service will be adjusted accordingly. For example, if a

[142] Copies of all relevant tariff provisions are included in Appendix C in PDF format.

customer upgrades from DS1s to DS3s, the minimum commitment level associated with the DS1 service will be reduced by 90% of the total equivalent DS0s being upgraded, while the minimum commitment level for DS3 service will be increased by 90% of the DS0 equivalents being added. Similarly, if a customer switches from CDP to the National Discount Plan (NDP), for example from DDS under CDP to DS1 under NDP, the minimum commitment level for DDS will be reduced by 75% of the quantity moving to NDP. The same type of adjustment is made if a circuit is upgraded from a service on CDP to an optical service outside of CDP.

Furthermore, a customer can upgrade under the technology migration tariff provisions. If a customer uses the technology migration provisions, the number of TDM-based DS0 equivalents it disconnects and replaces with a "Replacing Service" will count toward the minimum commitment level at subsequent true-ups. In calculating whether the customer's average DS0 equivalent channel termination quantity satisfies that customer's commitment level, it is as if the upgrade never occurred. The services must satisfy the criteria in FCC #1, Section 2.9.6 or FCC #11, Section 2.10.5 in order to qualify as a technology migration.

Relevant CDP Tariff Citations

FCC 1 – Sections 25.1.3(B), 25.1.7(B), 25.1.7(D), 2.9.4(A), and 2.9.6
FCC 11 – Sections 25.1.3(B), 25.1.7(B), 25.1.7(D), 2.10.3(A), and 2.10.5

National Discount Plan (NDP) – FCC 1

NDP offers circuit portability. All of a customer's circuits for special access DS1s and DS3s services are included in the plan and receive NDP discounts regardless of the customer's commitment level. Instead, as long as a circuit is in service for one year — even if that year pre-dated in whole or in part the start of the NDP — the customer may disconnect that circuit without an early-termination fee and can retain the full NDP discounts that were applied to that circuit, so long as the customer satisfies its commitment level. NDP discounts also are applied to a customer's circuits for NDP-eligible services that exceed the minimum commitment level by up to 60%.

Under NDP, it is not necessary to track or monitor activity at the individual circuit level because the plan is managed by measuring the average number of in-service circuits against a commitment level. If the customer satisfies its commitment level over the twelve-month true-up period, the customer will not incur a shortfall charge. In addition, each circuit under the plan has portability across the entire Verizon footprint (the FCC 1, 11, 14 and 16 tariff regions) without incurring early-termination liability, so long as the circuit is maintained in service for at least one year. The combined DS1 and DS3 commitment level provides an additional level of flexibility and portability to NDP because individual services do not need to be tracked and managed separately.

Under NDP, customers can upgrade a service to a higher bandwidth service included in NDP — or to a higher bandwidth service outside of NDP — if certain conditions are satisfied. When upgrading from a service in NDP to a service outside of NDP, an upgrade adjustment will be calculated and used during the Annual Review in the calculation of monthly equivalent DS1 channel mileage and channel termination quantities.

Furthermore, a customer can upgrade under the technology migration tariff provisions. If a customer uses the technology migration provisions, the number of TDM-based equivalent DS1s it disconnects and replaces with a "Replacing Service" will count toward the commitment level at subsequent true-ups. In calculating whether the customer's average number of equivalent DS1 channel termination and channel mileage quantities meet its commitment level, it is as if the upgrade never occurred. The services must satisfy the criteria in FCC #1, Section

2.9.6, in FCC #11, Section 2.10.5, FCC #14, Section 2.10.5, and FCC #16, Section 2.9.4 in order to qualify as a technology migration.

Relevant NDP Tariff Citations

FCC 1 – Sections 25.3.1(B), 25.3.7(B), 25.3.7(E), 25.3.7(F), 25.3.7(H), 2.9.5(A), and 2.9.6
FCC 11 – Sections 25.2.1(B), 25.2.7(B), 25.2.7(E), 25.2.7(F), 25.2.7(H), 2.10.4(A), and 2.10.5
FCC 14 – Sections 23.1.1(B), 23.1.7(B), 23.1.7(E), 23.1.7(F), 23.1.7(H), 2.10.4(A), and 2.10.5
FCC 16 – Sections 22.1.1(B), 22.1.7(B), 22.1.7(E), 22.1.7(F), 22.1.7(H), 2.9.3(A), and 2.9.4

DS1 Term Volume Plan (TVP) – FCC 14

DS1 Term Volume Plan (TVP) also offers circuit portability. When a customer subscribes to the plan, all of its DS1 Special Access Lines (SALs) receive DS1 TVP pricing, regardless of the customer's commitment level. Under the DS1 TVP, it is not necessary to track or monitor activity at the individual circuit level because the plan is managed by measuring the number of in-service SALs against a commitment level. If the customer satisfies the commitment level at the annual review, the customer will not incur a fee. In addition, each circuit under the plan has portability within the tariff region without incurring early-termination liability, so long as the circuit is maintained in service for at least one month.

Under the DS1 TVP, customers can also upgrade a service to a higher speed service without incurring early-termination liability on the SALs that were upgraded, as long as certain conditions are satisfied. When upgrading to an Optical Networking arrangement, the number of DS1 SALs upgraded will remain in the quantity count used for determining the TVP threshold.

Furthermore, a customer can upgrade under the technology migration tariff provisions. If a customer uses the technology migration provisions, the number of TDM-based DS1 SALs it disconnects and replaces with a "Replacing Service" will count toward the commitment level at subsequent true-ups. In calculating whether the customer's DS1 SALs satisfies its commitment level, it is as if the upgrade never occurred. The services must satisfy the criteria in FCC #14, Section 2.10.5 in order to qualify as a technology migration.

Relevant DS1 TVP Tariff Citations

FCC 14 – Sections 5.6.14(N), 5.6.14(G), 2.10.1(A), and 2.10.5

DS3 TVP – FCC 14

The DS3 TVP also offers circuit portability. All of a customer's Eligible DS3 SALs are included in the plan and receive DS3 TVP pricing, regardless of the customer's commitment level. Under the DS3 TVP, it is not necessary to track or monitor activity at the individual circuit level because the plan is managed by measuring the average number of in-service SALs against a commitment level. The minimum period on an individual circuit still needs to be satisfied. If the customer satisfies the commitment level on average over the twelve-month true-up period, the customer will not incur a fee. In addition, each circuit under the plan has portability within the tariff region without incurring early-termination liability, so long as the circuit is maintained in service for at least one year.

Under the DS3 TVP, customers can also upgrade a service to a higher bandwidth service without incurring early termination liability on the SALs that were upgraded as long as certain conditions are satisfied. The quantity of SALs that were upgraded will be added back into the actual in-service DS3 SAL count used to determine if the customer has met the minimum commitment quantity at the time of the annual review.

Furthermore, a customer can upgrade under the technology migration tariff provisions. If a customer uses the technology migration provisions, the number of TDM-based DS3 SALs it disconnects and replaces with a "Replacing Service" will count toward the commitment level at subsequent true-ups. In calculating whether the customer's average number of DS3 SALs in service over the preceding 12 months satisfies its commitment level, it is as if the upgrade never occurred. The services must satisfy the criteria in FCC #14, Section 2.10.5 in order to qualify as a technology migration.

Relevant DS3 TVP Tariff Citations

FCC 14 – Sections 5.6.19(J), 2.3.10(A), and 2.10.5

DS1 Eight and Ten Year Term Volume Plan (ETTVP) – FCC 14

ETTVP also offers circuit portability. When a customer signs up for a multi-year plan, the customer does not have to maintain DS1 Special Access Lines (SALs) that are included in the plan for the full commitment term to receive the full ETTVP discounts. Instead, as long as a circuit is in service for one year — even if that year pre-dated in whole or in part the start of the ETTVP — the customer may disconnect that SAL without an early-termination fee and can retain the full ETTVP discounts that were applied to that SAL, so long as the customer's total volume satisfies the commitment level and the circuit is maintained in service for at least one year. Furthermore, the ETTVP discounts are applied to a customer's SALs even for SALs that exceed the commitment level.

Under the ETTVP, it is not necessary to track or monitor activity at the individual SAL level because the plan is managed by measuring the number of in-service SALs against a commitment level. If the customer satisfies the commitment level at the annual review, the customer will not incur a shortfall charge. In addition, each SAL under the plan has portability within the tariff region without incurring early termination liability, so long as the SAL is maintained in service for at least one year.

Under the ETTVP, customers can also upgrade a service to a higher-speed service without incurring early-termination liability on the SALs that were upgraded as long as certain conditions are satisfied. When ETTVP DS1 SALs are upgraded to a DS3 arrangement or to an Optical Networking arrangement, the number of DS1 SALs upgraded will remain in the quantity count used for determining the ETTVP threshold.

Furthermore, a customer can upgrade under the technology migration tariff provisions. If a customer uses the technology migration provisions, the number of TDM-based DS1s it disconnects and replaces with a "Replacing Service" will count toward the commitment level at subsequent true-ups. In calculating whether the customer's average number of DS1s in service at the annual review satisfies its commitment level, it is as if the upgrade never occurred. The services must satisfy the criteria in FCC #14, Section 2.10.5 in order to qualify as a technology migration.

Relevant ETTVP Tariff Citations

FCC 14 – Sections 5.6.14(N), 5.6.14(G), 2.10.2(A), and 2.10.5

<u>Paragraph 63 of the Order. Table I. Variable Identifier 4(i).</u>

If Percentage_Commit is reported as 1 and All_Or_Nothing is reported as 1, provide narrative description of any cost justification of the percentage commitment in the context of an all-or-nothing provision.

When Verizon developed its pricing plans, the Commission had already shifted the incumbent local telephone companies from rate-of-return regulation to price-cap regulation. Unlike rate-of-return regulation, under price caps, "costs do not generally affect the prices LECs may charge."[143] As the Commission has explained, "price cap regulation severs the direct link between regulated costs and prices."[144] Therefore, there was no cost-justification requirement

[143] *AT&T Corp. v. FCC*, 448 F.3d 426, 428 (D.C. Cir. 2006).

[144] Memorandum Opinion and Order, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, 23 FCC Rcd 7302, ¶ 8 (2008) ("*AT&T Cost Assignment Forbearance Order*").

when Verizon introduced its pricing plans, and Verizon prepared no formal cost justifications for the requirement that customers commit all of their eligible purchases from Verizon to the CDP, NDP, TVP, or ETTVP.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 4(ii).</u>

If Percentage_Commit is reported as 1 and All_Or_Nothing is reported as 1, provide narrative description of any efficiency justification for the percentage commitment in the context of an all-or-nothing provision.

Verizon designed its term-discount plans with portability to give wholesale customers greater flexibility in managing their special access services than was available under the pre-existing standard term-discount plans. Although the standard term-discount plans allow some flexibility to replace individual circuits, both Verizon and its wholesale customers found that managing individual circuits was administratively burdensome. Term-discount plans with portability, like the CDP and NDP, eliminate this problem. Customers that maintain their commitment level (and satisfy the circuit-specific minimum in-service periods) may disconnect and reinstall circuits to suit their needs without facing early-termination liability. For example, a customer may disconnect circuits with Verizon in a particular area and replace them with its own circuits or circuits obtained from another provider, and to maintain its commitment may obtain new circuits from Verizon in a different area until it builds out its network or finds another supplier at that new location.

Term-discount plans with portability also offer several other significant advantages to customers. Unlike circuit-specific plans, they apply a discount to all of the customer's circuits, including those that exceed the customer's commitment level. And they enable the customer to treat all of its circuits as terminating concurrently, at the end of the plan, rather than keeping track of differing termination dates for each individual DS1 or DS3. The latter feature is especially beneficial to customers because it provides discounts to circuits that are added after the term-discount plan with portability is established, even though those circuits may be in service for only a few months. For example, if a customer signs up for a five-year term, it may add circuits throughout the term (at shorter term lengths than five years) and receive the five-year discount rate for those circuits, yet still have the plan terminate for all of its circuits after the expiration of five years from the initial subscription.

As the *Order* recognizes, circuit portability provides customers significant economic benefits:

> Circuit portability provides customers, particularly competitive LEC customers, flexibility to disconnect circuits and replace them with others to meet their commitments and thereby not incur early termination penalties. By most accounts, circuit portability provides a crucial non-rate benefit for competitive LECs serving retail customers whose terms of service rarely coincide with the competitive LECs' underlying pricing plan term commitments with incumbent LECs.[145]

Portability enables customers to receive the benefits of large discounts without the requirement to commit any specific circuit, to any specific customer, to a term commitment longer than one year. The customer knows that it will receive the same discount on the circuits it purchases under the CDP or NDP to serve its own retail customer, regardless of whether it can convince that retail customer to sign up for a multi-year deal. This is particularly valuable given the rapid pace of change in the high-capacity marketplace, where providers compete to win each other's customers and add new customers at an unpredictable rate.

Verizon incurs substantial costs to provide customers with this enormous flexibility, even as compared to a standard term-discount plan that offers very limited flexibility. With term-discount plans with portability, Verizon loses the assurances that it will receive a steady stream

[145] *Order* ¶ 34.

of revenues for a particular number of circuits in its inventory. Verizon also bears the costs of physically connecting new circuits and disconnecting old ones when customers take advantage of the circuit portability feature. Because of the significant costs of providing portability, Verizon requires an additional commitment from the customer — a "commitment level" — to equilibrate the bargain so that it is economically viable for both parties. At the time a customer subscribes to the CDP or NDP, it must include within the plan all of the special access it then purchases from Verizon for the service types included in the plan. That amount becomes the customer's commitment level,[146] for its chosen term of two, three, five, or seven years.

The commitment level generates efficiencies that make possible the discounts and portability available under the CDP and NDP. First, by requiring that customers include in the plan all of their purchases from Verizon for a given type of service, it reduces uncertainty concerning circuit demand, which facilitates network planning. As a result, Verizon can reasonably expect to be able to recover its non-recurring costs over an average circuit life that is multiple years long. Second, by enabling a billing process that does not require managing individual circuits, the commitment level reduces Verizon's significant administrative costs in overseeing standard, circuit-specific term-discount plans. Because measuring compliance with the commitments under these plans focuses on each customer's *average* purchases under the CDP and NDP, administrative oversight is required only during the semiannual or annual review process rather than year-round.

Customers are given considerable flexibility with respect to their commitment level. CDP customers can reduce their purchases of DS1s or DS3s below their commitment level by 10% (to what the tariffs call a minimum commitment level), or increase those purchases by 30%

[146] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3 (CDP), 25.3.2(C) (NDP).

above the minimum commitment level. So long as the customer stays within those ranges, it will receive discounts for all the circuits it purchases from Verizon.[147] Verizon measures compliance with that commitment using the customer's average purchases over a six-month period for the CDP and over a year for NDP, which provides customers with even greater flexibility.[148]

Although the CDP and NDP require customers to include in the plan all their purchases from Verizon of discounted services, they do not require customers to commit to buy any percentage of their *total* special access purchases from Verizon, and a customer can choose to subscribe to the CDP only for Verizon's former NYNEX or Bell Atlantic regions (or both). Nor do the plans have such a de facto effect. To the contrary, customers are free to satisfy increased demand from other providers. And when a customer first enters into the CDP or NDP, it exercises control over its commitment level, because it can reduce its total purchases from Verizon before entering into the CDP or NDP. And once that initial, customer-chosen commitment period expires, the customer can revise its commitment level before entering into a new CDP or NDP, depending on its needs at that time. Thus, assuming the customer planned ahead, it may use Verizon's special access services for an initial period and migrate to competitive suppliers when that initial period expires. For example, << >> signed up to a CDP in 2008 in which it committed to purchase a minimum of << >>. At the end of that CDP in 2013, << >> had << >> in service. When << >> entered

[147] *Id.* §§ 25.1.3(A)(5), 25.1.7(A)(1). NDP customers may choose from three commitment levels: Standard, Premier, and Deluxe. *Id.* § 25.3.4(C). Those customers can reduce their purchases to 85%, 90%, or 92% of their initial commitment level without incurring a shortfall payment; higher discounts are available to customers that select the Premier and Deluxe commitment levels. *Id.*

[148] *See, e.g.*, *id.* §§ 25.1.7(D), 25.3.7.

into its new CDP for DS1s, however, it was able to reduce its purchases from Verizon sufficiently to subscribe at a lower, minimum commitment level of only << >>.[149]

Verizon requires that a customer include in the CDP and NDP all of its purchases from Verizon for each service type — such as DS1 or DS3 — included in the plan.[150] This requirement provides Verizon with an increased likelihood that the average in-service life of the circuits included in the plan will be multiple years so that Verizon, on average, will be able to spread the non-recurring costs of the circuits over that term. Without this requirement, a customer could include in the plan only those circuits that it expects to disconnect shortly after the one-year minimum period. In addition, this requirement reduces the significant cost, associated with standard term-discount plans, of keeping track of the individual commitment term associated with each circuit included in the discount plan.[151] Rather than dedicating resources to managing individual circuits, the CDP and NDP permit Verizon to engage in a semiannual (CDP) or annual (NDP) review of the customer's compliance with its commitment level. Administrative costs would be far higher if some DS1 circuits purchased from Verizon were included in the CDP, while others were purchased under standard term-discount plans, and still others at standard, undiscounted rates. By eliminating the substantial costs required to track each circuit's compliance with the terms of the discount plan individually and replacing it with a semiannual or annual true-up review, the CDP and NDP reduce circuit-management administrative costs by an order of magnitude.[152]

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[149] Sullivan Decl. ¶ 11.

[150] *See Order* ¶ 30; *see, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) (CDP), 25.3.3(A)(2) (NDP).

[151] *See* Sullivan Decl. ¶ 5.

[152] *See id.*

The ETTVP also offers customers circuit portability. As with the CDP, NDP and TVP, customers need not maintain specific circuits in service for the duration of the plan. Use of the ETTVP is very limited. The plan is available only under Verizon FCC Tariff No. 14, which currently covers only former GTE regions in Pennsylvania, California, Florida, Virginia, North Carolina, and Texas.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 4(iii).</u>

If Percentage_Commit is reported as 1 and EITHER Circuit_Portability_Mandated is reported as 1 OR Circuit_Portability_Option is reported as 1, provide a narrative description of any cost justification of the percentage commitment in the context of a circuit portability provision or option.

When Verizon developed its pricing plans, the Commission already had shifted the large incumbent local telephone companies from rate-of-return regulation to price-cap regulation. Unlike rate-of-return regulation, under price caps, "costs do not generally affect the prices LECs may charge."[153] As the Commission has explained, "price cap regulation severs the direct link between regulated costs and prices."[154] Therefore, there was no cost-justification requirement when Verizon introduced its pricing plans, and Verizon prepared no formal cost justifications for the requirement that customers commit all of their eligible purchases from Verizon to the CDP, NDP, TVP, or ETTVP.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 4(iv).</u>

If Percentage_Commit is reported as 1 and EITHER Circuit_Portability_Mandated is reported as 1 OR Circuit_Portability_Option is reported as 1, provide a narrative description of any efficiency justification for the percentage commitment in the context of a circuit portability provision or option.

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[153] *AT&T*, 448 F.3d at 428.

[154] *AT&T Cost Assignment Forbearance Order* ¶ 8.

In response to demands from customers that wanted the benefit of multi-year discounts along with the flexibility to add and remove circuits during the commitment term, Verizon developed two voluntary, term-discount plans with portability — the Commitment Discount Plan ("CDP") and the National Discount Plan ("NDP").[155] These plans offer customers discounts based on the length of their commitment, but do not require the customer to commit to maintain any specific circuit for the length of the term.[156] Instead, the customer commits to maintain any individual circuit for only one year, while maintaining a minimum average number of circuits for a full commitment period.[157] In exchange, the customer receives the discount associated with the longer term for *all* of its circuits, regardless of how long each individual circuit remains in service. These plans also do not impose large up-front installation charges for new circuits; for example, charges for such connections under the CDP are only $1.[158] By way of example, consider a customer that purchases 1,000 DS1 circuits. Under a standard term-discount plan (*without* circuit portability), if the customer commits to buy 1,000 specific DS1 circuits over five years, it receives the five-year discount of 35% on each circuit.[159] But if the customer seeks to remove any of those circuits before that five-year term ends, the customer typically must pay an

[155] Although the CDP appears in two Verizon tariffs, the plans are substantively identical, and Verizon, therefore, addresses them together. Similarly, although the NDP appears in four Verizon tariffs, it is a single, national plan, and Verizon addresses it as such.

[156] *See, e.g.*, Verizon FCC Tariff No. 1, § 25.1. The NDP is offered only over a five-year term.

[157] If a CDP or NDP customer disconnects a circuit that has not been in service for at least one year (including any time in service before the CDP or NDP took effect), the customer must pay any remaining monthly charges until that requirement is satisfied. *See id.* §§ 5.2.6, 25.1.10 (CDP), 25.3.8 (NDP).

[158] *See, e.g.*, *id.* § 25.1.8(G) (CDP).

[159] *Id.* §§ 7.4.17(B)(3), 7.5.9(A)(1)(a), 7.5.16(C).

early-termination charge on each circuit removed.[160] The one limited exception is that customers will not be charged an early-termination fee if, at the same time they disconnect a circuit, they order a replacement circuit of the same speed or type.[161] In contrast, under a five-year CDP, that same customer could get that same five-year discount of 35% for its 1,000 DS1 circuits but could remove any number of those circuits after only one year in service, so long as the customer maintains an average of at least 900 DS1 circuits with Verizon during the true-up periods over each six-month period during the course of the five-year term.[162] Plans like the CDP thus give the customer significant value in the form of substantial flexibility, enabling them to tear circuits down and put up new ones, so long as the average number of circuits the customer purchases in each six-month period (or twelve months under the NDP) meets the commitment level.

Customers value circuit portability and routinely take advantage of the flexibility it provides. For example, << >>, which currently subscribes to the CDPs with five- and seven-year terms, disconnected nearly << >> circuits subject to that plan between April 2014 and March 2015; of those, more than 20% had been in service for two years or fewer, and nearly 60% had been in service for four years or fewer.[163] Another CDP subscriber, << >>, disconnected nearly << >> circuits subject to its five- and seven-year CDPs between April 2014 and March 2015; of those, more than 20% had been in service for two years or fewer, and more than 60% had been in service for four years or fewer.[164] Similarly, << >>, which currently subscribes to the NDP with a five-year term, disconnected more than

[160] *See id.* § 7.4.17(D)(4).

[161] *See* Verizon FCC Tariff No. 11, § 7.4.10(C)(6)(a).

[162] *See* Verizon FCC Tariff No. 1, § 25.1.4(D); *id.* §§ 7.5.9(A)(1)(a), 7.5.16(C).

[163] *See* Sullivan Decl. ¶ 9.

[164] *See id.*

<< >> circuits subject to that plan between April 2014 and March 2015; of those, nearly 35% had been in service for two years or fewer, and more than 60% had been in service for four years or fewer.[165] Yet << >> still met its commitment-level obligations and avoided any shortfall fees.

As the *Order* recognizes, circuit portability provides customers significant economic benefits:

> Circuit portability provides customers, particularly competitive LEC customers, flexibility to disconnect circuits and replace them with others to meet their commitments and thereby not incur early termination penalties. By most accounts, circuit portability provides a crucial non-rate benefit for competitive LECs serving retail customers whose terms of service rarely coincide with the competitive LECs' underlying pricing plan term commitments with incumbent LECs.[166]

Portability enables customers to receive the benefits of large discounts without the requirement to commit any specific circuit, to any specific customer, to a term commitment longer than one year. The customer knows that it will receive the same discount on the circuits it purchases under the CDP or NDP to serve its own retail customer, regardless of whether it can convince that retail customer to sign up to a multi-year deal. This is particularly valuable given the rapid pace of change in the high-capacity marketplace, where providers compete to win each other's customers and add new customers at an unpredictable rate.

Verizon incurs substantial costs to provide customers with this enormous flexibility, even as compared to a standard term-discount plan that offers very limited flexibility. With term-discount plans with portability, Verizon loses the assurances that it will receive a steady stream of revenues for a particular number of circuits in its inventory. Verizon also bears the costs of

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[165] *See id.*

[166] *Order* ¶ 34.

physically connecting new circuits and disconnecting old ones when customers take advantage of the circuit portability feature. Because of the significant costs of providing portability, Verizon requires an additional commitment from the customer — a “commitment level” — to equilibrate the bargain so that it is economically viable for both parties. At the time a customer subscribes to the CDP or NDP, it must include within the plan all of the special access it then purchases from Verizon for the service types included in the plan. That amount becomes the customer’s commitment level,[167] for its chosen term of two, three, five, or seven years.

The commitment level generates efficiencies that make the discounts and portability available under the CDP possible. First, by requiring that customers include in the plan all of their purchases from Verizon for a given type of service, it reduces uncertainty concerning circuit demand, which facilitates network planning. As a result, Verizon can reasonably expect to be able to recover its non-recurring costs over an average circuit life that is multiple years long. Second, by enabling a billing process that does not require managing individual circuits, the commitment level reduces Verizon’s significant administrative costs in overseeing standard, circuit-specific term-discount plans. Because measuring compliance with the commitments under these plans focuses on each customer’s *average* purchases under the CDP and NDP, administrative oversight is required only during the semiannual or annual review process rather than year-round.

Customers are given considerable flexibility with respect to their commitment level. CDP customers can reduce their purchases of DS1s or DS3s below their commitment level by 10% (to what the tariffs call a minimum commitment level), or increase those purchases by 30% above the minimum commitment level. So long as the customer stays within those ranges, it will

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[167] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3 (CDP), 25.3.2(C) (NDP).

receive discounts for all the circuits it purchases from Verizon.[168] Verizon measures compliance with that commitment using the customer's average purchases over a six-month period for the CDP and over a year for NDP, which provides customers with even greater flexibility.[169]

The ETTVP and TVP also offer customers circuit portability. As with the CDP and NDP, customers need not maintain specific circuits in service for the duration of the plans. Use of these plans is very limited. They are available only under Verizon FCC Tariff No. 14, which currently covers only former GTE regions in Pennsylvania, California, Florida, Virginia, North Carolina, and Texas.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 4(v).</u>

If (1) Percentage_Commit is reported as 1, (2) All_Or_Nothing is reported as 1, and (3) EITHER Circuit_Portability_Mandated is reported as 1, OR Circuit_Portability_Option is reported as 1, then enter a narrative description of the business purpose of these provisions. Response must include detailed discussion of efficiency, cost, or other business purpose of predicating the availability of circuit portability on purchasers making a percentage commitment in the context of an all-or-nothing provision

Verizon introduced its term-discount plans with portability to accommodate customers' requests for additional flexibility in managing their networks. The special access discount plans under investigation here are voluntary. Verizon does not "lock up" demand for special access.[170] This is shown most clearly by << >> — <<

[168] *Id.* §§ 25.1.3(A)(5), 25.1.7(A)(1). NDP customers may choose from three commitment levels: Standard, Premier, and Deluxe. *Id.* § 25.3.4(C). Those customers can reduce their purchases to 85%, 90%, or 92% of their initial commitment level without incurring a shortfall payment; higher discounts are available to customers that select the Premier and Deluxe commitment levels. *Id.*

[169] *See, e.g.*, *id.* § 25.1.7(D). Compliance under the NDP is measured over a 12-month period, giving customers yet more flexibility. *See, e.g.*, *id.* § 25.3.7.

[170] *See, e.g.*, *Order* ¶¶ 6, 12, 31.

>>[171] — which decided in 2012 *not* to renew its CDP with Verizon and, instead, to purchase those DS1s and DS3s it obtains from Verizon in the former Bell Atlantic region at undiscounted rates or under standard term-discount plans. Through this decision, << >> has reduced its purchases of DS1s and DS3s from Verizon by << >> and << >>, respectively, as compared to its purchase levels at the time its CDP subscription ended.[172]

More generally, customers that do elect to purchase special access from the CDP, NDP, TVP, or ETTVP can control the amount of special access services they purchase from Verizon. Importantly, because the commitment levels are set based solely on the customer's purchases from Verizon — irrespective of the customer's special access purchases from providers other than Verizon — the plans do not require that a customer make a particular percentage of its *total* special access purchases from Verizon.[173] Rather, when a customer initially subscribes to a CDP or NDP, it is required to include in the plan all of its special access purchases from Verizon at that specific moment in time for special access service types included in the plan.[174] This amount sets the commitment level under the plan for the term the customer selects. Therefore,

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[171] Vertical Systems Group, *Mid-Year 2015 U.S. Carrier Ethernet LEADERBOARD* (Aug. 24, 2015), http://www.verticalsystems.com/vsglb/mid-year-2015-u-s-carrier-ethernet-leaderboard/.

[172] *See* Sullivan Decl. ¶¶ 6-7.

[173] As explained above, the "lock in" claim reduces to claims that undiscounted rates are unjust and unreasonable and that ILECs have market power — two questions that are outside the scope of this proceeding. *See supra* Part I.A-B.

[174] The CDP calculates the in-service purchases as of the same month that the customer subscribes. *See* Verizon FCC Tariff No. 1, § 25.1.3(A). The same is true of the TVP. *See* Verizon FCC Tariff No. 14, § 5.6.14(A). The NDP calculates the in-service purchases as of the month before the customer subscribes. *See* Verizon FCC Tariff No. 1, § 25.3.2(C).

up until the time they subscribe, potential customers to these plans can lower their commitment level by switching purchases to other providers or to self-provisioned circuits before signing up.

Subscribing customers have similar options at the end of their chosen plan term. Indeed, customers that desire to switch from Verizon to other providers have the ability and responsibility to plan in advance, so that they will be ready to transition circuits from Verizon to other providers as their plan ends. To facilitate such planning, the plans permit customers to reduce their purchases of services from Verizon by as much as 10% or 15% below their commitment level during the term of the plan,[175] and the CDP even offers customers an extra two months of discounts after a plan terminates to assist with that transition.[176] And, as shown above, <<   >> did just that when its CDP expired in 2013, renewing its CDP for DS1s at a commitment level about <<   >> lower than its in-service volume of DS1s at the end of its prior CDP.[177]

As the *Order* recognizes, circuit portability provides customers with a "crucial non-rate benefit."[178] But the *Order* ignores that offering customers circuit portability fundamentally changes the economics of a term-discount offer. Term discounts provide Verizon with "the certainty associated with longer-term relationships"[179] and "minimize the risk of stranded

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[175] *Id.* § 25.3.4(C)(2); Verizon Tariff No. 11, § 25.2.4(C)(2).

[176] *See* Verizon FCC Tariff No. 1, § 25.1.8(C)(2). The NDP does not contain such a grace period, but, because commitment levels are assessed based on 12-month averages, customers enjoy significant flexibility to reduce their commitments prior to the plan's expiration under that plan as well.

[177] *See* Sullivan Decl. ¶ 11.

[178] *Order* ¶ 34.

[179] *Fourth Transport Rate Order* ¶ 13.

investment."[180] But that is true because the customers of these plans commit to maintain specific circuits in place for the entirety of the term (with some limited flexibility to disconnect circuits before the end of the term, so long as the customer at the same time orders a replacement circuit of the same speed or type). Under the CDP and NDP, however, the customer is committing to maintain individual circuits included in the plan only for one year. And, as shown above, CDP customers are taking advantage of the benefits portability provides, terminating a significant percentage of circuits obtained under plans with five- or seven-year term commitments after only two or four years.[181] To take another example, << >> took advantage of portability to receive discounts on about << >> unique DS1 circuits under its CDPs, which was about 50% more than the << >> DS1 circuits it had committed to maintain under those plans.[182]

Portability not only reduces certainty, but also imposes on Verizon the additional costs of disconnecting and installing circuits each time the customer takes advantage of portability. Verizon's plans offer portability over multi-state regions, and those costs are therefore significant. At the same time, portability reduces the time over which Verizon can recover those circuit-specific, non-recurring costs. In addition, because Verizon is required to make its tariffs generally available, it bears additional uncertainty and costs caused by customers that are unlikely to live up to the commitments they make. Verizon cannot simply turn these customers away or discriminate against customers it views as higher risk — practices that are routine in competitive industries. Verizon must instead account for these risks and costs in structuring its generally available terms and conditions. The Commission likewise must account for these costs

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[180] *Local Competition Order* ¶ 687.

[181] *See* Sullivan Decl. ¶ 8.

[182] *See id.* ¶ 10.

and risks of providing portability to any requesting customer in evaluating whether Verizon's terms and conditions are just and reasonable.

Business practices in other industries confirm that portability — while a significant benefit to customers — also imposes substantial costs on providers. Car rental companies, for example, charge substantially higher rates if a customer does not pick up and return the rental car at the same location.[183] A recent search of prices for a five-day rental from Hertz showed a rate of $40 per day for a car picked up from and returned to Reagan National Airport; that rate increased to nearly $200 per day if the customer instead wanted to return the car at the Philadelphia or Boston airports.[184] Health clubs similarly offer customers portable memberships — usable at multiple locations rather than at a single location — at additional costs. For example, Washington Sports Clubs offers a $39.99 per-month membership for the right to attend its F Street location, but that price rises to $69.99 per month if the customer wants the right to attend any of the My Sports Clubs locations.[185]

Despite the added costs that portability imposes, Verizon offers CDP and NDP customers the same discounts available under a standard term plan of the same length. As shown above, a customer committing to a five-year CDP for DS1 circuits receives the same 35% discount as a customer that commits specific DS1 circuits to a five-year term-discount plan. Many of the plan

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[183] Independent Traveler.com, *One-Way Rentals and Driveaways*, http://www.independenttraveler.com/travel-tips/car-travel/one-way-car-rentals-and-driveaways ("One-way car rentals are one of the priciest propositions in the travel industry. If you drop your car off in a different place than you picked it up, your car rental company has to get the vehicle back to where it belongs — and you can be sure it will pass the associated costs on to you. One-way renters are typically penalized with high base rates or drop-off surcharges.").

[184] Comparison of the compact car rates offered for a rental from December 14 through December 18, 2015.

[185] Comparison of the Premier and Passport month-to-month rates at https://www.mysportsclubs.com/account/signup/options/60?trial=false.

features the *Order* designates for investigation are the very features that make it possible for Verizon to offer customers the significant benefit of portability at no additional cost for the special access circuits.

First, Verizon requires that a customer include in the CDP or NDP all of its purchases from Verizon for each circuit type — such as DS1 or DS3 — included in the plan.[186] This requirement provides Verizon with an increased likelihood that the average in-service life of the circuits included in the plan will be multiple years so that Verizon, on average, will be able to spread the non-recurring costs of the circuits over that term. Without this requirement, a customer could include in the plan only those circuits that it expects to disconnect shortly after the one-year minimum period. In addition, this requirement reduces the significant cost, associated with standard term-discount plans, of keeping track of the individual commitment term associated with each circuit included in the discount plan.[187] Rather than dedicating resources to managing individual circuits, the CDP and NDP permit Verizon to engage in a semiannual (CDP) or annual (NDP) review of the customer's compliance with its commitment level. Administrative costs would be far higher if some DS1 circuits purchased from Verizon were included in the CDP, while others were purchased under standard term-discount plans, and still others at standard, undiscounted rates. By eliminating the substantial costs required to track each circuit's compliance with the terms of the discount plan individually and replacing it with a semiannual or annual true-up review, the CDP and NDP reduce circuit-management administrative costs by an order of magnitude.[188]

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[186] *See Order* ¶ 30; *see, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) (CDP), 25.3.3(A)(2) (NDP).

[187] *See* Sullivan Decl. ¶ 5.

[188] *See id.*

Second, the CDP and NDP also require that the customer make its commitment based on its level of purchases at the time it subscribes to either plan.[189] Although the CDP and NDP provide customers with some flexibility to reduce their purchases from Verizon — to 10% below the initial purchase commitment for DS1s and DS3s under the CDP and to as much as 15% below the initial purchase commitment for DS1s and DS3s under the NDP[190] — the *commitment* to continue purchasing services from Verizon over the course of the CDP or NDP term is necessary to justify the discount levels. Otherwise, a customer could get multi-year discounts on its initial amount of purchases, without actually making a multi-year commitment of any kind. And, because it is a commitment, the customer faces consequences if it fails to hold up its end of the bargain.

Contrary to some CLECs' claims,[191] the shortfall provisions in the CDP and NDP that enforce this commitment are not punitive. Rather, they ensure that Verizon receives the benefit of the bargain it struck with its customer.[192] As a federal court recently found, in enforcing the shortfall provision in the CDP, such provisions "fulfill a familiar function of contract law by calculating expectancy damages" and "provide[ ] a valuable tool to let Verizon calculate, and allow[ ] [the customer] to know the reach of, expectancy damages in the event of a shortfall, a permissible and reasonable goal for any service provider."[193] And shortfall payments assessed

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[189] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) (CDP), 25.3.3(A)(2) (NDP).

[190] *See, e.g.*, *id.* §§ 25.1.3(A)(5) (CDP), 25.3.4(C)(2) (NDP).

[191] *See Order* ¶ 73.

[192] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.7(B) (CDP), 25.3.7(C)(1) (NDP).

[193] *Verizon Virginia*, 2015 WL 6759473, at *11.

on customers have been small compared to the total purchases under these plans, equaling less than 3% of Verizon's revenue under CDP and 1% of Verizon's revenue under NDP.[194]

Third, because the CDP and NDP permit customers to disconnect individual circuits without an early-termination fee after only one year — while retaining the multi-year discount for each circuit under the plans — the CDP and NDP limit the extent to which the customer can exceed its commitment level and retain the discounts without increasing its commitment level.[195] Thus, the CDP allows a customer to increase its purchases under the plan by up to 30% above its minimum commitment level.[196] The multi-year discount rate under the CDP applies to all of these excess circuits, even though the customer could disconnect each of those additional circuits one year after ordering them, and could never exceed its commitment level during the remainder of the CDP term. Circuits ordered in excess of that 30% will be billed through the overage charge provision at Verizon's undiscounted rates, unless the customer elects to increase its commitment level — and, thereby, actually *commit* to purchasing additional circuits for a period longer than one year.[197] Without such a provision, a customer could initially secure a low commitment level, then purchase a large number of additional circuits at the discounted rates, but keep each of them in service for only one year. The overage provisions also help ensure that the average circuit duration is not too low, which also facilitates network planning.

These commitment level provisions are even more reasonable — and customer friendly — because Verizon measures them over one-year periods under the NDP and six-month periods

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[194] Calculated as the sum of amounts in the "Shortfall_Penalty" column in Table VI divided by the sum of amounts in the Discount_Rev_Total column in Table IIA for each of the CDP and NDP plans..

[195] *See Order* ¶ 79.

[196] *See*, *e.g.*, Verizon FCC Tariff No. 1, § 25.1.7(A)(1), (C).

[197] *See Order* ¶ 82; *see*, *e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A)(9), 25.1.7(D).

under the CDP.[198] Thus, a CDP customer can drop below its minimum commitment level or increase its purchases by more than 30% above that minimum level, without facing shortfall or overage payments, so long as — on average, over the longer period — the customer satisfies the commitment that it made to Verizon. This averaging further confirms these features of the CDP and NDP are designed to ensure that the customer has made a commitment sufficient to warrant the discounts provided and are not the punitive measures some CLECs have claimed.

CLECs' complaints about the plans at issue here are belied by their own discount-plan offerings, which include substantially similar terms and conditions. First, CLEC responses in the special access rulemaking show that term discounts are commonplace throughout the special access marketplace. For example, cable operators and CLECs acknowledging they offer discounts for customers who commit to a specified term, generally with larger discounts for longer terms, include: <<

>>[199]

Second, the responses show that some competitors enter into agreements that contain commitment levels based on historical purchasing levels. <<

>>[200] <<

[198] Verizon FCC Tariff No. 1, § 25.1.7(A)(2); Verizon FCC Tariff No. 11, § 25.1.7(A)(2) (CDP); Verizon FCC Tariff No. 1, § 25.3.7; Verizon FCC Tariff No. 11, § 25.2.7 (NDP).

[199] See these providers' responses to II.A.19.

[200] << >>

>>[201]

Third, competitors defend such agreements on the same grounds that Verizon does: that they <<

>> Competitors offer these discount plans <<

>>[202] <<

>>[203] <<

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[201] <<

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>>[204] << >>[205] <<

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>>[207] According to CLECs, these arrangements permit providers << >>[208] The

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fact that CLECs offer similar bargains and justify them just as Verizon does belies their self-serving complaints to the Commission here.

Paragraph 63 of the Order. Table I. Variable Identifier 5(iv).

Where applicable, provide a narrative description of the percentage commitment for other TDM business data services, including the types of other TDM business data services for which a percentage commitment applies, how these services are denominated, the relevant units of measure, and how each type of business data services counts toward this percentage commitment.

Commitment Discount Plan

Voice Grade and DDS services are included in CDP in FCC 1, and DDS II is included in FCC 11. Each service has a separate commitment based on 75% of in-service channel terminations at the time the customer subscribes.

Intellilight Entrance Facilities is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in-service channel terminations (CDP does not include Intellilight Entrance Facilities as a separate service type). For purposes of this submission, Intellilight Entrance Facilities and DS3 Channel Termination quantities are reported together for customers who chose to include Intellilight Entrance Facilities in CDP. Intellilight Entrance Facilities quantities are expressed in terms of DS0-equivalents.

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National Discount Plan

NDP also includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as equivalent DS1s. A single, minimum commitment level based on 85% of in-service Channel Mileages is established for Standard, 90% for Premier, and 92% for Deluxe.

In addition, Intellilight Entrance Facilities Synchronous Transport Signal (STS) 1 is included in NDP. It is expressed as equivalent DS1s and included in the channel termination and channel mileage commitments based on 85% of in-service Channel Terminations or Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 6(ii).</u>

Provide citations and the full text (which may be a searchable PDF) of all provisions in the tariff that limit the number of circuits that the ILEC can migrate in one day, for a given customer.

None of the tariffs (CDP – FCC 1 & FCC 11, DS1 TVP, DS1 ETTVP – FCC 14, DS3 TVP – FCC 14, and NDP – FCC 1, FCC 11, FCC 14, and FCC 16) contains language specifying the number of circuits a customer can migrate in one day.

<u>Paragraph 63 of the Order. Table I. Variable Identifier 6(iv).</u>

Where applicable, provide a narrative description of the circuit migration charge, including the types of business data services circuits involved, and how they are charged.

There are no specific move or migration charges associated with a customer's participation in CDP, NDP, DS1 TVP, DS3 TVP, or ETTVP.

<u>Paragraph 64 of the Order. Table III. Variable Identifier 1(iv).</u>

Where applicable, provide narrative description of the types of business data services specified in Volume_Commit_Other, including a description of how the commitment is denominated and the relevant units of measure.

Commitment Discount Plan

Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) services are included in CDP. Each service has a separate minimum commitment level based on 75% of in-service channel terminations at the time the customer subscribes. The commitment is expressed in DS0s.

Intellilight Entrance Facilities is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in service channel terminations. Intellilight Entrance Facilities are expressed in terms of DS0-equivalents.

National Discount Plan

NDP includes a channel mileage commitment level. DS1 and DS3 mileage are expressed as DS1-equivalents with a single minimum commitment level based on 85% of in-service Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

In addition, Intellilight Entrance Facilities STS 1 is included in NDP. It is expressed as DS1-equivalents and included in the channel termination and channel mileage minimum commitment levels based on 85% of in-service Channel Terminations or Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

<u>Paragraph 64 of the Order. Table III. Variable Identifier 2(ii).</u>

If Basis_Volume_Commit was set to 0, then provide narrative explanation of the basis for setting the volume commitment, including the date for which the quantity of business data services previously purchased may have been used to set the volume commitment.

The chart that appears below provides information by customer on the date that may have been used to set the commitment level for which the quantity of business data services previously purchased was determined.

Commitment Discount Plan

For Table III, we interpret "Volume Commit" to mean the in-service amount. That is displayed in Paragraph 64 1(iii). The actual minimum commitment is determined by multiplying that in-service amount by the percentage commitment. Paragraph 64, 1(i), 1(ii) and 1(iii) show the in-service amounts by DS1, DS3, and other. 2(i) has been set to 0 for CDP because a month before the start date is used to determine the commitment the customer will be making. The month used is usually 1-3 months prior to the start date of the agreement. The customer's minimum commitment is 90% of that in-service amount or 75%, depending upon the service.

NDP – FCC 1, 11, 14, 16

For Table III, we interpret "Volume Commit" to mean the in-service amount. That is displayed in Paragraph 64 1(iii). The actual minimum commitment is determined by multiplying that in-service amount by the percentage commitment. Paragraph 64, 1(i), 1(ii) and 1(iii) show the in service amounts by service type. 2(i) has been set to 0 for NDP because a month before the start date is used to determine the commitment the customer will be making. In most cases, the month used is 1-3 months before the start date of the agreement. The customer's commitment for NDP Deluxe is 92% of that in-service amount.

Agreement_ID	Basis_Volume_Commit_Expl
22214P08	Quantities as of 02/2008
22186P06	Quantities as of 07/2006
22185P06	Quantities as of 07/2006
22185P11	Quantities as of 08/2011
22185P11	Quantities as of 08/2011
24100P04	Quantities as of about 1 - 2 months before 08/2004
22164P05	Quantities as of 03/2005
22211P07	Quantities as of about 1 - 2 months before 01/2007
22207P06	Quantities as of about 1 - 2 months before 06/2006

Agreement_ID	Basis_Volume_Commit_Expl
22215P08	Quantities as of about 1 - 2 months prior to 07/2008
24430P12	Quantities as of 01/2012
22195P12	Quantities as of 01/2012
22165P10	Quantities as of 08/2010
22189P06	Quantities as of 04/2006
22203P08	Quantities as of about 1 - 2 months before 6/2008
22187P06	Quantities as of about 1 - 2 months before 10/2006
22187S13	Quantities as of 10/2013
22206P07	Quantities as of about 1 - 2 months before 12/2007
22172P06	Quantities as of about 1 - 2 months before 12/2006
22202P07	Quantities as of about 1 - 2 months before 08/2007
22201P07	Quantities as of about 1 - 2 months before 08/2007
22170P05	Quantities as of 09/2005
22170S12	Quantities as of 11/2012; confidential settlement
22192P07	Quantities as of 12/2006
22221P09	Quantities as of 06/2009
22213P08	Quantities as of 02/2008
22213S13	Quantities as of 04/2013
22167P07	Quantities as of 08/2011
22155P07	Quantities as of 08/2011
22162P10	Quantities as of 03/2010
24949P13	Quantities as of 10/2012
24948P13	Quantities as of 10/2012
22168P05	Quantities as of 09/2005
22216P05	Quantities as of 09/2005
22226P10	Quantities as of 03/2010
22219P07	Quantities as of about 1 - 2 months before 02/2007
22219S14	Quantities as of 01/2014
22219S14	Quantities as of 01/2014
22151P02	Quantities as of 03/2002
22181P04	Quantities as of 06/2004
22184P04	Quantities as of 11/2004
22184S14	Quantities as of 09/2014

Agreement_ID	Basis_Volume_Commit_Expl
22159P04	Quantities as of 11/2004
22159S14	Quantities as of 09/2014
22159S14	Quantities as of 09/2014
22173P05	Quantities as of 06/2005
22173S12	Quantities as of 06/2012
22175P05	Quantities as of 06/2005
22175S12	Quantities as of 06/2012
22204P07	Quantities as of 10/2007
22204P10	Quantities as of 05/2010
22205P07	Quantities as of 07/2007
22205P07	Quantities as of 07/2007
22205S12	Quantities as of 10/2012
22197P07	Quantities as of 09/2006
22197S14	Quantities as of 03/2014
22196P07	Quantities as of 09/2006
22196P07	Quantities as of 09/2006
22196S14	Quantities as of 03/2014; DS3 as of 08/2014
22208P08	Quantities as of 12/2007
22209P08	Quantities as of 12/2007
22163P05	Quantities as of 01/2005
22225P10	Quantities as of about 1 - 2 months before 05/2010
2219AP14	Quantities as of 08/2014
23223P09	Quantities as of 08/2009
22222P10	Quantities as of 11/2009
22222P10	Quantities as of 11/2009
22222S14	Quantities as of 12/2013
26360P14	Quantities as of 10/2013
22223P10	Quantities as of 11/2009
22220P09	Quantities as of 06/2009
22218P09	Quantities as of 12/2008
22218S14	Quantities as of 02/2014
22217P09	Quantities as of 12/2008
2222AP09	Quantities as of 01/2013

Agreement_ID	Basis_Volume_Commit_Expl
2222AS14	Quantities as of 08/2014
22210P08	Quantities as of about 1 - 2 months before 02/2008
22303P11	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2011 billing.
22303S14	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2014 billing.
22282P07	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22282S12	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2012 billing.
22254P08	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22254S13	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
23545P11	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
24397P07	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
24397S12	Basis for volume commitment is the lowest number in the threshold selected.
22349P10	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22343P09	Basis for volume commitment is the lowest number in the threshold selected.
22343S14	Basis for volume commitment was an auto renewal at the quantity in service as of Mar 2014 billing.
22338P08	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22272P07	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22272S12	Basis for volume commitment was an auto renewal at the quantity in service as of Sept 2013 billing.
22262P08	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22262S13	Basis for volume commitment is the quantity in service as of Nov 2013 billing.
22337P08	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22340P08	Basis for volume commitment is the lowest number in the threshold selected.

Agreement_ID	Basis_Volume_Commit_Expl
26284P08	Basis for volume commitment is the lowest number in the threshold selected.
26284S13	Basis for volume commitment is the lowest number in the threshold selected.
22344P09	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
24252P11	Basis for volume commitment is the lowest number in the threshold selected.
24252S14	Basis for volume commitment is the quantity in service as of Oct 2014 billing.
24488P07	Basis for volume commitment is the quantity in service as of Nov 2006 billing.
24488S12	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22298P10	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22298S14	Basis for volume commitment is the quantity in service as of Sept 2014 billing.
22258P11	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22285P07	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22285S12	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22347P09	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
27020P14	Basis for volume commitment is the quantity in service as of Dec 2013 billing.
22330P10	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22332P11	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22332S14	Basis for volume commitment is the quantity in service as of Jan 2014 billing.
22299P07	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22329P12	Basis for volume commitment is the lowest number in the threshold selected.
22329S13	Basis for volume commitment is the quantity in service as of Dec 2012 billing.
22329S14	Basis for volume commitment is the quantity in service as of Dec 2013 billing.
22300P10	Basis for volume commitment is the lowest number in the threshold selected.
22301P05	Basis for volume commitment is the lowest number in the threshold selected.

Agreement_ID	Basis_Volume_Commit_Expl
22306P10	Basis for volume commitment is not noted and was not routinely captured at the time of enrollment in the plan.
22313P03	ETTVP - Basis for volume commitment is the demand # from 1-2 MO prior to Sept 2003.
22327P06	ETTVP - Basis for volume commitment is the demand # from 1-2 MO prior to Nov 2006.
22324P07	ETTVP - Basis for volume commitment is the demand # from 1-2 MO prior to Apr 2007.
40101P11	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2011 billing.
40301P07	Basis for volume commitment is In Service Quantity at auto renewal as of Oct 2007. Data was not routinely captured at the time; data reported is as of Jan 2009.
40401P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.
40501P07	Basis for volume commitment is In Service Quantity at auto renewal as of Feb 2007. Data was not routinely captured at the time; data reported is as of Jan 2009.
40501S12	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2012 billing.
40601P11	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2011 billing.
30101P11	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2011 billing.
30101S12	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2012 billing.
30102P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2010 billing.
30102S12	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2012 billing.
30103P10	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2010 billing.
30103S13	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2013 billing.
30104P11	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2011 billing.
30201P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.

Agreement_ID	Basis_Volume_Commit_Expl
30201S13	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2013 billing.
30202P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.
30301P11	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2011 billing.
30301S13	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2013 billing.
30302P09	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2009 billing.
30302S12	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2012 billing.
30401P11	Basis for volume commitment was an auto renewal at the quantity in service as of Mar 2011 billing.
30401S12	Basis for volume commitment was an auto renewal at the quantity in service as of Mar 2012 billing.
30501P12	Basis for volume commitment was the quantity requested by ASRs in May 2012
30601P11	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2011 billing.
30601S14	Basis for volume commitment was an auto renewal at the quantity in service as of Dec 2014 billing.
30602P09	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2009 billing.
30602S14	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2014 billing.
30701P10	Basis for volume commitment was an auto renewal at the quantity in service as of Mar 2010 billing.
30801P11	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2011 billing.
30801S14	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2014 billing.
30901P11	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2011 billing.
30901S12	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2012 billing.
30901S13	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2013 billing.

Agreement_ID	Basis_Volume_Commit_Expl
30901S14	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2014 billing.
31001P09	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2009 billing.
31001S12	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2012 billing.
31002P09	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2009 billing.
31002S14	Basis for volume commitment was an auto renewal at the quantity in service as of Feb 2014 billing.
31101P10	Basis for volume commitment was an auto renewal at the quantity in service as of March 2010 billing.
31101S13	Basis for volume commitment was an auto renewal at the quantity in service as of Mar 2013 billing.
31201P07	Basis for volume commitment is In Service Quantity at auto renewal as of Jun 2007. Data was not routinely captured at the time; data reported is as of Jun 2009.
31201S12	Basis for volume commitment was an auto renewal at the quantity in service as of Jun 2012 billing.
31301P08	Basis for volume commitment is In Service Quantity at auto renewal as of May 2008. Data was not routinely captured at the time; data reported is as of May 2009.
31301S13	Basis for volume commitment was an auto renewal at the quantity in service as of May 2013 billing.
31302P11	Basis for volume commitment was an auto renewal at the quantity in service as of May 2011 billing.
31302S14	Basis for volume commitment was an auto renewal at the quantity in service as of May 2014 billing.
31401P11	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2011 billing.
31401S12	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2012 billing.
31401S13	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2013 billing.
31402P08	Basis for volume commitment is In Service Quantity at auto renewal as of Aug 2008. Data was not routinely captured at the time; data reported is as of Jan 2009.

Agreement_ID	Basis_Volume_Commit_Expl
31402S13	Basis for volume commitment was an auto renewal at the quantity in service as of Aug 2013 billing.
31501P11	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2011 billing.
31501S13	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2013 billing.
31601P11	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2011 billing.
31601S12	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2012 billing.
31601S13	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2013 billing.
31601S14	Basis for volume commitment was an auto renewal at the quantity in service as of Sep 2014 billing.
31701P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.
31701S12	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2012 billing.
31701S14	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2014 billing.
31801P11	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2011 billing.
31801S12	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2012 billing.
31801S13	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2013 billing.
31801S14	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2014 billing.
31802P09	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2009 billing.
31802S14	Basis for volume commitment was an auto renewal at the quantity in service as of Oct 2014 billing.
31901P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.
31901S13	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2013 billing.
31902P10	Basis for volume commitment was an auto renewal at the quantity in service as of Jul 2010 billing.

Agreement_ID	Basis_Volume_Commit_Expl
32001P11	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2011 billing.
32001S12	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2012 billing.
32001S13	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2013 billing.
32001S14	Basis for volume commitment was an auto renewal at the quantity in service as of Jan 2014 billing.

DS1 TVP – FCC 14

Paragraph 64, 1(i), 1(ii) and 1(iii) show the in service amounts. For DS1 TVP, the customer selects its commitment of any quantity of two or more SALs, within the threshold chosen. If the quantity is based on an in-service volume, the month used is usually 1-3 months before the start date of the agreement.

DS3 TVP – FCC 14

For DS3 TVP the customer selects its commitment quantity, within the threshold chosen.

ETTVP – FCC 14

Paragraph 64, 1(i) shows the in service amounts. 2(i) has been set to 0 for DS1 ETTVP because a month before the start date is used to determine the customer's commitment. The month is usually 1-2 months before the start date of the agreement. The customer's minimum commitment is 90% of that in-service amount. A minimum of 4,000 SALs are required to qualify for the ETTVP.

Paragraph 64 of the Order. Table III. Variable Identifier 3.

Where applicable, provide a narrative description of any change in policy during 2012 through 2014, regarding the basis for setting volume commitments. Provide detailed explanation for how the policy changed and the business justification for the change.

This is not applicable. There were no changes in policy during 2012 through 2014 regarding the basis for setting volume commitments.

Paragraph 65 of the Order. Table IIA. Variable Identifier 5(iv).

Provide a narrative explanation of the types of all other TDM business data services included in Discount_Quant_Other, how these are denominated, and the relevant units of measure.

Commitment Discount Plan

All other TDM business data services include DDS (FCC 1), DDS II (FCC 11), Enterprise DS0 (FCC 11), and Voice Grade (FCC 1) channel terminations. For FCC 1, this includes Fixed and Per Mile for DDS, VG, DS1 and DS3, and mux for DS1 and DS3. Also for FCC 11, this includes Fixed and Per Mile for DDSII, Enterprise DS0, DS1 and DS3, mux for DS1 and DS3, and optional features for DDSII, DS1 and DS3.

Although a customer's commitment level under the CDP is based on channel terminations, the customer receives a discount on the entire circuit, including channel terminations, mileage, multiplexing, and optional features.

National Discount Plan

All other TDM business data services include DS3 and DS1 mileage, expressed as DS1-equivalents.

Paragraph 65 of the Order. Table IIB. Variable Identifier 3(iv).

Provide a narrative explanation of the types of all other TDM business data services included in Undiscounted_Quant_Other, how these are denominated, and the relevant units of measure.

Commitment Discount Plan

Table IIB provides undiscounted revenue for the services subject to the plans under investigation. These revenues typically are for services billed under undiscounted month-to-month plans. Table IIB excludes month-to-month revenue that contributes to discounts resulting from pricing flexibility contracts.

All other TDM business data services include DDS (FCC 1), DDS II (FCC 11), Enterprise DS0 (FCC 11), and Voice Grade (FCC 1) channel terminations. For FCC 1, this includes Fixed and Per Mile for DDS, VG, DS1 and DS3, and mux for DS1 and DS3. For FCC 11, this includes Fixed and Per mile for DDSII, Enterprise DS0, DS1 and DS3, mux for DS1 and DS3, and optional features for DDSII, DS1 and DS3.

National Discount Plan

All other TDM business data services include DS1 and DS1 mileage.

<u>Paragraph 67 of the Order.</u>

To enable an assessment of the reasonableness of the thresholds for percentage purchase commitments, the incumbent LECs subject to this investigation must submit in their direct cases the methodology and calculations used to determine the percentage thresholds in the relevant pricing plans. They must also submit the business justification for the percentage commitments included in each relevant plan under investigation. The incumbent LECs must state whether other threshold values were considered at the time the percentage threshold was established and, if so, explain the basis for selection of the threshold in the pricing plan. We also seek data on the potential relationship between percentage commitments and incumbent LECs' costs. The incumbent LECs affirm the relevance of cost to percentage commitments (and other terms and conditions) in their advocacy. For example, CenturyLink asserts percentage commitments play a role in ensuring cost recovery. Verizon states that such terms and conditions are "efforts to reduce transaction costs and address risk-sharing issues." Where, as here, the incumbent LECs have asserted that the practices in question are related to their costs, we seek cost data that will provide an objective measure by which to assess the reasonableness of such commitments. We therefore seek any evidence and data demonstrating whether the level of the volume commitment was related to cost recovery.

The thresholds are designed to provide customers with some flexibility to add and remove circuits in response to the marketplace.

Customers that want maximum flexibility to add and remove DS1 and DS3 circuits can purchase special access at Verizon's standard tariffed rates. Set in accordance with the Commission's price cap and pricing flexibility regimes, these undiscounted rates were deemed lawful, are just and reasonable, and are not the subject of investigation in this proceeding. Customers purchasing at Verizon's standard rates can disconnect a circuit after as little as one to three months without incurring early-termination fees.[209] For customers facing competitive threats, that flexibility has great value. For example, <<

>>, purchases DS1 and DS3 special access services from Verizon at standard, undiscounted rates, and has been doing so since mid-2012 when it ceased purchasing from Verizon under its CDP.[210]

Although not under investigation here, Verizon's voluntary, standard term-discount plans — like the Term Pricing Plan[211] and the Service Discount Plan[212] — also offer customers substantial discounts (*e.g.*, 8% to 52% off standard, undiscounted rates for DS1 services) on specific services, in exchange for term commitments of two, three, five, or seven years.[213] Discounts increase with the length of the term commitment, and in all cases customers can receive these discounts while committing to include just one circuit in the discount plan.[214] Because the term commitments and corresponding discounts are circuit-specific, a customer can choose a two-year commitment for one circuit, a five-year commitment for a second circuit, a seven-year commitment for a third circuit, and so on.[215]

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[209] *See* Verizon FCC Tariff No. 14, § 3.2.4 (DS1, one month); Verizon FCC Tariff No. 1, § 7.4.4 (DS1, two months); Verizon FCC Tariff No. 11, § 7.4.4 (DS1 and DS3, three months).

[210] Sullivan Decl. ¶¶ 6-7.

[211] Verizon FCC Tariff No. 1, §§ 7.4.13, 7.4.17.

[212] Verizon FCC Tariff No. 11, § 7.4.10.

[213] *See* Verizon FCC Tariff No. 1, §§ 7.4.17(B)(1), 7.5.9(B)(1), 7.5.16(D).

[214] *See*, *e.g.*, *id.* § 7.5.16 (TPP).

[215] *See*, *e.g.*, *id.* § 7.4.17(C) (TPP).

The economic trade-off underlying Verizon's standard term-discount plans *without* portability is the starting point to understanding the trade-offs in term-discount plans *with* portability. When Verizon installs a new circuit, it incurs considerable up-front, incremental costs, which may include wiring at the central office, installing physical facilities to competitors' collocation arrangements, mapping circuit channel terminations, and designing circuits to function in a new configuration. In addition, once Verizon designs and installs a circuit, Verizon incurs additional costs associated with testing the circuit to ensure that it works properly. This work is labor intensive, and Verizon must scale its workforce to meet its customers' needs.[216]

Term commitments thus give Verizon the ability to spread those up-front costs over a longer term, as well as to plan its business operations more accurately. When a customer orders circuits at Verizon's undiscounted rates, absent any long-term commitment, Verizon has no way to know how many of those circuits will remain in place beyond the minimum commitment term, which ranges from one to twelve months, and so it faces substantial uncertainty in predicting the size of the labor force it may need to oversee those circuits and the revenue flow from those circuits. By contrast, if a customer purchases circuits subject to a two- or five-year term commitment, Verizon knows how long those specific circuits will remain in service and the total revenue it will receive from them, and it can plan accordingly. Through its standard term-discount plans, Verizon shares the value it obtains with customers in the form of substantial discounts.

In response to demands from customers that wanted the benefit of multi-year discounts along with the flexibility to add and remove circuits during the commitment term, Verizon

[216] Sullivan Decl. ¶ 4.

developed two voluntary, term-discount plans with portability — the CDP and the NDP.[217] These plans offer customers discounts based on the length of their commitment, but do not require the customer to commit to maintain any specific circuit for the length of the term.[218] Instead, the customer commits to maintain any individual circuit for only one year, while maintaining a minimum average number of circuits for a full commitment period.[219] In exchange, the customer receives the discount associated with the longer term for *all* of its circuits, regardless of how long each individual circuit remains in service. These plans also do not impose large up-front installation charges for new circuits; for example, charges for such connections under the CDP are only $1.[220] By way of example, consider a customer that purchases 1,000 DS1 circuits. Under a standard term-discount plan (*without* circuit portability), if the customer commits to buy 1,000 specific DS1 circuits over five years, it receives the five-year discount of 35% on each circuit.[221] But if the customer seeks to remove any of those circuits before that five-year term ends, the customer typically must pay an early-termination charge on each circuit removed.[222] The one limited exception is that customers will not be charged an early-termination fee if, at the same time they disconnect a circuit, they order a

[217] Although the CDP appears in two Verizon tariffs, the plans are substantively identical, and Verizon, therefore, addresses them together. Similarly, although the NDP appears in four Verizon tariffs, it is a single, national plan, and Verizon addresses it as such.

[218] *See*, *e.g.*, Verizon FCC Tariff No. 1, § 25.1. The NDP is offered only over a five-year term.

[219] If a CDP or NDP customer disconnects a circuit that has not been in service for at least one year (including any time in service before the CDP or NDP took effect), the customer must pay any remaining monthly charges until that requirement is satisfied. *See id.* §§ 5.2.6, 25.1.10 (CDP), 25.3.8 (NDP).

[220] *See*, *e.g.*, *id.* § 25.1.8(G) (CDP).

[221] *Id.* §§ 7.4.17(B)(3), 7.5.9(A)(1)(a), 7.5.16(C).

[222] *See id.* § 7.4.17(D)(4).

replacement circuit of the same speed or type.[223] In contrast, under a five-year CDP, that same customer could get that same five-year discount of 35% for its 1,000 DS1 circuits but could remove any number of those circuits after only one year in service, so long as the customer maintains an average of at least 900 DS1 circuits with Verizon during the true-up periods over the course of the five-year term.[224] Plans like the CDP thus give the customer significant value in the form of substantial flexibility, enabling them to tear circuits down and put up new ones, so long as the average number of circuits the customer purchases in each six-month period (or twelve months under the NDP) meets the commitment level.

The Verizon voluntary discount plans that the Commission designated for investigation are just and reasonable. They offer customers the benefit of high discounts normally offered — by CLECs and ILECs alike — only in exchange for a commitment to keep particular circuits in service for multi-year terms. These multi-year commitments ensure Verizon can spread the fixed up-front costs of providing circuits over a longer period and make the discounts possible. The Verizon plans under investigation permit customers to obtain multi-year discounts for circuits the customer may discontinue after as little as one year without incurring a termination or shortfall charge. This lets customers get significant discounts with greater flexibility to add and remove circuits in response to changes in demand or marketplace circumstances. Customers not only want that flexibility — or "portability" — but also they take frequent advantage of it. Yet portability dramatically changes the economics of standard circuit-specific term-discount plans, and the plans' features under investigation flow directly from portability. Those features strike a reasonable economic balance, while affording customers — particularly those that engage in

[223] *See* Verizon FCC Tariff No. 11, § 7.4.10(C)(6)(a).

[224] *See* Verizon FCC Tariff No. 1, § 25.1.4(D); *id.* §§ 7.5.9(A)(1)(a), 7.5.16(C).

prudent, forward-looking network planning — substantial flexibility to move their special access purchases not only to other suppliers but also to newer technologies.

Verizon incurs substantial costs to provide customers with this enormous flexibility, even as compared to a standard term-discount plan that offers very limited flexibility. With term-discount plans with portability, Verizon loses the assurances that it will receive a steady stream of revenues for a particular number of circuits in its inventory. Verizon also bears the costs of physically connecting new circuits and disconnecting old ones when customers take advantage of the circuit portability feature. Verizon's plans offer portability over multi-state regions, and those costs are significant. At the same time, portability reduces the time over which Verizon can recover those circuit-specific, non-recurring costs.[225]

CDP customers can reduce their purchases of DS1s or DS3s below their commitment level by 10% (to what the tariffs call a minimum commitment level), or increase those purchases by 30% above the minimum commitment level. So long as the customer stays within those ranges, it will receive discounts for all the circuits it purchases from Verizon.[226] Verizon measures compliance with that commitment under the CDP using the customer's average

[225] In addition, because Verizon is required to make its tariffs generally available, it bears additional uncertainty and costs caused by customers that are unlikely to live up to the commitments they make. Verizon cannot simply turn these customers away or discriminate against customers it views as higher risk — practices that are routine in other competitive industries. Verizon must instead account for these risks and costs in structuring its generally available terms and conditions. The Commission likewise must account for these costs and risks of providing portability to any requesting customer in evaluating whether Verizon's terms and conditions are just and reasonable.

[226] *Id.* §§ 25.1.3(A)(5), 25.1.7(A)(1). NDP customers may choose from three commitment levels: Standard, Premier, and Deluxe. *Id.* § 25.3.4(C). Those customers can reduce their purchases to 85%, 90%, or 92% of their initial commitment level without incurring a shortfall payment; higher discounts are available to customers that select the Premier and Deluxe commitment levels. *Id.*

purchases over a six-month period, which provides customers with even greater flexibility.[227] The commitment level, the minimum and maximum discount range, and the shortfall and overage payments are the mechanisms that balance the benefits to purchasers with the costs to Verizon of providing portability.

Verizon is not aware of existing documents that would demonstrate the methodology and calculations used to determine the percentage thresholds. In general, Verizon intended the percentage thresholds under its term-discount plans with portability to be customer-friendly. Customers receive the discounts under the plans on 100% of their circuits. But a 100% commitment level would not have been well received by our customers. Instead Verizon established minimum commitment levels below 100%, to balance our customers' needs and Verizon's.

Verizon designed the CDP almost 20 years ago, and we are not aware of current documents that can explain specific methodologies or calculations used to determine the percentage thresholds in the CDP. Nor is Verizon aware of other thresholds that may have been considered for the CDP or NDP. For the ETTVP, Verizon developed the threshold through negotiations with its customer AT&T. Verizon initially proposed a 95% minimum commitment level but through negotiations reduced the minimum commitment level to 90% in response to an AT&T request for a lower minimum commitment level.

In addition, when Verizon developed its pricing plans, the Commission already had shifted the large incumbent local telephone companies from rate-of-return regulation to price-cap regulation. Unlike rate-of-return regulation, under price caps, "costs do not generally affect the

[227] *See, e.g.*, *id.* § 25.1.7(D). Compliance under the NDP is measured over a 12-month period, giving customers yet more flexibility. *See, e.g.*, *id.* § 25.3.7.

prices LECs may charge."[228] As the Commission has explained, "price cap regulation severs the direct link between regulated costs and prices."[229] Therefore, there was no cost-justification requirement when Verizon introduced its pricing plans, and Verizon prepared no formal cost justifications for the percentage thresholds under CDP, NDP, TVP, or ETTVP.

<u>Paragraph 69 of the Order. Table IV. Variable Identifier 5(iv).</u>

Where applicable, provide narrative explanation of all other TDM business data services reported in Successor_Vol_Commit_Other, including a description of how these services are denominated and the relevant units of measure.

Commitment Discount Plan

Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) services are included in CDP. Each service has a separate minimum commitment level based on 75% of in-service channel terminations at the time the customer subscribes. The commitment is expressed in DS0s.

Intellilight Entrance Facilities is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in service channel terminations. Intellilight Entrance Facilities is expressed in terms of DS0-equivalent.

National Discount Plan

NDP includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as DS1-equivalents, and there is a single minimum commitment level based on 85% of in-service Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

In addition, Intellilight Entrance Facilities STS 1 is included in NDP. It is expressed as DS1-equivalents and included in the channel termination and channel mileage commitments

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[228] *AT&T*, 448 F.3d at 428.

[229] *AT&T Cost Assignment Forbearance Order* ¶ 8.

based on 85% of in-service Channel Terminations or Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

Paragraph 69 of the Order. Table IV. Variable Identifier 6(iv).

Where applicable, provide a narrative explanation of all other TDM business data services reported in Predecessor_Vol_Commit_Other, including a description of how these services are denominated and the relevant units of measure.

Commitment Discount Plan

Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) services are included in CDP. Each service has a separate minimum commitment level based on 75% of in-service channel terminations at the time the customer subscribes. The commitment is expressed in DS0s.

Intellilight Entrance Facilities is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in service channel terminations. Intellilight Entrance Facilities is expressed in terms of DS0-equivalents.

National Discount Plan

NDP includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as DS1-equivalents and has a single minimum commitment level based on 85% of in-service Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

In addition, Intellilight Entrance Facilities STS 1 is included in NDP. It is expressed as DS1-equivalents and included in the channel termination and channel mileage commitments based on 85% of in-service Channel Terminations or Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

Paragraph 69 of the Order. Table IV. Variable Identifier 7(iv).

If applicable, provide a narrative explanation of all other TDM business data services reported in Predecessor_End_Commit_Other, including a description of how these services are *denominated and the relevant units of measure on a monthly basis. This question calls for a narrative response that must be submitted in a Word document per the instructions in the Introduction of this data template.*

CDP – FCC 1 & FCC 11

Voice Grade (FCC 1), DDS (FCC 1) and DDS II (FCC 11) services are also included in CDP. A separate commitment for each service based on 75% of in-service channel terminations at the time the customer subscribes is established. The commitment is expressed in DS0s.

IEF is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s and a single minimum commitment level based on 90% of in service channel terminations is established. IEF is expressed in terms of DS0-equivalent.

NDP – FCC 1, FCC 11, FCC 14 & FCC 16

NDP also includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as equivalent DS1s and a single minimum commitment level based on 85% of in-service channel mileage is established for Standard, 90% for Premier, and 92% for Deluxe.

In addition, IEF STS 1 is included in NDP. It is expressed as equivalent DS1s and included in the channel termination and channel mileage commitments based on 85% of in-service channel terminations or channel mileage for Standard, 90% for Premier, and 92% for Deluxe.

<u>Paragraph 70 of the Order. Table I. Variable Identifier 1(iv).</u>

Where applicable, provide narrative description of the types of other TDM business data services referenced in Ethernet_Other_Commit and a description of how Ethernet services may be used to count toward this percentage commitment.

Commitment Discount Plan

Under CDP, if Voice Grade (FCC 1), DDS (FCC 1), DDS II (FCC 11) and Intellilight Entrance Facilities channel terminations are upgraded to Verizon's Ethernet service, that

Ethernet service may be considered when average in-service quantities of DS0-equivalents are compared to commitment levels for each service during the Annual Review for CDP. Per the applicable tariff, Voice Grade, DDS, DDS II, and Intellilight Entrance Facilities channel termination quantities that have been upgraded to Verizon's Ethernet service and that meet the criteria in the Technology Migration section of the tariff, can be added back into the average in-service quantities of DS0-equivalent channel terminations. Verizon adds back the DS1 and DS3 (or Intellilight Entrance Facilities) quantities that the customer upgrades to Ethernet in the true-up calculations during the Annual Review for the remainder of the CDP term to determine if a customer has met its commitment levels.

National Discount Plan

Under NDP, if DS1 or DS3 channel terminations or channel mileage (or Intellilight Entrance Facilities channel terminations or channel mileage) are upgraded to Verizon's Ethernet service, that Ethernet service may be considered when monthly average in-service quantities of DS1-equivalents are compared to commitment levels during the Annual Review for NDP. DS1 and DS3 (or Intellilight Entrance Facilities) channel termination and channel mileage quantities that have been upgraded to Verizon's Ethernet service and that meet the criteria in either the NDP tariff (for customers subscribed to NDP prior to December 2, 2010) or the Technology Migration section of the tariff, can be added back into the monthly DS1-equivlaent counts of channel termination and channel mileage using an upgrade adjustment calculation. These adjusted counts — which essentially add back in the DS1 and DS3 (or Intellilight Entrance Facilities) quantities upgraded to Ethernet — are used in the true-up calculations during the Annual Review until the end of the NDP term to determine if a customer has satisfied its commitment levels.

Paragraph 70 of the Order. Table I. Variable Identifier 2(i).

Where applicable, provide, using a searchable PDF or text format, the full text of all provisions in the tariff concerning how Ethernet purchases are eligible to count toward fulfillment of DS1 channel terminations purchase commitments (i.e., the product of the percentage commitment and the volume commitment), and include citations to those provisions.

Commitment Discount Plan
FCC 1 – Sections 25.1.3(B), 25.1.7, and 2.9.4
FCC 11 – Sections 25.1.3(B), 25.1.7, and 2.10.3

DS1 TVP, DS1 ETTVP
FCC 14 – Sections 5.6.14(G) and 2.10.2(A)

National Discount Plan
FCC 1 – Sections 25.3.1(B), 25.3.7(B), 25.3.7(H), and 2.9.5
FCC 11 – Sections 25.2.1(B), 25.2.7(B), 25.2.7(H), and 2.10.4
FCC 14 – Sections 23.1.1(B), 23.1.7(B), 23.1.7(H), and 2.10.4
FCC 16 – Sections 22.1.1(B), 22.1.7(B), 22.1.7(H), and 2.9.3

Paragraph 70 of the Order. Table I. Variable Identifier 2(ii).

Where applicable, provide, using a searchable PDF or text format, the full text of all provisions in the tariff concerning how Ethernet purchases are eligible to count toward fulfillment of DS3 channel terminations purchase commitments (i.e., the product of the percentage commitment and the volume commitment), and include citations to those provisions.

Commitment Discount Plan
FCC 1 – Sections 25.1.3(B), 25.1.7, and 2.9.4
FCC 11 – Sections 25.1.3(B), 25.1.7, and 2.10.3

DS3 TVP
FCC 14 – Sections 5.6.19(J) and 2.10.3(A)

National Discount Plan
FCC 1 – Sections 25.3.1(B), 25.3.7(B), 25.3.7(H), and 2.9.5
FCC 11 – Sections 25.2.1(B), 25.2.7(B), 25.2.7(H), and 2.10.4
FCC 14 – Sections 23.1.1(B), 23.1.7(B), 23.1.7(H), and 2.10.4
FCC 16 – Sections 22.1.1(B), 22.1.7(B), 22.1.7(H), and 2.9.3

Paragraph 70 of the Order. Table I. Variable Identifier 2(iii).

Where applicable, provide using a searchable PDF or text format, the full text of all provisions in the tariff concerning how Ethernet purchases are eligible to count toward fulfillment of purchase commitments (i.e. the product of the percentage commitment and the volume *commitment), other than DS1 and DS3 channel terminations purchase commitments, and include citations to those provisions.*

Commitment Discount Plan
FCC 1 – Sections 25.1.3(B), 25.1.7, and 2.9.4
FCC 11 – Sections 25.1.3(B), 25.1.7, and 2.10.3

National Discount Plan
FCC 1 – Sections 25.3.1(B), 25.3.7(B), 25.3.7(H), and 2.9.5
FCC 11 – Sections 25.2.1(B), 25.2.7(B), 25.2.7(H), and 2.10.4
FCC 14 – Sections 23.1.1(B), 23.1.7(B), 23.1.7(H), and 2.10.4
FCC 16 – Sections 22.1.1(B), 22.1.7(B), 22.1.7(H), and 2.9.3

Paragraph 70 of the Order. Table I. Variable Identifier 2(iv).

Where applicable, provide narrative description of the types of other TDM business data services, other than DS1 channel terminations and DS3 channel terminations, whose percentage commitment may be fulfilled by Ethernet purchases.

Commitment Discount Plan

The other TDM business data services for which Ethernet upgrades may count toward satisfying CDP commitment levels are Voice Grade, DDS, and Intellilight Entrance Facilities channel terminations.

National Discount Plan

The other TDM business data services for which Ethernet upgrades may count toward satisfying NDP commitment levels are DS1 and DS3 channel mileage, and Intellilight Entrance Facilities channel terminations and channel mileage.

Paragraph 70 of the Order. Table I. Variable Identifier 3.

Provide a narrative description of the business rationale for each provision, condition, qualification, or limitation on technology migration, such as limitations on the counting of Ethernet purchases toward the fulfillment of applicable percentage commitments.

Because new demand is primarily for business Ethernet services and *not* the traditional DS1 and DS3 special access services covered by the CDP, NDP, TVP, and ETTVP, Verizon modified these discount plans in response to customer demands to ensure they do not impede meeting that new demand with IP-based services. The plans include technology-transition provisions, which allow a customer to convert an existing DS1 or DS3 circuit to Ethernet and count that Ethernet circuit toward satisfying its commitment level.[230] Subscribers can also use circuit portability to upgrade an existing customer from a DS1 or DS3 service to Ethernet, so long as it continues to meet its minimum commitment level by purchasing DS1 or DS3 service from Verizon to serve another customer in another location, even in another state.

Customers have used the technology-transition provisions of the plans to move to new technologies.[231] And because demand for Ethernet is growing — and because Verizon's plans do not require customers to purchase *new* demand from Verizon — these plans do not inhibit purchases of Ethernet to meet that new demand.

Verizon's tariffs include certain conditions that must be met for the technology-transitions provisions to apply. For example, the existing and replacement service both must be provided by Verizon. Customers make term commitments and percentage volume commitments when they subscribe to the CDP and NDP, and those commitments allow Verizon to offer substantial discounts to customers. If customers replace, for example, a DS1 service purchased from Verizon with an Ethernet circuit purchased from Verizon, the upgraded circuits effectively count toward those customers' compliance with their commitments under those discount plans. This condition allows and customers to upgrade the level of service they receive from Verizon without increasing the risk of a shortfall under the CDP or NDP.

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[230] The technology-transition provisions include protections to ensure that customers do not use those provisions as a means of evading the commitment it made in exchange for the discounts Verizon has provided. *See, e.g.*, Verizon FCC Tariff No. 1, §§ 2.9.4, 25.1.3(B), 25.1.7 (CDP).

[231] *See* Appendix B, Table V.

Another condition requires the replacement service to be provided at the same location as the TDM service. This ensures the technology-transition provisions apply to true technology upgrades. The CDP is a regional plan across many Verizon states. A customer cannot invoke the technology-transition provisions, for example, if it disconnects a DS1 circuit for a customer in New York and adds an Ethernet circuit for a different customer in Maryland. By contrast, the provisions do apply if the customer in New York upgrades from DS1 to Ethernet.

A separate condition ensures the New York customer in this example upgrades within a certain time period. Because the replaced TDM-based services count toward the customer's commitment level when the technology-transition provisions apply, without a specified time period, the customer could game the technology-transition provisions. This condition protects against, for example, a customer disconnecting a DS1 service in year one, adding an Ethernet circuit in year four, and claiming the replaced services should count toward the commitment level in all four years.

The remaining conditions are designed to ensure the upgraded service actually is an upgraded service and that the customer continues to make a commitment similar to its original commitment for the TDM service.

Paragraph 71 of the Order. Table V. Variable Identifier 6(ii).

Narrative description of the type, number, and capacity of Ethernet services sold that offset the DS1 channel termination percentage commitments as reported in Ethernet_Counted_DS1, how those Ethernet services were denominated and the relevant units of measure.

Commitment Discount Plan – FCC 1

The table below provides information on the type, number, and capacity of Ethernet services sold that offset the DS1 channel termination commitment:

Agreement_ID	Ethernet_Counted_DS1	Service_Bundle_DS1
22213S13	7300	146 50Mbps VzON Channel Extensions
22222P10	90112	88 1Gbps TLS UNIs
22222P10	116736	114 1Gbps TLS UNIs

Commitment Discount Plan – FCC 11

The table below provides information on the type, number, and capacity of Ethernet services sold that offset the DS1 channel termination commitment:

Agreement_ID	Ethernet_Counted_DS1	Service_Bundle_DS1
23223P09	52224	51 1Gbps TLS UNIs
23223P09	57344	56 1Gbps TLS UNIs

DS1 TVP – FCC 14

The table below provides information on the type, number, and capacity of Ethernet services sold that offset the DS1 channel termination commitment:

Agreement_ID	Ethernet_Counted_DS1	Service_Bundle_DS1
26284S13	47,104	46 1Gbps TLS UNIs

Paragraph 71 of the Order. Table V. Variable Identifier 6(iv).

Narrative description of the type, number, and capacity of Ethernet services sold that offset the DS3 channel termination percentage commitments as reported in Ethernet_Counted_DS3, how those Ethernet services were denominated and the relevant units of measure.

Commitment Discount Plan – FCC 1

The table below provides information on the type, number, and capacity of Ethernet services sold that offset the DS3 channel termination commitment:

Agreement_ID	Ethernet_Counted_DS3	Service_Bundle_DS3
22207P06	200	2 100Mbps VzON Channel Extensions

Commitment Discount Plan – FCC 11

The table below provides information on the type, number, and capacity of Ethernet services sold that offset the DS3 channel termination commitment:

Agreement_ID	Ethernet_Counted_DS3	Service_Bundle_DS3
22211P07	400	4 100Mbps VzON Channel Extensions
22189P06	350	5 50Mbps VzON Channel Extensions & 1 100Mbps TLS UNI
22189P06	250	3 50Mbps VzON Channel Extensions & 1 100Mbps TLS UNI

Paragraph 71 of the Order. Table V. Variable Identifier 6(vi).

Where applicable, provide narrative description of the type, number, and capacity of Ethernet services sold that offset the other TDM business data services percentage commitments as reported in Ethernet_Counted_Other.

This is not applicable.

Paragraph 71 of the Order. Table V. Variable Identifier 7(iv).

If applicable, and if not already provided above, provide narrative description of the other TDM business data services whose percentage commitment was offset by Ethernet purchases as reported in Ethernet_Rev_Counted_Other.

This is not applicable.

Paragraph 71 of the Order. Table V. Variable Identifier 8(iv).

If applicable, and if not already provided above, provide narrative description of the other TDM business data services which were offset by Ethernet purchases as reported in TDM_Offset_Other, including the types of business data services, how they are denominated, and the relevant units of measure.

This is not applicable.

Paragraph 71 of the Order. Table V. Variable Identifier 9(iv).

If applicable, and if not already provided above, provide a narrative description of the other TDM business data services whose percentage commitment was offset by Ethernet purchases as reported in TDM_Offset_Rev_Other, including the types of business data services, how they are denominated, and the relevant units of measure.

This is not applicable.

Paragraph 77 of the Order. Table VI. Variable Identifier 7(iv).

Where applicable, provide a narrative description of New_Volume_Commitment_Other, including a description of the type of business data services included, how these business data services are denominated, and the relevant units of measure.

Commitment Discount Plan

Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) services are also included in the CDP. Each service has a separate minimum commitment level based on 75% of in-service channel terminations at the time the customer subscribes. The commitment is expressed in DS0s.

Intellilight Entrance Facilities is an optional service that can be included in CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in service channel terminations. Intellilight Entrance Facilities is expressed in terms of DS0-equivalents.

National Discount Plan

The NDP includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as DS1-equivalents with a single minimum commitment level based on 85% of in-service Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

In addition, Intellilight Entrance Facilities STS 1 is included in the NDP. It is expressed as DS1-equivalents and included in the channel termination and channel mileage commitments based on 85% of in-service Channel Terminations or Channel Mileages for Standard, 90% for Premier, and 92% for Deluxe.

Paragraph 77 of the Order. Table VI. Variable Identifier 8(ii).

Narrative description of how the shortfall penalty was calculated for this shortfall.

Commitment Discount Plan

During the six-month true-up, the six-month average of DS0-equivalents is compared to the commitment level to determine if a shortfall applies. The shortfall is calculated by determining the average number of DS0-equivalent channel terminations in service for a service type over the previous six months. The average is the sum of the monthly DS0-equivalent Channel Termination counts divided by six. This average is compared to the commitment level over the last six months. If the average is less than the minimum commitment level, there is a shortfall.

The shortfall payment is calculated by first determining the average monthly rate per DS0-equivalent for a given service type. The average monthly rate is calculated using the total monthly charges for a given service type associated with all Channel Terminations, channel mileage, and optional features discounted under CDP, divided by six. If a shortfall applies, the difference between the minimum commitment level and average in-service circuits is multiplied by the average rate per DS0-equivalent, which in turn is multiplied by six. Technology migration and sale of assets provisions also are incorporated into the true-up process.

As an example, for Agreement 22219P07, FCC 1, the shortfall was $9,626.76 for the period February 2012 through July 2012. During this six-month period, the average in-service DS0 equivalents for DS1 service were 31,272 and the total revenue was $1,362,625, producing average monthly revenue of $227,104. To calculate the shortfall, this average monthly revenue was divided by the average DS0 equivalents of 31,272, which yielded an average rate per DS0 of $7.26. The customer's shortfall was 221 DS0s below their commitment, which was multiplied by $7.26 and by six months, yielding a total shortfall of $9,626.76.

National Discount Plan

During the Annual True-up process, a shortfall payment is assessed against the Channel Termination commitment level and/or channel mileage commitment level if the monthly average count of equivalent DS1 Channel Terminations or Channel Mileage is below the Channel Termination or Channel Mileage minimum commitment level, respectively. Channel Terminations and Channel Mileages are evaluated independently, and all calculations are done on a DS1-equivalents basis. The calculations described below are for Channel Terminations, but the process works in the same manner for Channel Mileage.

First, the monthly average count of Channel Terminations for the twelve-month review period is determined by adding the actual monthly number of Channel Terminations for qualifying services under the NDP, including any Channel Terminations replaced by Replacing Services under the Technology Migration criteria in the tariff, plus any upgrade adjustments and sale adjustments. This total is divided by 12 to determine the monthly average. The monthly average is then compared to the Channel Termination commitment level. If the monthly average count is below the Channel Termination minimum commitment level, a shortfall payment applies. The difference between these two quantities is the monthly shortage. Next, the average monthly rate per equivalent DS1 Channel Termination is calculated by adding the total monthly charges billed for all Channel Termination (and mux FCC 1 & 11) (or for Channel Mileage if a mileage shortfall payment is being calculated) discounted rate elements for each of the 12 months in the true-up period and dividing by 12, then dividing by the average monthly count of equivalent DS1 Channel Terminations. The shortfall payment is calculated by multiplying the monthly shortage by the average monthly rate per equivalent DS1 Channel Termination, and multiplying it by 12.

TVP

During the annual review, when the number of in-service TVP DS1 SALs (including those SALs replaced by Replacing Services under the Technology Migration tariff provisions) falls below the commitment quantity by up to 3%, the customer will be considered as having met its commitment. When the number of in-service TVP DS1 SALs falls below the commitment quantity by more than 3%, the shortfall payment is calculated as the lowest TVP rate for the current threshold in the states where the service is located, multiplied by the shortfall and multiplied by four months.

DS3 TVP

There was no shortfall under the DS3 TVP.

ETTVP

There was no shortfall under the ETTVP.

<u>Paragraph 77 of the Order. Table VI. Variable Identifier 9(iv).</u>

Where applicable, provide a narrative description of the shortfall of all other TDM business data services, including the types of business data services involved, how these services are denominated, and the relevant units of measure. This question calls for a narrative response that must be submitted in the Word document per the instructions in the Introduction of this data template.

Commitment Discount Plan

Shortfall is calculated separately for each service type in the CDP, but it is calculated in the same manner for all services under the CDP. Separate commitments for Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) services based on 75% of in-service channel terminations are established when the customer subscribes to CDP. The commitment is expressed in DS0-equivalents.

During the six-month true-up, the six-month average of DS0-equivalents is compared to the customer's minimum commitment level to determine if a shortfall applies. The shortfall is calculated by determining the average number of DS0-equivalent channel terminations in service for a service type over the previous six months. The average is the sum of the monthly DS0-equivalent Channel Termination counts divided by six. This six-month average is compared to the commitment level. If the six-month average is less than the minimum commitment level, there is a shortfall.

The shortfall payment is calculated by first determining the average monthly rate per DS0-equivalent for a given service type. The average monthly rate is calculated using the total monthly charges for a given service type associated with all Channel Terminations, channel mileage, and optional features discounted under the CDP, divided by six. If a shortfall applies, the difference between the minimum commitment level and the six-month average of in-service DS0-equivalents is multiplied by the average rate per DS0-equivalent, which in turn is multiplied by six. Technology migration and sale of assets provisions also are incorporated into the true-up process.

Intellilight Entrance Facilities is an optional service that can be included in the CDP if the customer chooses. If included, it is combined with DS3s to create a minimum commitment level based on 90% of in service channel terminations. Intellilight Entrance Facilities is expressed in terms of DS0-equivalents.

National Discount Plan

The NDP includes a channel mileage commitment level. DS1 and DS3 mileage is expressed as DS1-equivalents with a single minimum commitment level based on 85% of in-service Channel Mileage for Standard, 90% for Premier, and 92% for Deluxe.

During the annual true-up process, a shortfall payment is assessed against the Channel Termination minimum commitment level or channel mileage minimum commitment level if the monthly average count of equivalent DS1 Channel Terminations or Channel Mileage is below the Channel Termination or Channel Mileage minimum commitment levels, respectively. Channel Terminations and Channel Mileage are evaluated independently, and all calculations are done on a DS1-equivalents basis. The process works the same way for both Channel Terminations and Channel Mileage. First, the monthly average count of Channel Mileage for the twelve-month review period is determined by adding the actual monthly number of Channel Mileage for qualifying services under the NDP, including any Channel Mileage replaced by Replacing Services under the Technology Migration criteria in the tariff, plus any upgrade adjustments and sale adjustments. This total is divided by 12 to determine the average. The monthly average is then compared to the Channel Mileage commitment level. If the monthly average count is below the Channel Mileage minimum commitment level, there is a shortfall. The difference between these two quantities is the monthly shortage.

Next, the average monthly rate per equivalent DS1 Channel Mileage is calculated by adding the total monthly charges billed for all Channel Mileage discounted rate elements for each of the 12 months in the true-up period and dividing by 12, then dividing by the average monthly count of equivalent DS1 Channel Mileage. The shortfall payment is calculated by multiplying the monthly shortage by the average monthly rate per equivalent DS1 Channel Mileage, and then multiplying that total by 12.

In addition, Intellilight Entrance Facilities STS 1 is included in NDP. It is expressed as DS1-equivalents and included in the channel termination and channel mileage commitments based on 85% of in-service Channel Terminations or Channel Mileage for Standard, 90% for Premier, and 92% for Deluxe.

Paragraph 78 of the Order.

In our inquiry into the reasonableness of incumbent LEC shortfall fees, the incumbent LECs subject to this investigation must also submit in their direct cases for the plans under examination the following information: (1) tariff and plan names and specific section numbers where shortfall provisions are found in the tariffs, (2) an explanation of the justification of the shortfall penalties and their amounts, (3) a description of the methodologies used to calculate the levels of the shortfall penalties along with showing the calculations, (4) all relevant information and data inputs used to calculate these, (5) an explanation of how each shortfall charge provision in the plan reflects costs incurred by the incumbent LEC as a result of the shortfall, and (6) a detailed description and quantification of such costs that are incurred by the incumbent LEC in a shortfall situation, including any relevant calculations performed to derive such costs. The incumbent LECs subject to this investigation have asserted that these fees are at least in part designed to recover their costs. To the extent shortfall penalties are intended to recover costs that would not have been incurred but for the shortfall, the incumbent LECs must also submit in their narrative responses: (7) all cost data that explains and justifies the level of the shortfall penalties, (8) a description and quantification of the costs that incumbent LECs incur in a shortfall situation, and (9) the mathematical calculations used to derive that cost.

The Verizon voluntary discount plans that the Commission designated for investigation are just and reasonable. They offer customers the benefit of high discounts normally offered — by CLECs and ILECs alike — only in exchange for a commitment to keep particular circuits in service for multi-year terms. These multi-year commitments ensure Verizon can spread the fixed up-front costs of providing circuits over a longer period and make the discounts possible. The Verizon plans under investigation permit customers to obtain multi-year discounts for circuits the customer may discontinue after as little as one year without incurring a termination or shortfall charge. This lets customers get significant discounts with greater flexibility to add and remove circuits in response to changes in demand or marketplace circumstances. Customers not only want that flexibility — or "portability" — but also they take frequent advantage of it. Yet portability dramatically changes the economics of standard circuit-specific term-discount plans, and the plans' features under investigation flow directly from portability. Those features strike a reasonable economic balance, while affording customers — particularly those that engage in prudent, forward-looking network planning — substantial flexibility to move their special access purchases not only to other suppliers but also to newer technologies.

CDP and NDP also require that the customer make its commitment based on its level of purchases at the time it subscribes to either plan.[232] Although the CDP and NDP provide customers with some flexibility to reduce their purchases from Verizon — to 10% below the initial purchase commitment for DS1s and DS3s under the CDP and to as much as 15% below the initial purchase commitment for DS1s and DS3s under the NDP[233] — the *commitment* to continue purchasing services from Verizon over the course of the CDP or NDP term is necessary to justify the discount levels. Otherwise, a customer could get multi-year discounts on its initial amount of purchases, without actually making a multi-year commitment of any kind. And, because it is a commitment, the customer faces consequences if it fails to hold up its end of the bargain.

Contrary to some CLECs' claims,[234] the shortfall provisions in the CDP and NDP that enforce this commitment are not punitive. Rather, they ensure that Verizon receives the benefit

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[232] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A) (CDP), 25.3.3(A)(2) (NDP).

[233] *See, e.g.*, *id.* §§ 25.1.3(A)(5) (CDP), 25.3.4(C)(2) (NDP).

[234] *See Order* ¶ 73.

of the bargain it struck with its customer.[235] As a federal court recently found, in enforcing the shortfall provision in the CDP, such provisions "fulfill a familiar function of contract law by calculating expectancy damages" and "provide[ ] a valuable tool to let Verizon calculate, and allow[ ] [the customer] to know the reach of, expectancy damages in the event of a shortfall, a permissible and reasonable goal for any service provider."[236] And shortfall payments assessed on customers have been small compared to the total purchases under these plans, equaling less than 3% of Verizon's revenue under CDP and 1% of Verizon's revenue under NDP.[237]

Shortfall penalties are one of the mechanisms in CDP that enforces the bargain the customer and Verizon strike when customers voluntarily subscribe to CDP. As described in responses to Table I, Variable Identifier 4(iv), Verizon incurs costs to provide CDP's portability. For example, for term-discount plans with portability Verizon loses the certainty that it will receive a steady stream of revenues for specific circuits, as well as the guarantee that it can spread non-recurring installation costs over a specific multi-year service life. And Verizon bears the costs of connecting new circuits and disconnecting old ones when customers take advantage of portability. Portability confers a substantial non-rate benefit on customers. It enables customers to receive the benefits of large discounts without the requirement to commit any specific circuit, to any specific customer, to a term commitment longer than one year. To equilibrate the balance Verizon strikes with its customer, Verizon requires a commitment level, which the shortfall payment enforces.

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[235] *See, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.7(B) (CDP), 25.3.7(C)(1) (NDP).

[236] *Verizon Virginia*, 2015 WL 6759473, at *11.

[237] Calculated as the sum of amounts in the "Shortfall_Penalty" column in Table VI divided by the sum of amounts in the Discount_Rev_Total column in Table IIA for each of the CDP and NDP plans.

TVP also is subject to annual review to determine whether commitment levels have been satisfied,[238] and no shortfall payment will be assessed if the customer is within 3% of its commitment levels.[239] For DS1 services, even if there is a shortfall, the shortfall payment is limited to the amount of shortfall times the lowest applicable rate times four months.[240] Thus, even if the shortfall existed for the full 12-month period under review, the customer only pays a shortfall for one-third of the year. Use of the TVP is very limited. The plan is available only under Verizon FCC Tariff No. 14, which currently covers only former GTE regions in Pennsylvania, California, Florida, Virginia, and Texas.

The ETTVP also is subject to annual review. A shortfall occurs under ETTVP if the customer does not meet its minimum commitment level in the most recent month before the true-up. If there is a shortfall, the applicable average rate is calculated using one month of billing divided by one month of SALs. That average rate is multiplied by the shortfall amount and then by six months.

The methodologies for determining shortfall payments are described in response to Paragraph 77 of the Order. Table VI. Variable Identifier 8(ii).

When Verizon developed its pricing plans, the Commission already had shifted the large incumbent local telephone companies from rate-of-return regulation to price-cap regulation. Unlike rate-of-return regulation, under price caps, "costs do not generally affect the prices LECs may charge."[241] As the Commission has explained, "price cap regulation severs the direct link

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[238] Verizon FCC Tariff No. 14, §§ 5.6.14(G) (DS1), 5.6.19(E) (DS3).

[239] *Id.*

[240] *Id.* §§ 5.6.14(I) (DS1), 5.6.19(F) (DS3).

[241] *AT&T*, 448 F.3d at 428.

between regulated costs and prices."[242] Therefore, there was no cost-justification requirement when Verizon introduced its pricing plans, and Verizon prepared no formal cost justifications for the shortfall provisions in the CDP, NDP, TVP, or ETTVP.

Relevant CDP Tariff Citations

FCC 1 – Section 25.1.7(B)
FCC 11 – Section 25.1.7(B)

Relevant NDP Tariff Citations

FCC 1 – Section 25.3.7(C)
FCC 11 – Section 25.2.7(C)
FCC 14 – Section 23.1.7(C)
FCC 16 – Section 22.1.7(C)

Relevant DS1 TVP Tariff Citations

FCC 14 – Section 5.6.14(I)

Relevant DS3 TVP Tariff Citations

FCC 14 – Section 5.6.19(F)

Relevant ETTVP Tariff Citations

FCC 14 – Section 5.6.14(I)

Paragraph 80 of the Order.

In order to enable an assessment of the reasonableness and potentially discriminatory nature of upper percentage thresholds, the incumbent LECs subject to this investigation must submit in their direct cases all information and data regarding the methodology and calculations used to determine upper percentage thresholds. Incumbent LECs are required to answer the following questions: What business justifications are there for using upper percentage thresholds? How were these thresholds set? Were other thresholds considered and, if so, on what basis was the specific threshold in the pricing plan selected? Is there an efficiency rationale for requiring a buyer to increase percentage commitments to retain the discount credit or other benefit offered under the pricing plan? To the extent that percentage thresholds are related to economies of scale, we require incumbent LECs to submit as part of their direct cases an explanation of how and to submit all evidence demonstrating such relationship. The incumbent LECs must also

[242] *AT&T Cost Assignment Forbearance Order* ¶ 8.

submit any evidence and data showing whether the thresholds are calculated to recover any additional costs incurred in providing the increased number of services or are in any way related to cost recovery.

Upper percentage thresholds are a mechanism that balances the benefits to customers with the costs to Verizon of providing portability.

Because the CDP and NDP provide a discount for each circuit under the plans — including those that exceed the commitment level — they limit the extent to which the customer can exceed its commitment level and retain the discounts without increasing its commitment level.[243] Thus, the CDP allows a customer to increase its purchases under the plan by up to 30% above its minimum commitment level,[244] and the NDP allows a customer to increase its purchases under the plan by up to 60% above its minimum commitment level.[245]

The multi-year discount rate under the CDP and NDP applies to all of these excess circuits, even though the customer could disconnect each of those additional circuits one year after ordering them, and could never exceed its commitment level during the remainder of the CDP or NDP term. CDP circuits ordered in excess of that 30% will be billed through the overage charge provision at Verizon's undiscounted rates, unless the customer elects to increase its commitment level — and, thereby, actually *commit* to purchasing additional circuits for a period longer than one year.[246] If an NDP customer exceeds its minimum commitment level by more than 60%, its commitment level automatically will be increased. This explains why the NDP upper threshold is substantially higher than the CDP's.

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[243] *See Order* ¶ 79.

[244] *See, e.g.*, Verizon FCC Tariff No. 1, § 25.1.7(A)(1), (C).

[245] *See, e.g.*, *id.* § 25.3.4(E).

[246] *See Order* ¶ 82; *see, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A)(9), 25.1.7(D).

Without these provisions, a customer could secure a low commitment level, then purchase a large number of additional circuits at the discounted rates, but keep them in service for only one year. The overage provisions also help ensure that the average circuit duration is not too low, which also facilitates network planning.

These commitment level provisions are even more reasonable — and customer friendly — because Verizon measures them over six-month periods for the CDP.[247] Thus, a CDP customer can drop below its minimum commitment level or increase its purchases by more than 30% above that minimum commitment level, without facing shortfall or overage payments, so long as — on average, over the longer period — the customer satisfies the commitment that it made to Verizon. This averaging further confirms these features of the CDP (and, to an even greater extent, NDP) are designed to ensure that the customer has made a commitment sufficient to warrant the discounts provided and are not the punitive measures some CLECs have claimed.

Upper thresholds help enforce the commitment customers make in order to receive portability benefits, which impose costs on Verizon. Those costs are described in responses to Table I, Variable Identifier 4(iv).

Verizon is not aware of existing documents that would demonstrate the methodology and calculations used to determine the overage thresholds. We also are not aware whether other thresholds were considered.

[247] Verizon FCC Tariff No. 1, § 25.1.7(A)(2); Verizon FCC Tariff No. 11, § 25.1.7(A)(2) (CDP); Verizon FCC Tariff No. 1, § 25.3.7; Verizon FCC Tariff No. 11, § 25.2.7 (NDP).

Paragraph 81 of the Order. Table I. Variable Identifier 2.

If the tariff pricing plan has an upper percentage threshold, then provide the full text (which may be a searchable PDF) and a citation to the section number of the tariff pricing plan containing the upper percentage threshold provision.

Commitment Discount Plan

FCC 1 – Section 25.1.7(A)
FCC 11 – Section 25.1.7(A)

Under CDP in both FCC Tariff Nos. 1 and 11, when a customer exceeds its maximum service level, it can either increase its minimum commitment level to 90% of the new in-service quantity for the service type or pay the overage payment. The commitment level is not automatically increased, nor is the overage payment automatically charged.

National Discount Plan

FCC 1 – Section 25.3.4(E)
FCC 11 – Section 25.2.4(E)
FCC 14 – Section 23.1.4(E)
FCC 16 – Section 22.1.4(E)

Under NDP in all four tariffs, when a customer exceeds its minimum commitment level by more than 60%, its commitment level automatically will be increased.

DS1 and DS3 TVP

FCC 14 – Section 5.6.14(G) (DS1)
FCC 14 – Section 5.6.19(E) (DS3)

There is no upper percentage threshold. At each annual review, if the quantity exceeds the commitment level, the customer has the option to increase the commitment level or convert the quantity over the commitment level to month-to-month or to another TVP.

ETTVP

FCC 14 – Section 5.6.14(G)

During the annual review, the minimum commitment level will be reset to 90% of the existing in-service SALs and cannot fall below the initial 90% commitment quantity at time of enrollment.

<u>Paragraph 81 of the Order. Table I. Variable Identifier 3(iv).</u>

If applicable, provide a narrative description of the other TDM business data services to which the Overage_Percent_Threshold_Other applies, including the type of business data services, how they are denominated, the relevant units of measure, and how each type of business data services counts toward the overage calculation.

Commitment Discount Plan

Although Voice Grade (FCC 1), DDS (FCC 1), and DDS II (FCC 11) are other TDM business data services included in the CDP, each is a separate service type with its own commitment levels. Since each service type has its own commitment level, overages are measured independently for each service. Each commitment is measured as DS0-equivalent channel terminations. For each service type, the average in-service quantity of channel terminations is measured against the commitment level to determine if the customer satisfied, did not satisfy, or exceeded the commitment level.

Intellilight Entrance Facilities channel terminations can be included in the CDP at the option of the customer. Intellilight Entrance Facilities quantities are translated into DS0-equivalents and included in the DS3 commitment level. Intellilight Entrance Facilities at the STS1 level translates into 672 DS0-equivalents, STS3 translates into 2,016 DS0-equivalents, and STS12 translates into 8,064 DS0-equivalents. These Intellilight Entrance Facilities quantities expressed as DS0-equivalents are added together with the DS3 channel termination DS0-equivalents quantities to establish the DS3 commitment level, which is used during the

Annual Review to determine if the customer satisfied, did not satisfy, or exceeded the commitment level.

National Discount Plan

For the NDP, other TDM business data services include DS1 and DS3 channel mileage, expressed as DS1-equivalents. A separate commitment is established for channel mileage under NDP. The DS3s are expressed as equivalent DS1s and added to the DS1 mileage quantity. During the Annual Review, monthly average actuals are calculated and measured against the commitment level for channel mileage to determine if the customer satisfied, did not satisfy, or exceeded the commitment level.

Intellilight Entrance Facilities, specifically at the STS1 level, is included in both the channel termination and channel mileage commitment levels. The methodology for calculating and measuring against the commitment level is the same for both channel terminations and channel mileage. Intellilight Entrance Facilities STS1s translate into 28 DS1-equivlalents. Expressed in terms of DS1-equivalent, the quantities of Intellilight Entrance Facilities, DS3s, and DS1s are added together in both setting the commitment levels and measuring against them during the Annual Review to determine if the customer satisfied, did not satisfy, or exceeded the commitment level.

<u>Paragraph 81 of the Order. Table I. Variable Identifier 5.</u>

If the pricing plan requires an automatic increase of the volume commitment of a purchaser that exceeds an upper percentage threshold, provide the full text of the provision (which may be a searchable PDF) and a citation to the relevant section of the pricing plan.

National Discount Plan

FCC 1 – Sections 25.3.4(E) and 25.3.7(B)
FCC 11 – Sections 25.2.4(E) and 25.2.7(B)
FCC 14 – Sections 23.1.4(E) and 23.1.7(B)
FCC 16 – Sections 22.1.4(E) and 22.1.7(B)

DS1 TVP

FCC 14 – Section 5.6.14(G)

DS3 TVP

FCC 14 – Section 5.6.19(E)-(G)

ETTVP

FCC 14 – Section 5.6.14(G)

<u>Paragraph 83 of the Order.</u>

To enable an assessment as to whether overage penalties are reasonable or reasonably discriminatory, the incumbent LECs under investigation must submit in their direct cases a narrative description of the methodology for calculating the level of the overage penalty. In addition, the carriers must respond to the following questions: Were other levels or types of penalties considered and, if so, on what basis was the overage penalty in the pricing plan selected? Is there an efficiency rationale for the overage penalty? To what extent are overage penalty levels designed to recover incumbent LECs' costs? If so, the incumbent LECs must identify the costs they would incur in serving such increases in demand that would not otherwise be recoverable through their tariffed rates under the plan at issue.

The overage payment, like the shortfall payment, is a mechanism in the CDP that balances the benefits to customers with the costs to Verizon of providing portability.

Because the CDP provides a discount for each circuit under the plans — including those that exceed the commitment level — the CDP limits the extent to which the customer can exceed its commitment level and retain the discounts without increasing its commitment level.[248] Thus, the CDP allows a customer to increase its purchases under the plan by up to 30% above its minimum commitment level.[249] The multi-year discount rate under the CDP applies to all of these excess circuits, even though the customer could disconnect each of those additional circuits one year after ordering them, and could never exceed its commitment level during the remainder

[248] *See Order* ¶ 79.

[249] *See, e.g.*, Verizon FCC Tariff No. 1, § 25.1.7(A)(1), (C).

of the CDP term. Circuits ordered in excess of that 30% will be billed through the overage charge provision at Verizon's undiscounted rates, unless the customer elects to increase its commitment level — and, thereby, actually commit to purchasing additional circuits for a period longer than one year.[250] Without such a provision, a customer could initially secure a low commitment level, then purchase a large number of additional circuits at the discounted rates, but keep each of them in service for only one year. The overage provision thus helps ensure that the average circuit duration is not too low, which also facilitates network planning.

These commitment level provisions are even more reasonable — and customer friendly — because Verizon measures them over six-month periods for the CDP.[251] Thus, a CDP customer can drop below its minimum commitment level or increase its purchases by 30% above that minimum commitment level, without facing shortfall or overage payments, so long as — on average, over the longer period — the customer satisfies the commitment that it made to Verizon. This averaging further confirms these features of the CDP (and to an even greater extent, NDP) are designed to ensure that the customer has made a commitment sufficient to warrant the discounts provided and are not the punitive measures some CLECs have claimed.

Overage penalties are not intended to recover costs, although they do help enforce the commitment customers make in order to receive the CDP's portability benefits, which do impose costs on Verizon. Those costs are described in responses to Table I, Variable Identifier 4(iv). For example, for term-discount plans with portability, Verizon loses the certainty that it will receive a steady stream of revenues for specific circuits, as well as the guarantee that it can spread non-recurring installation costs over a specific multi-year service life. And Verizon bears

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[250] *See Order* ¶ 82; *see, e.g.*, Verizon FCC Tariff No. 1, §§ 25.1.3(A)(9), 25.1.7(D).

[251] Verizon FCC Tariff No. 1, § 25.1.7(A)(2); Verizon FCC Tariff No. 11, § 25.1.7(A)(2) (CDP); Verizon FCC Tariff No. 1, § 25.3.7; Verizon FCC Tariff No. 11, § 25.2.7 (NDP).

the costs of connecting new circuits and disconnecting old ones when customers take advantage of portability. Portability confers a substantial non-rate benefit on customers. It enables customers to receive the benefits of large discounts without the requirement to commit any specific circuit, to any specific customer, to a term commitment longer than one year. To equilibrate the balance Verizon strikes with its customer, Verizon requires a commitment level, which the overage payment enforces.

Verizon is not aware of existing documents that would demonstrate the methodology and calculations used to determine the overage thresholds.

<u>Paragraph 84 of the Order. Table VII. Variable Identifier 7.</u>

The upper percentage threshold associated with the pricing plan. If there are multiple upper percentage thresholds in the relevant agreement, specify the upper percentage threshold relevant to this overage occurrence.

Commitment Discount Plan

The upper percentage threshold for CDP is 130% for DS1s, the only service type for which a customer has exceeded its commitment level.

<u>Paragraph 84 of the Order. Table VII. Variable Identifier 8(ii).</u>

Provide a narrative description of how Overage_Penalty was calculated for this overage occurrence, including a description of the inputs, how these inputs are denominated and the relevant units of measure, as well as the calculation used.

Commitment Discount Plan

During the six-month true-up, the six-month average of DS0-equivalents is compared to the maximum service level, which is 130% of the minimum commitment level, to determine if a customer has an overage. If the customer exceeds the maximum service level and chooses not to increase its minimum commitment level to 90% of the in-service quantity at that time, an overage payment applies.

To determine if there is an overage, the average number of DS0-equivalent Channel Terminations in service over the previous six months is calculated by summing the total number of DS0-equivalent Channel Terminations in service over the last six months and dividing the result by six. If the result is greater than the maximum service level, there is an overage.

The overage payment is calculated by first determining the average monthly rate per DS0-equivalent for a given service type. The average monthly rate is calculated using the total monthly charges associated with Channel Terminations and channel mileage and optional features discounted under CDP during the true-up period, which is first divided by six, and then divided by the average monthly DS0-equivalent count. The number of DS0-equivalents over the maximum service level is multiplied by the average rate per DS0-equivalent. The result is further divided by the discount factor, and multiplied by six months. Technology migration and sale of assets provisions are incorporated into the true-up process.

<u>Paragraph 84 of the Order. Table VII. Variable Identifier 9(iv).</u>

Where applicable, provide a narrative explanation of how Overage_Other was calculated, including a description of the type of all other TDM business data services included, how these are denominated, and the relevant units of measure.

Commitment Discount Plan

This is not applicable, because there were no overages associated with services in the all other TDM business data services category.

<u>Paragraph 84 of the Order. Table VII. Variable Identifier 10(iv).</u>

Where applicable, and if not already included in (9) (iv) above, provide a narrative explanation of how Overage_Rev_Other was calculated, including a description of the type of other TDM business data services included, how these are denominated, and the relevant units of measure.

Commitment Discount Plan

This is not applicable, because there were no overages associated with services in the all other TDM business data services category.

Paragraph 84 of the Order. Table VII. Variable Identifier 12(iv).

Where applicable, provide a narrative explanation of how Volume_Increase_Other was calculated, including a description of the type of other TDM business data services included, how these are denominated, and the relevant units of measure.

Commitment Discount Plan

This is not applicable, because there were no overages associated with services in the all other TDM business data services category.

Paragraph 84 of the Order. Table VII. Variable Identifier 13(iv).

Where applicable, and if not already included in (12) (iv) above, provide a narrative explanation of how Vol_Incr_Rev_Other was calculated, including the type of other TDM business data services included, how these were denominated, and the relevant units of measure.

Commitment Discount Plan

This is not applicable, because there were no overages associated with services in the all other TDM business data services category.

Paragraph 84 of the Order. Table VII. Variable Identifier 16.

In instances where an overage penalty was not actually paid, provide a narrative description of how it was ultimately resolved.

Commitment Discount Plan

When a customer exceeds the maximum service level, it has the option to increase its minimum commitment level to 90% of the current in-service quantity or maintain its current commitment level and pay and an overage charge.

Under the FCC 1 tariff, the customer under Agreement ID 22213P08 exceeded its maximum service level and chose to increase its commitment level. The customer under

Agreement ID 22169P10 chose not to increase its commitment level and was billed an overage charge that was resolved via a confidential settlement.

Under the FCC 11 tariff, the customers under Agreement IDs 22204P10 and 22184P04 both chose not to increase their commitment levels and were billed overage charges. For the customer under Agreement ID 22204P10, the overage was resolved via a confidential settlement. The overage charge for the customer under 22184P04 was billed, disputed, and subject to a lawsuit. Verizon has not received payment.

Paragraph 90 of the Order. Table VIII. Variable Identifier 3.

A citation to the section of the tariff pricing plan that describes the term discounts. In addition, provide full text (or text-searchable PDF) of this section of the tariff pricing plan.

CDP – FCC 1 & 11

FCC 1 – Section 25.1
FCC 11 – Section 25.1

NDP – FCC 1, FCC 11, FCC 14 & FCC 16

FCC 1 – Section 25.3
FCC 11 – Section 25.2
FCC 14 – Section 23.1
FCC 16 – Section 22.1

DS1 TVP – FCC 14

FCC 14 – Section 5.6.14

DS3 TVP – FCC 14

FCC 14 – Section 5.6.19

ETTVP – FCC 14

FCC 14 – Section 5.6.14

Paragraph 100 of the Order. Table IX. Variable Identifier 4(ii).

Narrative explanation of how termination fee was calculated, e.g., the number of circuit(s) that were terminated before the end date of the agreement, the number of months by which the termination date preceded the end date, and any additional factors used in calculating the termination fee.

Commitment Discount Plan

Under the FCC Tariff No. 1, the customer under Agreement ID 22225P10 terminated its agreement 36 months early. However, the customer had received 24 months of Renewal Option Period for DS3, DDS and VG. Therefore, the termination was considered only 12 months early. Because there is a 60-day period during which the customer can continue to receive CDP billing while deciding what it wants to do with its plan, the customer's early-termination liability charge was based on terminating 10 months early.

There are two ways to calculate Termination Liability (TL). Option 1 resulted in the lowest TL charge for the customer so that was used. With Option 1, the early-termination liability is 50% of the average monthly rate for the number of months remaining in the selected commitment period less any Time in Service Credit (TISC) or Renewal Option that may be applicable. For DS3, the average rate per DS0 of $2.819 was multiplied by 94,349, the minimum commitment, then by 50%, and then by the 10 months, resulting in early-termination liability of $1,329,849. For DDS, the average rate per DS0 of $139.10 was multiplied by 17, the minimum commitment, then by 50%, and then by 10 months, resulting in early-termination liability of $11,824. For VG, the average rate per DS0 of $32.42 was multiplied by 18, the minimum commitment, then by 50%, and then by 10 months, resulting in early-termination liability of $2,918. The total early-termination liability was $1,345,000.

Under the FCC Tariff No. 11, the customer under Agreement ID 22203P08 terminated its agreement 14 months before the end of its term. In this case, Option 2 produced the lowest TL for the customer. With this option, the early-termination liability charge is the difference over the previous 24 months between the discounted monthly rates resulting from the highest CDP commitment period that could have been satisfied prior to disconnection of service or cancellation of the CDP and the discounted monthly rates resulting from the CDP which was selected by the CDP customer. This customer subscribed to a seven-year plan and received a 40% discount. At the point it disconnected, it had satisfied a five-year plan. Between April 1, 2012, and May 31, 2014, the revenue billed was $8,075. The 40% discount was backed out and a 35% discount was applied. The revenue based on the 35% discount was $8,748. The difference between that revenue and what the customer paid was $673 which was the early-termination liability.

NDP – FCC 1, 11, 14, 16

Not applicable.

DS1 TVP

Not applicable.

DS3 TVP – FCC 14

Not applicable.

ETTVP – FCC 14

Not applicable.

Paragraph 100 of the Order. Table IX. Variable Identifier 6(iv).

Where applicable, provide a narrative explanation of how Not_Maintained_Other was calculated, including a description of the types of other TDM business data services involved, how each service is denominated, and the relevant units of measure. This question calls for a narrative response that must be submitted in the Word document per the instructions in the Introduction of this data template.

CDP – FCC 1

In FCC 1, Voice Grade and DDS services are also included in CDP. A separate commitment for each service based on 75% of in-service channel terminations at the time the customer subscribes is established. The commitment is expressed in DS0s.

Per the response above to Paragraph 100 4(ii), the customer under Agreement ID 22225P10 had TL for DDS and VG for FCC 1. The quantity populated for this contract for units not maintained is 17 per month for DDS and 18 per month for VG. These numbers are the minimum commitment for each service.

<u>Paragraph 100 of the Order. Table IX. Variable Identifier 7(iv).</u>

Where applicable, provide narrative explanation of how Rev_Not_Maintained_Other is defined, including the types of services, how each service is denominated, and the relevant units of measure. This question calls for a narrative response that must be submitted in the Word document per the instructions in the Introduction of this data template.

CDP – FCC 1

In FCC 1, Voice Grade and DDS services are also included in CDP. A separate commitment for each service based on 75% of in-service channel terminations at the time the customer subscribes is established. The commitment is expressed in DS0s.

Per the response above to Paragraph 100 4(ii), the customer under Agreement ID 22225P10 had TL for DDS and VG for FCC 1. The total TL for DDS and VG was $14,742. The TL was calculated using 50% of the remaining balance. Therefore, the revenue not maintained was the TL amount multiplied by 2 or $29,484.

<u>Paragraph 101 of the Order.</u>

In addition, the incumbent LECs subject to this investigation must submit in their direct cases for each tariff pricing plan under examination (1) a justification of the early termination fee and its amount, (2) a description of the methodology used to calculate the level of the early termination fee, (3) all relevant information and data used to calculate that fee, (4) to the extent early termination fees are intended to recover costs, the incumbent LECs must also produce all *relevant cost data related to the setting of the early termination fees, (5)an explanation of the extent to which payments by a customer for service for a period of time prior to early termination offset an incumbent LEC's cost to deploy the service, and (6) an identification of and explanation for any instances in which an early termination fee exceeds either the price or the cost of deploying the facilities used in providing the service.*

As the Commission recognized, term discounts provide "the certainty associated with longer-term relationships"[252] and "minimize the risk of stranded investment."[253] Unsurprisingly, longer term lengths are associated with larger discounts, as the increased term length provides greater certainty, reduces further the risk of stranded investment, and provides a longer period over which to spread any nonrecurring costs.[254]

Once a customer has chosen to sign up for the CDP, NDP, TVP, or ETTVP and has selected a term length, however, that customer is required to live up to its end of the bargain, no different from Verizon. The early-termination provisions in these plans are not punitive but instead discourage a customer from reneging on the deal it struck after obtaining the benefits of its bargain. The CDP, for example, contains two methods of calculating the amount a customer owes if it terminates the CDP early. Verizon will "apply the method that produces the *lesser* termination liability charge."[255] The first method is to calculate the average amount the customer was buying from Verizon on a monthly basis just before terminating its CDP, and to assess the customer only half of that amount for the months remaining in the CDP term.[256] The second method is to calculate the difference between the discounted rates the customer actually paid and the higher rates it would have paid had it signed up for a shorter term that matched the actual

[252] *Fourth Transport Rate Order* ¶ 13.

[253] *Local Competition Order* ¶ 687.

[254] *See, e.g.*, Verizon FCC Tariff No. 1, § 25.1.4(D) (CDP).

[255] *Id.* § 25.1.9(C) (emphasis added).

[256] *See id.* § 25.1.9(C)(1).

amount of time its CDP was in effect.[257] The first method will likely result in a lower payment for a customer that terminates early but near the end of its chosen CDP term, while the second method will likely result in a lower payment for a customer that terminates shortly after signing up for CDP.[258]

Either way, if a customer does end its plan before completing its agreed-upon term, the customer generally will be no worse off than it would have been had it subscribed initially to a plan with a shorter term commitment during which the customer actually received service. Customers who exit plans early generally retain a significant portion of the discounts they received while participating in the plan.

When Verizon developed its pricing plans, the Commission already had shifted the large incumbent local telephone companies from rate-of-return regulation to price-cap regulation. Unlike rate-of-return regulation, under price caps, "costs do not generally affect the prices LECs may charge."[259] As the Commission has explained, "price cap regulation severs the direct link between regulated costs and prices."[260] Therefore, there was no cost-justification requirement when Verizon introduced its pricing plans, and Verizon prepared no formal cost justifications for the early-termination charges in those plans. In any event, early-termination charges do allow Verizon to recover facility costs and up-front sunk costs involved in provisioning special access

[257] *See id.* § 25.1.9(C)(2).

[258] The early-termination provisions of the NDP and TVP operate similarly. *See, e.g.*, *id.* § 25.3.13 (NDP) (assessing decreasing fractions of remaining charges based on number of plan years remaining); Verizon FCC Tariff No. 14, §§ 5.6.14(O) (DS1 TVP), 5.6.19(K) (DS3 TVP) (assessing 15% charge for remaining months after first year).

[259] *AT&T*, 448 F.3d at 428.

[260] *AT&T Cost Assignment Forbearance Order* ¶ 8.

to a customer that Verizon reasonably anticipates it would otherwise recover over the course of the agreed-upon term.

Paragraph 105 of the Order.

We therefore direct the incumbent LECs under investigation to include in their respective direct cases the submission of all special access commercial agreements between them and competitive LECs that include tariffed special access services, the rates or terms of which impact, directly or indirectly, the rates paid for tariffed special access services. This includes agreements which contain discounts, credits, waivers, refunds, or other benefits for non-TDM services or other non-tariffed services that effectively impact the overall price paid for both tariffed special access services and other services offered in the agreement. In addition to the submission of these agreements, we also require incumbent LECs separately to identify as part of their direct cases all discounts, credits, waivers, refunds, or other benefits for purchasers included in each such commercial agreement submitted. For each discount, credit, waiver, refunds or other benefit, the incumbent LEC must also identify the basis for determining the amount of the benefit. Specifically, the incumbent LEC must identify all instances in which the amounts of any such benefits or credits approximate the amount a purchaser would otherwise have to pay in non-recurring charges or in circuit termination penalties under a tariff.

Verizon offers tariffed special access services in accordance with its tariffed terms and conditions. Although Verizon has entered into contract tariffs that affect charges for tariffed special access services, those are already filed pursuant to § 203. Verizon has thoroughly reviewed its commercial agreements and has not identified any unfiled agreements that affect charges for tariffed special access services.

Nevertheless, out of an abundance of caution, in response to this question, Verizon is providing eight commercial agreements between Verizon and CLECs that involve tariffed special access. For purposes of this response, Verizon interprets “special access commercial agreements” and “commercial agreements for special access services” to mean contracts for Ethernet or other non-TDM enterprise broadband services for which Verizon received forbearance from Title II common carriage regulation.

Verizon is providing these contracts because they include discounts or credits off the rates for Ethernet and other commercial services that depend in part on the amount of tariffed special access purchased or revenue associated with tariffed special access. These terms do not affect the price paid for tariffed special access services.

In Appendix A, Verizon identifies the discounts, credits, waivers, refunds, or other benefits in these commercial agreements that have a relationship to the customer's tariffed special access purchases. These terms were commercially negotiated.