



February 19, 2016

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

Re: *Technology Transitions*, GN Docket No. 13-5; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch:

In accordance with the Modified Protective Order, Second Protective Orders, and Data Collection Protective Order for the above-referenced proceedings, Windstream Services, LLC (“Windstream”) herein submits a redacted version of the attached reply comments in the above-referenced proceeding.

Windstream has designated for highly confidential and confidential treatment the marked portions of the attached documents pursuant to the Modified Protective Order,¹ Second Protective Order,² and Data Collection Protective Order³ in WC Docket No. 05-25 and RM-10593, and the Second Protective Order in GN Docket No. 13-5.⁴

Pursuant to the protective orders and additional instructions from Commission staff, Windstream is filing a redacted version of the document electronically via ECFS, one copy of the

¹ *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Modified Protective Order, DA 10-2075, 25 FCC Rcd. 15,168 (Wireline Comp. Bur. 2010).

² *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Second Protective Order, DA 10-2419, 25 FCC Rcd. 17,725 (Wireline Comp. Bur. 2010).

³ *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, DA 14-1424, 30 FCC Rcd. 11,657 (Wireline Comp. Bur. 2015).

⁴ *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket Nos. 13-5 and 12-353, Second Protective Order, DA 14-273, 29 FCC Rcd. 2022 (Wireline Comp. Bur. 2014).

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Highly Confidential version with the Secretary, and sending two copies of the Highly Confidential version to Christopher Koves, Pricing Policy Division, Wireline Competition Bureau.

Please contact me if you have any questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

John T. Nakahata
Counsel to Windstream

Attachment

cc: Christopher Koves

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

In the Matter of)	
)	
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	
Technology Transitions)	GN Docket No. 13-5

REPLY COMMENTS OF WINDSTREAM SERVICES, LLC

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REPLY COMMENTS OF WINDSTREAM SERVICES, LLC

I. INTRODUCTION AND SUMMARY

As Windstream Services, LLC (“Windstream”) warned in its opening comments, no less than “[t]he future of a robust array of choices for complex communications solutions, and the competition that delivers those choices, is at stake in this Commission proceeding.”¹ Without Commission action, “[c]hoices for integrated, managed solutions will disappear as the large [incumbent local exchange carriers (“ILECs”)] squeeze other providers from the market.”² Comments not only from other local exchange competitors, but also from enterprise business users and a major wireless carrier confirm the critical need for Commission action to limit the market power that the largest ILECs in particular continue to have and exercise, and to stop their ongoing, unjustified price squeezes. Windstream does not take joining this call to action lightly. Its company interests are nearly evenly weighted between incumbent and competitive local exchange carrier operations, and it is the nation’s fifth-largest ILEC.

ILEC market power stems from the fact that ILECs remain the sole provider of dedicated last-mile transmission facilities into a substantial majority of business locations in their service areas, and one of only two such providers to nearly all of the rest.³ The Commission has long recognized that businesses do not move to make telecommunications choices: The choices they have are the ones that are available at their location, or that quickly can be made available at

¹ Comments of Windstream Services, LLC at 2, WC Docket No. 05-25, RM-10593, GN Docket No. 13-5 (filed Jan. 27, 2016) (“Windstream Dedicated Services Comments”).

² *Id.*

³ *See id.* at 9; Declaration of Dr. Jonathan B. Baker ¶ 44, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“Baker Declaration”).

their location.⁴ So when an ILEC is the only provider of dedicated services facilities to a business location, it is overwhelmingly likely to remain the only provider of dedicated services facilities to that location. The comments from parties other than the large ILECs confirm this reality, and that best efforts broadband is not an adequate substitute for dedicated services customers.

The large ILECs, especially AT&T, Verizon and CenturyLink, however, offer the Commission a market view unmoored from reality. They ask the Commission to ignore all well-recognized principles of competition analysis, and to disregard the evidence of dedicated services customer needs and the substantial barriers to extending fiber into buildings. Their arguments are not even supported by their own behavior: They offer, and price separately, distinct best efforts and dedicated services products, with a premium price for dedicated services offerings. And, outside of their ILEC service territories, the largest ILECs use their own fiber to reach all the way to *****BEGIN HIGHLY CONFIDENTIAL***** 
 *****END HIGHLY CONFIDENTIAL***** of the buildings with special access demand in the census blocks in which they have customers.⁵

⁴ See, e.g., *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-183, 20 FCC Rcd. 18,290, 18,324 ¶ 62 (2005) (“[T]he Commission has recognized that, because a customer is unlikely to physically move its location in response to a small, but significant and nontransitory increase in the price of a communications service, each customer location constitutes a separate relevant geographic market.”); *Promotion of Competitive Networks et al.*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, 15 FCC Rcd. 22,983, 22,998 ¶ 31 (2000) (“Although a tenant has the apparent option to express dissatisfaction with the building owner’s choice of local telecommunications service provider by moving to a new building, this choice, as a practical matter, is often not available.”).

⁵ The percentage represents the ILECs’ CLEC affiliates’ share of locations served in census blocks included in the fiber network map in responses to Question II.A.5 plus Locations served based on responses to Question II.A.4. The II.A.4 locations include only those

The comments also confirm Windstream’s concerns that large ILECs are executing exclusionary price squeezes in violation of the Communications Act by failing to offer wholesale prices with required discounts below retail prices, and in some cases even setting wholesale prices above retail prices. These price squeezes are a clear and present danger to competition, not just in providing complex communications solutions that ride over dedicated services connections, but also to competition in deploying additional fiber to business locations to move beyond a monopoly or duopoly environment. In addition to other actions that the Commission can and should take to reestablish limits to control ILEC market power with respect to dedicated services, it must ensure that ILECs are offering wholesale rates, particularly for Ethernet, that reflect their substantial avoided retail costs, including the benefits and cost savings—which they touted in their Tariff Investigation direct cases—of significant volume and term commitments.

As Chairman Wheeler recently reminded us, “[the Telecom Act] established ground rules whereby new entrants could challenge incumbents. We must continue these policies for, after all, the underlying concept of the American economy is competition, competition, competition.”⁶ Through this proceeding, the Commission can and should do just that.

II. LARGE ILECS IGNORE CONSUMER PREFERENCES AND THEIR OWN MARKET BEHAVIOR IN AN ATTEMPT TO HIDE THEIR MARKET POWER.

As the opening comments showed, dedicated services markets, by every measure, are extraordinarily concentrated in the hands of the large ILECs. The data confirm the CLECs’ experience that, despite heavy investments into substantial fiber networks, actual business

locations that could be mapped to a census block where a CLEC owned a connection or IRU. The number of locations excludes those in an ILEC footprint for ILECs with CLEC affiliates.

⁶ Remarks of FCC Chairman Tom Wheeler, 20th Anniversary of the Telecommunications Act, Library of Congress (Feb. 11, 2016).

customer locations are largely still out of reach absent any ILEC last-mile input.⁷ The large ILECs' own actions demonstrate both that best efforts services are not an adequate substitute for the full range of dedicated services, and that entry to additional buildings is not generally easy or rapid even when a competitor has fiber somewhere in or near that same census block.

A. The Record Shows that Dedicated Services Customers Do Not View Best Efforts as a Substitute that Constrains Dedicated Services Prices.

Users and providers of dedicated services alike have poured evidence into the record demonstrating that dedicated services and best efforts services are fundamentally different sets of offerings with different functionalities designed to meet different needs and offered at different price points.⁸ Yet the large ILECs try to camouflage their dominance in one set of markets by

⁷ See Comments of Birch, BT Americas, EarthLink, and Level 3 at 23-24, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“Joint CLEC Comments”) (“Given that incumbent ILECs own the only connection to the vast majority of commercial buildings around the country, Level 3 usually has no choice but to lease dedicated services from the incumbent ILEC in order to reach locations that Level 3 cannot reach with its own network.”); Declaration of Gary Black, Jr. on Behalf of Level Communications, LLC ¶ 6, attached as Appendix B to Joint CLEC Comments (“Black Buy-Side Declaration”); Comments of TDS Metrocom, LLC at 21, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“TDS Comments”) (“Because of higher costs of deploying its own fiber, TDS CLEC serves only **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of its business customers over its own fiber.”); Declaration of James Butman on Behalf of TDS Telecommunications Corporation ¶ 17, attached to Letter from Thomas Jones, Counsel for TDS Telecommunications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, GN Docket No. 13-5, 12-353 (filed Mar. 26, 2015) (“Butman Declaration”); Windstream Dedicated Services Comments at 36 (“Windstream has invested billions to operate a fiber network now covering approximately 121,000 miles, but even so, the vast majority of business locations are a significant distance away from Windstream’s fiber such that the cost of self-provisioning the last-mile connectivity as a CLEC is prohibitively expensive.”); Declaration of Dan Deem, Douglas Derstine, Mike Kozlowski, Arthur Nichols, Joe Scattareggia, and Drew Smith ¶¶ 44, 52, attached as Attachment A to Windstream Dedicated Services Comments (“Windstream Declaration”).

⁸ See Comments of the National Rural Electric Cooperation Association, at 5 n.7, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (filed Oct. 26, 2015) (“NRECA Comments”); Comments of The Ad Hoc Telecommunications Users Committee, at ii, 11, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013) (“Ad Hoc Feb. 11, 2013 Comments”). See also Windstream Dedicated Services Comments at 10-30; Windstream

directing the Commission’s attention to different markets, and insisting that best efforts services are adequate substitutes for dedicated services.⁹ The Ad Hoc Telecommunications Users Committee rightly labeled this “novel notion” as just “bizarre,” and one that “[a] passing familiarity with the nature and history of special access services is sufficient to de-bunk.”¹⁰

As commenters explained through sworn declarations, as well as comments, dedicated services have higher levels of performance than best efforts services on key metrics like availability, latency, and jitter, because their users require sophisticated and integrated communications solutions that rely on superior reliability and the ability to prioritize different types of user-specified traffic.¹¹ Purchasers of dedicated services “buy them in order to obtain fixed capacity transmission links that are dedicated to their exclusive use, guaranteeing that the

Declaration ¶¶ 11-24, 37-42; Joint CLEC Comments at 4-5; Comments of XO Communications, LLC on the Further Notice of Proposed Rulemaking at 18, WC Docket No. 05-25, RM-10593 (Jan. 27, 2016) (“XO Comments”); Declaration of James A. Anderson ¶ 33, attached to XO Comments (“Anderson Declaration”); Baker Declaration ¶¶ 31-34.

⁹ See Comments of AT&T Inc. at 13, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“AT&T Comments”) (“The inclusion of the Commission’s cable connection data from the National Broadband Plan mapping project is necessary because cable companies have been aggressively targeting small and mid-sized special access customers for years.”); Comments of CenturyLink at 9, WC Docket No. 05-25, RM-10593 (filed Jan. 28, 2016) (“CenturyLink Comments”) (“[C]ompetition in the provision of high-capacity services must necessarily account for the services offered by cable providers.”); Comments of Verizon at 38, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“Verizon Comments”) (“[T]he Commission must also take into account ‘best efforts’ business class broadband services that cable operators provide . . .”).

¹⁰ See Ad Hoc Feb. 11, 2013 Comments at 11, ii.

¹¹ See Windstream Declaration 17-20; Declaration of Paul Schieber ¶¶ 8-16, attached as Attachment A to Comments of Sprint Nextel Corporation, WC Docket No. 05-25, RM-10593 (filed Feb. 11, 2013) (“Schieber Declaration”) (discussing relevant differences between special access and best efforts services as experienced by Sprint); Baker Declaration ¶¶ 20, 31. See also Windstream Dedicated Services Comments at 11-17; XO Comments at 26; Joint CLEC Comments at 17.

minimum bandwidth they purchase will always be available when they want to use it.”¹² As the National Rural Electric Cooperation Association explained, dedicated services also “provide[] ‘any-to-any’ connectivity among the enterprise’s defined locations . . . that does not traverse the public Internet.”¹³ Utilities customers stress that for their data transmission needs, “[i]t is not a question of capacity,” but rather the “extensive service level agreements measuring service metrics such as availability, jitter and latency [that] are provided” as part of dedicated services.¹⁴

Best efforts services lack these essential performance characteristics. Sprint stated that it does not purchase best efforts services because “[a]mong other concerns, best efforts services do not provide the quality of service necessary to meet business customer needs, such as the need for access to real-time voice or video.”¹⁵ As Level 3 explained, best efforts services, even when they are offered with service level agreements, “have technological limitations that prevent them from meeting the needs of customers that demand services beyond basic voice and Internet

¹² Ad Hoc Feb. 11, 2013 Comments at 11. *See also* Windstream Declaration ¶ 18; Black Buy-Side Declaration ¶ 16 (“Level 3’s retail business customers generally demand services that offer dedicated bandwidth, symmetrical speeds, robust service level agreements, and a high level of security.”); Schieber Declaration ¶ 8 (describing the performance requirements for Sprint’s macrocell backhaul providers).

¹³ NRECA Comments at 5 n.7.

¹⁴ *Id.* *See also* Comments of Utilities Telecom Council at 4, GN Docket No. 13-5, RM-11358, WC Docket No. 05, 25, RM-10593 (filed Oct. 26, 2015) (stating that “utilities and [critical infrastructure industries] . . . require low latency for their mission critical applications that protect against faults that can threaten their operations and safety”). *See also* Windstream Declaration ¶ 18.

¹⁵ Comments of Sprint Corporation at 13, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“Sprint Comments”); Schieber Declaration ¶¶ 12-14 (identifying requirements not met by best efforts services). *See also* Windstream Declaration ¶ 69; Anderson Declaration ¶ 35 (“Cable companies have yet to offer dedicated services which could attract XO’s Large and most Mid-Market customers who do not find Best Efforts product acceptable.”); Black Buy-Side Declaration ¶ 16 (“Level 3 generally cannot rely on the cable companies’ standard best-efforts broadband Internet access in order to reach its customers.”); Second Declaration of Matthew J. Loch ¶ 5, attached to TDS Comments (“Loch Second Declaration”).

access.”¹⁶ Moreover, Level 3 observed that cable providers’ Ethernet-over-HFC services “are often subject to high levels of jitter and a relatively lower maximum transmission unit” and are less reliable than cable companies’ own Ethernet-over-fiber services and the dedicated services offered by incumbent and competitive LECs.¹⁷ For these reasons, Windstream does not use coaxial or HFC last-mile connectivity as inputs for its dedicated services.¹⁸ As the Ad Hoc Telecommunications Users Committee—comprised of enterprise purchasers of business broadband—puts it, “best efforts business broadband Internet access services are, well, best efforts – the antithesis of special access.”¹⁹

Best efforts services, of course, can be suitable options for many customers with less complex, and more standardized needs, including many small business customers. These customers do not require the higher performance of dedicated services, and stand to benefit from purchasing a different set of services that better suit their needs.²⁰ The large ILECs tout the

¹⁶ Joint CLEC Comments at 17; Declaration of Chris McReynolds on Behalf of Level 3 Communications, LLC ¶ 21, attached as Appendix A to Joint CLEC Comments. *See also* Windstream Declaration ¶ 39 (“McReynolds Declaration”); Schieber Declaration ¶ 12 (“In particular, due to technical limitations associated with the design of the cable HFC network, cable companies cannot guarantee that the best efforts services they provide will meet Sprint’s minimum reliability requirements, making them unsuitable for Sprint’s macro network.”).

¹⁷ Joint CLEC Comments at 17; McReynolds Declaration ¶ 22. *See also* Windstream Declaration ¶ 45; Schieber Declaration ¶ 14.

¹⁸ *See* Windstream Declaration ¶ 78. *See also* Schieber Declaration ¶ 12; Anderson Declaration ¶ 35. Thus, even if Verizon were correct in assuming that the relative ubiquity of cable in terms of small business passed means that there is excess capacity to be used as inputs, such inputs would still be unsuitable for dedicated services. *See* Verizon Comments at 38.

¹⁹ Ad Hoc Feb. 11, 2013 Comments at 12.

²⁰ *See* Windstream Declaration ¶¶ 37-41 (describing requirements of best efforts services customers based on Windstream’s experience); Anderson Declaration ¶ 33 (noting that customers with “reduced service quality and feature needs” switch to best efforts services).

growth of the best efforts markets as evidence of competition in the dedicated services markets.²¹ This assertion, however, ignores the differences between the two types of services from the perspective of end users, as documented in the comments and declarations.²² Industry analysts underline the difference between the markets by cautioning that cable's growth in best efforts services for businesses using adapted consumer products does not equate with or even necessarily lead to competitiveness in the dedicated services markets.²³ As discussed below, the ILECs themselves recognize this division and accordingly offer two distinct sets of services for two distinct sets of markets.²⁴ Competitive providers also recognize that these are distinct markets, and this recognition is reflected in their business practices. XO, for example, does not even offer best efforts services to its customers and *****BEGIN HIGHLY**

²¹ See Verizon Comments at 38.

²² See also Baker Reply Declaration ¶ 4. Moreover, the large ILECs' data on best efforts offerings is derived from a source—the National Broadband Map—the large ILECs have previously criticized as portraying an overly expansive view of competition. See Letter from David Cohen, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 10-208, 14-58, 07-135, CC Docket No. 01-92, at 16 (filed Sept. 18, 2014) (“Many census blocks that are ineligible for [Connect American Fund] Phase II funding because they are shown as ‘served’ on the National Broadband Map *in fact have one or very few locations that are served at the performance levels prescribed by the Commission.*” (emphasis added)); Opposition of CenturyLink at 8, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket No. 01-92, 96-45, WT Docket No. 10-208 (filed Feb. 9, 2012) (“CenturyLink Opposition”) (“There are times when households in one census block may be served only because they can be reached by the edge of a broadband service provider’s network in an adjacent census block. *But that does not mean that the broadband service provider is capable of serving -- or intends to serve, even with incremental support -- all of the households in that census block.*” (emphasis added)).

²³ See Windstream Dedicated Services Comments at 23.

²⁴ See *infra*, Section III.A. Verizon gives the example of Comcast’s Ethernet @Home service, which “provides home-based workers” with links to “their corporate network[s],” as a service that competes with dedicated services. Verizon Comments at 39-40. The example actually illustrates the difference between those two sets of markets: Best services broadband may be sufficient for the user “@home,” while dedicated services are what power the “corporate network[s].”

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CONFIDENTIAL *** when customers switch to a best efforts product.²⁵

B. Large ILECs’ Products and Services Themselves Differentiate Between Best Efforts and Dedicated Services, with Different Prices for Each Type of Service.

Despite their insistence that best efforts services are substitutes for dedicated services, the large ILECs’ marketing of their own dedicated services offerings tells a very different story. The large ILECs emphasize these features of their own dedicated services offerings.²⁶ Verizon states that its Dedicated E-Line service is provided over a “dedicated path with predictable latency provided upfront,” and is suitable for “real-time” applications.²⁷ AT&T highlights that its Ethernet services offer “low latency” and “data packet prioritization” among other features that make them appropriate for uses like telemedicine and streaming video broadcasting.²⁸ AT&T’s dedicated real time class of service offerings, for example, provides uptime and performance assurances of 99.99 percent and higher, and can include a 99.995 percent packet delivery rate, latency of under 5 ms, jitter of under 3 ms, and traffic prioritization into 6 different Quality of Service (“QoS”) tiers.²⁹ Verizon’s Ethernet Dedicated E-Line + service provides a service

²⁵ See XO Comments at 18; Anderson Declaration ¶ 33. See also Joint CLEC Comments at 16 (stating that Level 3 “generally does not monitor or respond to the cable companies’ rates, terms, and conditions for these [best efforts] services” (internal quotation marks omitted)); McReynolds Declaration ¶ 20.

²⁶ See Windstream Dedicated Services Comments at 13-18.

²⁷ Verizon, *Simple, Flexible Connections for Today’s Business* at 6 (2015), http://www.verizonenterprise.com/resources/brochures/br_simple-flexible-connections-for-todays-business_en_xg.pdf.

²⁸ See AT&T, AT&T Switched Ethernet Guidebook, Part 5—Special Access Services, Common, Section 4—AT&T Switched Ethernet Service at §§ 4.1(H)(2)(c), 4.2(A)(7) (effective July 3, 2012), <http://cpr.att.com/pdf/is/0005-0004.pdf>.

²⁹ See *id.* at § 4.2(B) (“The SLA service parameter for Network Availability is to be not less than 99.99 percent for all ports regardless of Class of Service.”).

availability standard of up to 99.999 percent, 99.995 percent service level for packet delivery, frame jitter under 5 milliseconds (ms), and traffic prioritization into 4 different QoS tiers.³⁰

Likewise, CenturyLink's Ethernet service provides up to a 99.995 percent network availability service level, with a maximum latency of 10 ms and maximum jitter of 1 ms.³¹

These statements regarding the large ILECs' dedicated Ethernet services contrast with the performance of their best efforts products. In particular, AT&T's U-verse best efforts service aimed at business customers provides only 99.9 percent network availability and packet delivery guarantees.³² CenturyLink's business broadband service likewise offers only a 99.9 percent network availability level.³³ Verizon's FiOS business broadband service does not offer any specific network or performance guarantees, though it does cite prior performance test results.³⁴ Moreover, none of these best efforts services appears to provide the ability for customers to specify varied QoS priority tiers for traffic.

The qualitative differences between the large ILECs' dedicated services and best efforts services, and between the needs of their respective users, are further reflected in their pricing of

³⁰ See Verizon, Verizon Ethernet Dedicated E-Line + at 5-6 (2014), http://www.verizonenterprise.com/external/service_guide/reg/cp_edeline_plus_ethernet_dedicated_eline.pdf. See also Current Analysis, "Verizon U.S. WAN Services," at 13 (May 8, 2015) (observing Verizon's offered service level for latency is determined based on the customer's specific route).

³¹ See *Wholesale Ethernet Service*, CENTURYLINK, <http://www.centurylink.com/wholesale/EthernetServices/#tabSection> (last visited Feb. 13, 2016).

³² See *AT&T Broadband – Service Level Agreement*, AT&T, <http://www.att.com/gen/general?pid=6622> (last visited Feb. 17, 2016).

³³ See CenturyLink, CenturyLink High Speed Internet at 1 (2011), <http://www.centurylink.com/small-business/customer-support/user-guides/HSI-BE-8-8-11.pdf>.

³⁴ See *FiOS and DSL Performance*, VERIZON, <http://www.verizon.com/about/terms-conditions/fios-and-dsl-performance> (last visited Feb. 17, 2016).

both sets of products. In its opening comments, Windstream highlighted the gulf between the per-Mbps retail prices for typical best efforts offerings and typical dedicated services offerings.³⁵

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Reinforcing the distinction between these two different sets of markets, the ILECs' response to lower per-Mbps prices offered by best efforts services providers has *not* been to lower the prices for their dedicated services.³⁷ Instead, they have introduced their own best efforts services in response, and a typical ILEC DS1 price is still significantly higher on a per-Mbps basis than best efforts services —\$126 per month for an AT&T symmetrical 1.544 Mbps DS1 connection compared to a U-verse 75 Mbps/8 Mbps download/upload service offered at \$130 a month.³⁸ Verizon, as another example, charges a monthly rate of between \$170 and

³⁵ See Windstream Dedicated Services Comments at 24-25.

³⁶ See Windstream Declaration ¶ 24.

³⁷ See, e.g., Windstream Dedicated Services Comments at 52-53 & n.171 (citing prices for AT&T's Switched Ethernet dedicated services).

³⁸ Compare AT&T Tariff FCC No. 1 § 7.5.9(I) (effective Jan. 16, 2014 & Sept. 14, 2012), <http://cpr.att.com/pdf/fcc-pub/1007.pdf>, with AT&T U-verse High Speed Internet-Business Edition, AT&T, <https://www.att.com/smallbusiness/content/shop/internet-phone-tv/internet.page> (last visited Feb. 17, 2016).

\$264, depending on the rate zone, for a DS1 private line service on a two-year term.³⁹ By comparison, Verizon's FiOS best efforts services, which are marketed to businesses, offer a symmetrical 150 Mbps service for \$185 per month, and a symmetrical 300 Mbps service for \$255 per month.⁴⁰ By introducing lower per-Mbps prices with best efforts services, the ILECs can segment their customers, providing a lower per-Mbps price to those customers for whom best efforts is sufficient, while charging a higher price to customers that require dedicated services.

C. The Record Shows that Even When Competitors Have Fiber in a Census Block, Substantial Entry Barriers and Costs Relative to Revenues Preclude Widespread Entry to Other Buildings.

The large ILECs project a mirage of last-mile competition in the dedicated services markets by using statistics about non-ILEC-owned fiber located in the vicinity of customers. The presence of *any* type of non-ILEC-owned fiber *anywhere* within a census block (or even a broader metropolitan area), the large ILECs assert, is enough to constrain prices for dedicated services because “additional carriers with the ability to deploy a connection (based on, for example, a large fiber ring or transport facilities that are near the building) also vigorously compete for the business of the building’s special access customers.”⁴¹ Instead of addressing the

³⁹ See Verizon Tel. Cos. Tariff FCC No. 1 § 7.5.16(A) (effective July 1, 2015), <http://www.verizon.com/tariffs/PDFViewer.aspx?doc=180318>.

⁴⁰ See *FiOS Internet: Packages*, VERIZON, <http://www.verizon.com/smallbusiness/products/business-FiOS-Internet/packages/> (last visited Feb. 17, 2016).

⁴¹ AT&T Comments at 7. See also CenturyLink Comments at 27 (“[A] competitor with facilities in a census block generally . . . can serve other locations within the census block”); Verizon Comments at 2 (arguing that “competition for high-capacity services is thriving” based on data about the percentage of census blocks through which non-ILEC owned fiber runs); *id.* at 21 (“Competitors deploy networks that are within reach of all or most of the concentrated demand within a given metropolitan area.”).

myriad of hurdles between the mere presence of fiber in a census block and actually providing competitive dedicated services at a particular customers' location, the large ILECs skip right to their punchline, reciting the percentage of census blocks that have some competitive fiber, and declaring that "competitive special access deployment today is essentially ubiquitous."⁴² However, a number of unrealistic assumptions underlie the ILECs' assertion that potential competitors' "sunk facilities" in the vicinity are enough to constrain prices.

Without their assumptions, the large ILECs' Potemkin village of competition crumbles. First, the large ILECs' argument inappropriately assumes that the fiber traversing the census block can be readily used as last-mile inputs for dedicated services.⁴³ As the large ILECs themselves acknowledge, much of this fiber was intended to serve as transport rather than to provide last-mile connectivity.⁴⁴ Adapting a segment of the transport network to run laterals to nearby customer locations takes time, if it is possible at all.

Second, the large ILECs' economists provide no basis for their claim that "a competitive provider that has already deployed a fiber transport network can typically construct a lateral from that network to serve new or existing customers in less than a year."⁴⁵ Dr. Baker's conclusions,

⁴² AT&T Comments at 12. *See also* CenturyLink Comments at 3 (stating that the data on fiber presence in census blocks "are decisive on their own").

⁴³ *See* AT&T Comments at 15; Competitive Analysis of the FCC's Special Access Data Collection: Mark Israel, Daniel Rubinfeld & Glenn Woroch at 6-7, WC Docket No. 05-25 (filed Jan. 27, 2016) ("Israel et al.").

⁴⁴ *See* AT&T Comments at 7.

⁴⁵ *See* Israel et al. at 14. In fact, even the large ILECs' own economists seem reluctant to embrace this opinion as their own. The economists, instead, only go so far as to say that having *multiple* CLECs with fiber nearby and making more than a limited investment each, are needed to assure competitive prices. *See id.* at 8 ("[W]hen *multiple* carriers make *abundant* investments in sunk network facilities, competitive outcomes can be assured." (emphasis added)). The ILEC economists' report also does not indicate how many nearby firms with their own fiber are needed to assure competitive pricing or how much each firm has to invest. *See* Baker Reply Declaration ¶ 5 & n.11.

in contrast, are supported by declarations documenting various barriers to entry as well as information collected pursuant to the Commission’s dedicated services data request (“Data Request”).⁴⁶ As Dr. Baker finds, “CLECs offer dedicated services in only *****BEGIN HIGHLY CONFIDENTIAL***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** of commercial buildings located in census blocks in which at least one CLEC reports that it serves dedicated services customers or reports that it has fiber facilities.”⁴⁷ This finding is a more realistic gauge of the degree of competition (or lack thereof) evidenced by the data than the percentages cited by the large ILECs, which, as Dr. Baker noted, overstate the competitive presence of CLECs based on erroneous assumptions.⁴⁸

As the record demonstrates, the cost of constructing a lateral within the necessary window of time to sign up a customer too often is prohibitively high as compared with the anticipated revenues. As Dr. Baker notes, “it would be impractical and uneconomic for a CLEC to connect every potential dedicated services customer in every building in a census block with a fiber ring passing through that census block.”⁴⁹ He further explains, “a CLEC that has built a fiber ring near a building has not made all the sunk expenditures required to serve that building with its facilities.”⁵⁰ The Commission is all too familiar with these barriers.⁵¹ Windstream and

⁴⁶ See Baker Reply Declaration ¶¶ 6-8; Baker Declaration ¶¶ 97-104.

⁴⁷ Baker Reply Declaration ¶ 6 (footnotes omitted).

⁴⁸ See *id.* n.15.

⁴⁹ Baker Reply Declaration ¶ 6.

⁵⁰ *Id.* ¶ 7.

⁵¹ See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, FCC 15-166, 2015 WL 9583811 ¶ 83 (noting the inherently “more favorable environment” incumbents have for building out last-mile facilities “due to existing relationships with property owners and prospective customers” (citation omitted)); *Petition of Qwest Corporation for Forbearance Pursuant to*

others have explained in detail the barriers facing competitive entrants who are considering deploying fiber to a building.⁵² Competitive providers also have to secure all of the infrastructure access rights that the ILEC has always had—rights of way; conduit and pole access; and entry into buildings, especially carrier hotels.⁵³ As XO noted, refusal by buildings owners—who are in most cases not legally compelled to provide access—can be “absolute obstacle[s]” to competitive deployment.⁵⁴ All of these obstacles add up to sizable cost differences for a CLEC to deploy to the last-mile as compared to an ILEC. TDS compared the costs of deploying fiber to customers incurred by their ILEC business and by the CLEC business, and that comparison shows that even where the CLEC has a much shorter build distance and no material cost variation based on differing locations, the build cost for TDS CLEC was

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47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd. 8622, 8666-67 ¶ 84 (2010) (“*Qwest Phoenix Forbearance Order*”) (“[T]he Commission, in the *Triennial Review Order*, found that competitive carriers face extensive economic barriers to the construction of last-mile facilities. . . . We see nothing in the record to indicate that, in the years since the passage of the 1996 Act, these barriers have been lowered for competitive LECs that do not already have an extensive local network used to provide other services today.”), *aff’d*, *Qwest Corp. v. FCC*, No. 10-9543 (10th Cir. 2012). *See also Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533, 2616 ¶ 150 (2005).

⁵² *See* Joint CLEC Comments at 31-40; Sprint Comments at 35-38; TDS Comments at 18-21; Butman Declaration ¶¶ 10-16; Windstream Dedicated Services Comments at 35-42; Windstream Declaration ¶¶ 50-52; XO Comments at 36-38; Draft Declaration of George Kuzmanovski ¶¶ 29-32, attached to XO Comments (“Kuzmanovski Declaration”); Baker Declaration ¶ 36.

⁵³ *See* TDS Comments at 19-20; Butman Declaration ¶ 11-13. *See also* Joint CLEC Comments at 34-35 (citing Data Request responses by other competitive providers describing the barriers to extending last-mile facilities).

⁵⁴ XO Comments at 13 (“Building owners often are not interested in having providers in addition to the ILEC to construct to one of their buildings. This is a potentially absolute obstacle for XO because building owners have no regulatory obligation (other than in Texas) to permit access to their properties.”). *See* Kuzmanovski Declaration ¶ 32.

██████████ *****END HIGHLY CONFIDENTIAL***** than that of TDS ILEC.⁵⁵ As Dr. Baker further explains, “After accounting for these and other costs, a recent study found that CLECs would not be able to obtain the revenue required to justify entry in most locations.”⁵⁶

Third, even assuming the large ILECs’ unfounded claim that a one-year timeframe is achievable for competitive deployment of last-mile facilities to a particular location, that build out timeframe alone may be an insurmountable barrier for signing up a new customer—which may allow the ILEC to capture the retail business with an agreement that locks up that customer for several years. Given the amount of investment needed to provide dedicated services to a new customer, competitive providers generally do not build network extensions with only speculative hopes of finding a customer. XO, for example, states that “CLECs need to sign up a sufficient number of customers in advance to justify a lateral construction, and they must complete installation and begin providing service in a timely manner or the customer(s) may be lost.”⁵⁷ If the competitive provider misses the window of opportunity, those same potential customers usually will turn to the incumbent, whose facilities are already in the buildings.⁵⁸

Fourth, even if a provider with nearby transport fiber would extend a lateral to reach an individual customer location in time and on economically feasible terms, the competitive provider still may not be a viable competitor for a customer seeking to attain its communications

⁵⁵ TDS Comments at 20. *See* Butman Declaration ¶ 12.

⁵⁶ Baker Reply Declaration ¶ 7 (citing CostQuest, Analysis of Fiber Deployment Economics for Efficient Provision of Competitive Service to Business Locations, Attachment A to Letter from Jennie Chandra, Windstream Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, WC Docket Nos. 05-25, 15-1, RM-10593 (filed June 8, 2015)).

⁵⁷ XO Comments at 5; Kuzmanovski Declaration ¶¶ 10-11 (describing potential revenue considerations in lateral construction decisions).

⁵⁸ *See* Windstream Dedicated Services Comments at 37; Windstream Declaration ¶ 51. *See also* Joint CLEC Comments at 32.

solution for multiple customer locations. Because of the multilocation needs of dedicated services customers, prospective competitors often must be able to enter the market across many geographic areas,⁵⁹ which makes it even less likely that companies without widespread last-mile facilities providing these types of services could gain enough traction to enter or remain in the market. As Dr. Baker notes, particularly with respect to multilocation customers, CLECs (including cable providers) frequently cannot reach every one of that customer's locations using their own last-mile fiber.⁶⁰ Cable providers also often are not able to offer the individualized sales and support commonly required for these kinds of services even if they have their own facilities at a customer's locations;⁶¹ industry analysts have repeatedly noted technological and other limitations that have thus far limited cable to small and mid-sized businesses.⁶² This commonly leaves the CLEC subject to an ILEC's wholesale prices for leased facilities, which the ILEC can use to drive up the CLEC's overall costs of serving the entire set of locations.⁶³

⁵⁹ See Sprint Comments at 36-37.

⁶⁰ Baker Declaration ¶¶ 14 (including cable providers in his description of CLECs), 15-16.

⁶¹ See Joint CLEC Comments at 28 (“[I]n contrast to incumbent LECs, cable companies lack legacy relationships with enterprise customers and the expertise in serving them.”).

⁶² See Current Analysis, “Spectrum Business – Business Services US,” at 2 (Nov. 23, 2015) (“Spectrum Business’ largest segment by far is small businesses. . . . [and] Spectrum Business does not have internal sales and support resources to go to market with sophisticated, tailored enterprise services.”); Current Analysis, “Comcast Business – Business Services US,” at 2 (Nov. 13, 2015) (“Despite mid-market initiatives, Comcast’s high bandwidth/low price broadband value proposition for smaller businesses dominates revenue growth.”); Current Analysis, “Time Warner Cable Business Class – Business Services US,” at 2 (Oct. 16, 2015) (noting that Time Warner’s business revenue “remains dominated by small businesses seeking basic, competitively priced bundles of broadband, voice and video”). See also Sanford C. Bernstein & Co., LLC, U.S. Telecom: A Primer in the \$70B Enterprise Telecom Market (Cable’s Opportunity = Telcos’ Loss?) at 6 (July 16, 2015) (projecting that that cable’s growth will be in the “[l]ow- and [m]edium-complexity segments using only-slightly-adapted consumer products”).

⁶³ Baker Reply Declaration ¶¶ 8, 14-16 (describing potential for exclusionary price squeezes)

Given all these considerations, it is not surprising that AT&T, Verizon, and CenturyLink, notably, focus their last-mile fiber deployments in their own ILEC service areas.⁶⁴ The Data Request shows that in their CLEC operations *outside* of their respective ILEC footprints, AT&T, Verizon, and CenturyLink each provide service using their own last-mile facilities into the end user's business location to fewer than *****BEGIN HIGHLY CONFIDENTIAL***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** of buildings within a census block in which they have customers.⁶⁵ In other words, the large ILECs are also not building out to a significant majority (or even minority) of business locations in non-ILEC areas.

And even within their legacy ILEC footprints, the large ILECs have recognized the reality that their fiber deployment in one portion of a census block does not assure viability of deployment to other locations within the same block. For example, CenturyLink urged the Commission to make funds from the Connect America Fund Phase I available for unserved locations in a census block even though a customer in another part of the same census block may

⁶⁴ See *AT&T Fiber Reaches 1 Million New Business Customer Locations*, AT&T (Jan. 20, 2016), http://about.att.com/story/fiber_reaches_1_million_business_customer_locations.html (“AT&T offers business customers high-speed Internet products on its fiber network in every major metro in the company’s 21-state footprint.” (emphasis added)); *One Powerful Decade: FiOS Turns 10!*, VERIZON (Sept. 5, 2014), <http://www.verizon.com/about/news/onepowerful-decade-fios-turns-10> (noting that FiOS deployments are limited to Verizon’s ILEC footprint of “12 states and the District of Columbia”); Cindy Whelan, Current Analysis, “CenturyLink Launches Fiber Infrastructure, Portfolio to Get a Jump on Broadband Competitors,” at 2, (Aug. 11, 2014), <http://www.centurylink.com/business/asset/white-paper/current-analysis-fiber-infrastructure-report-wp141271.pdf> (last visited Feb. 17, 2016) (“CenturyLink’s deployment is limited to areas where the company has an incumbent local carrier footprint.”). See also Opposition of AT&T Services, Inc. at 23, WC Docket No. 15-1, GN Docket No. 13-5 (filed Feb. 5, 2015) (noting Project Velocity IP is focused on “its 21 state [ILEC] footprint”); Comments of CenturyLink at 11, WC Docket No. 15-1, GN Docket No. 13-5 (filed Feb. 5, 2015) (acknowledging that CenturyLink “must rely on other wholesale providers” for last-mile access outside of its ILEC footprint).

⁶⁵ See *supra* n. 5.

be addressed with last-mile fiber, because “that does not mean that the broadband service provider is capable of serving -- or intends to serve, even with incremental support -- all of the households in that census block.”⁶⁶

The Data Request also conveys the size of the chasm between having competitive fiber somewhere in a census block and actually providing competitive service. Far from being “ubiquitous,” last-mile facilities owned by competitive providers are in *****BEGIN HIGHLY CONFIDENTIAL***** [REDACTED] *****END HIGHLY CONFIDENTIAL***** of all business locations.⁶⁷ Overall, *****BEGIN HIGHLY CONFIDENTIAL***** [REDACTED]

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*****END HIGHLY CONFIDENTIAL*****⁶⁸ In only ***** BEGIN HIGHLY CONFIDENTIAL ***** [REDACTED] *****END HIGHLY CONFIDENTIAL*****⁶⁹ of all customer locations are there four or more facilities-based providers, which has been considered by the Commission and the antitrust authorities as the threshold number of providers sufficient for meaningful competition.⁷⁰ Dr. Baker’s regression analysis confirms that ***** BEGIN HIGHLY**

⁶⁶ CenturyLink Opposition at 8.

⁶⁷ See *id.* Table 1.

⁶⁸ See *id.*

⁶⁹ See *id.*

⁷⁰ See, e.g., *Applications of AT&T Inc. and Centennial Communications Corp.; For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, FCC 09-97, 24 FCC Rcd. 13,915, 13,948 ¶ 76 (2009) (“After performing a market-by-market analysis, we find, in the great majority of the 27 markets identified by the initial screen, no competitive concerns requiring remedy. For instance, in most of these markets, there would be *four or more competitors* present post-transaction with thoroughly built-out networks and the ability to offer competitive services.” (emphasis added)); Complaint at 18-19, *U.S. v. AT&T, Inc.*, No. 1:11-CV-01560 (D.D.C. filed Aug. 31, 2011) (“In the national market for mobile wireless telecommunications services provided to enterprise and government customers, the proposed transaction effectively would reduce the number of significant competitors *from four to three*. . . . The

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For purposes of its analysis, the Commission, therefore, should not treat the number of competitive providers who have fiber of any kind anywhere in the same census block as market participants. Consistent with the Commission's past approach,⁷² the relevant geographic market for analyzing competition for dedicated services is the customer's individual building.⁷³ The large ILECs' alternate scenario effectively expands the geographic market and produces misleading results that grossly overstate the degree of competition.⁷⁴

reduction in the number of bidders for enterprise and government contracts *to three . . . significantly increases the risk of anticompetitive effects.*") (emphasis added).

⁷¹ Baker Reply Declaration ¶ 10.

⁷² See Joint CLEC Comments at 19 (citing *Verizon Communications Inc. and MCL Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-184, 20 FCC Rcd. 18,433, 18,500 ¶ 128 (2005) ("Consistent with Commission precedent and the record before us, we conclude that the relevant geographic market for wholesale special access services is a particular customer's location, since it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a 'small but significant and nontransitory' increase in the price of special access service.")).

⁷³ See Sprint Comments at 18-19 (citing economists' conclusion that the relevant special access geographic market is at the building level); *id.* at 19 ("The GAO likewise found that 'the extent of competitive entry in a market [should be analyzed] at the level of individual buildings.'").

⁷⁴ This is particularly true with respect to Verizon's arguments, which as Dr. Baker notes, appear to be based on the even more misleading proposition that CLEC deployment of fiber anywhere in a metropolitan area—which is much broader than a census block—renders large swathes of that metropolitan area competitive. See Baker Reply Declaration ¶ 5 (discussing Verizon Comments at 2, 20-22, 25).

Finally, even if one were to accept the large ILECs' view that any competitor present within a census block is an actual immediate competitor, the ILEC is still the only provider in *** BEGIN HIGHLY CONFIDENTIAL *** [REDACTED] ***END HIGHLY CONFIDENTIAL** of census blocks in which special access services are supplied, and *** BEGIN HIGHLY CONFIDENTIAL *** [REDACTED] ***END HIGHLY CONFIDENTIAL*** of such census blocks have no more than two facilities-based providers that have any customers in that census block.⁷⁵ This level of competition falls short of what the Commission and other antitrust authorities have deemed to be sufficient.

D. Large ILECs Fail to Provide Any Evidence that a Duopoly Is Sufficient to Prevent Them from Exercising Market Power.

Well-recognized principles of competition analysis and the data in the record firmly establish the lack of facilities-based competition facing the overwhelming majority of customers of dedicated services. However, even if the Commission ignores all of that evidence and accepts at face value the most ambitious assertion made by the large ILECs—that the presence of competitive facilities anywhere in a census block means there is current competition—the number of competitors still is well below what is needed to produce competitive outcomes. The percentages of census blocks in which the large ILECs confidently conclude competition exists are based on the presence of as few as one other provider with its own fiber.⁷⁶ But the large ILECs have offered the Commission no reason to doubt that the suppliers in these (at best) duopoly conditions can still exercise market power to the detriment of dedicated services

⁷⁵ See Baker Declaration Table 1. See also Sprint Comments at 17-18 (same).

⁷⁶ See Israel et al. at 4 (“[E]ven if only a single competitor has deployed facilities to just one building in a far corner of a census block, that competitor generally would be able to extend those facilities to all or most other buildings . . . in that census block, and thus could compete for business at those other locations as well.”).

customers. Instead, they ask the Commission to assume that the presence of an additional provider is enough to offer meaningful competition.⁷⁷

The record in this proceeding demonstrates that this assumption is wrong, and that Commission action is needed to unlock actual competition. Both economic theory and the Data Request show that more than two competitors are necessary to produce actually competitive outcomes. The analysis performed by Drs. Besen and Mitchell and submitted by Sprint concluded that “several suppliers—‘likely [] four—and certainly more than two’—that actually compete with one another in a limited geographic area” are needed for competitive outcomes.⁷⁸ Drs. Besen and Mitchell cited “[a] substantial body of empirical evidence conclud[ing] that high firm concentration often leads to higher prices,”⁷⁹ before they then concluded, based on the Data Request, that “the market shares of the ILECs . . . generally far exceed the levels at which large firms are able to raise prices above competitive levels.”⁸⁰

Dr. Baker’s economic analysis also presented the generally accepted view in the literature that “[m]arkets with two providers . . . are also unlikely to perform competitively.”⁸¹ Dr. Baker explained that “in many cases, one of the two firms will provide no more than a limited constraint on the prices charged by the other,” because the competitive provider experiences “substantial impediments to expanding output, including high marginal costs of serving another

⁷⁷ See, e.g., AT&T Comments at 17 (“[E]ven if only a single competitor had deployed services to just one far corner of a census block with special access demand, it could still compete for customers in a large portion of the census block.”)

⁷⁸ Sprint Comments at 24 (quoting Declaration of Stanley M. Besen and Bridger M. Mitchell ¶ 47, Attachment to Sprint Comments (“Besen/Mitchell Declaration”)). See also TDS Comments at 17 (“[A] duopoly is not sufficient to constrain prices.”).

⁷⁹ Besen/Mitchell Declaration ¶ 43.

⁸⁰ *Id.* ¶ 47.

⁸¹ Baker Declaration ¶ 48.

customer in a building.”⁸² In the face of these costs, the competitive provider “would not have an incentive to compete aggressively with the ILEC on price.”⁸³ The impediments to output expansion even on the same block include “the building owner refus[ing] to grant the CLEC access or charg[ing] a high fee” and the difficulty of obtaining rights of way to a specific building.⁸⁴ Thus, even the presence of a second dedicated services provider on the same block does not necessarily mean that the second provider can discipline an ILEC price increase.

The Commission’s prior decisions also have recognized that multiple—at least three—competitors are needed in addition to the incumbent to produce competitive prices. In the *Qwest Phoenix Forbearance Order*, for example, the Commission noted that it had previously considered the presence of four total competitors in a market as evidence that a provider was not dominant.⁸⁵ The Commission has used the same rule of thumb when assessing the degree of

⁸² *Id.* ¶ 49.

⁸³ *Id.*

⁸⁴ *Id.* ¶ 79

⁸⁵ See *Qwest Phoenix Forbearance Order* at 8625 ¶ 7 (“Among the factors the Commission cited in support of its [non-dominance] finding were . . . AT&T faced at least three nationwide facilities-based providers and hundreds of smaller competitors . . .”).

competition in other contexts.⁸⁶ When fewer competitors are present, the Commission found that consumers may be subject to consistently high service prices.⁸⁷

The predictions of how these competition-limiting factors affect prices in the dedicated services markets is borne out in the Data Request. The regression analysis performed by Dr. Baker using the Data Request reveals the unsurprising conclusion that *****BEGIN HIGHLY CONFIDENTIAL***** [REDACTED]

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⁸⁶ See *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 14-28, 29 FCC Rcd. 4371, 4394 ¶ 54 (2014) (“[W]e continue to believe that it is appropriate to retain the eight-voices test, which helps to promote *at least four independent competitors* before common ownership is allowed.” (emphasis added)); *Applications of AT&T Inc. and Atlantic Tele- Network, Inc.*, Memorandum Opinion and Order, DA 13-1940, 28 FCC Rcd. 13,670, 13,693 ¶ 44 (Wireless Telecomms. Bur. & Int’l Bur. 2013) (“Post-transaction, we also note that AT&T and Verizon Wireless would be the only two service providers that would have both a significant market share and significant total coverage in terms of population and land area in the markets. . . . [W]e find that the proposed transaction would likely lessen competition in these five rural markets, and thus would likely harm the public interest.”); *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers et al.*, Report and Order, FCC 99-244, 15 FCC Rcd. 9219, 9255 ¶ 80 (1999) (“When the allocated spectrum is fully used, this aggregation limit allows for at least four mobile telephone service providers in each area.”).

⁸⁷ See *Qwest Phoenix Forbearance Order* at 8637-38 ¶ 31 (“The Commission also has noted that high and stable prices for wireless service existed during the period of duopoly, but that such prices dropped dramatically as new PCS competitors began to launch service.”).

⁸⁸ Baker Declaration ¶ 57 & Table 2.

A. Multiple Economists Reaffirm the 1996 Act's and the Commission's Findings that ILECs May Attempt to Crush Competition with a Wholesale-versus-Retail Price Squeeze.

Both the Telecommunications Act of 1996 and the Commission acknowledged and addressed the potential for price squeezes that could exclude competition. The 1996 Act requires ILECs to make all telecommunications services available for resale at retail rates, less avoided costs,⁹⁰ and it places an affirmative duty on local exchange carriers—whether ILECs or CLECs—to avoid imposing unreasonable or discriminatory conditions or limitations on resale of their telecommunications services.⁹¹ The Commission itself has recognized that a firm with market power in the wholesale market for necessary inputs has “the incentive and ability” to “raise rivals’ costs,”⁹² and that “incumbent carriers could strategically manipulate the price of their direct competitors’ wholesale inputs to prevent competition in the downstream retail market.”⁹³

These large ILEC tactics have a pernicious effect with respect to competition for both single location and multilocation business customers, and to CLECs’ ability to accrete a sufficient customer base in a building prior to deciding to build out additional fiber facilities. As Dr. Baker describes, when a CLEC cannot serve all of that customer’s locations from its own

⁹⁰ See 47 U.S.C. § 251(c)(4), 252(d)(3).

⁹¹ See 47 U.S.C. § 251(b)(1).

⁹² See *Qwest Phoenix Forbearance Order* at 8639 ¶ 34. See also *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, Second Report and Order, FCC 97-142, 12 FCC Rcd. 15,756, 15,803 ¶ 83 (1997) (“[A] carrier may be able to raise prices by increasing its rivals’ costs or by restricting its rivals’ output through the carrier’s control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services.”).

⁹³ *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290, 20 FCC Rcd. 2533, 2570 ¶ 63 (2005).

facilities, it will often be reliant on the ILEC's facilities. In that situation, when the vertically integrated ILEC sells its key last-mile input to downstream rivals, "it can exclude those rivals and harm retail competition by setting a high wholesale price relative to its retail price (*i.e.*, by creating a 'price squeeze')." ⁹⁴ Moreover, "[i]n dedicated services markets, an ILEC that benefits from foreclosing retail competition may recognize that benefit when setting the wholesale price where it has pricing flexibility or sells dedicated services not subject to ex ante price regulation." ⁹⁵

Similarly, as Dr. Steven Salop has pointed out, "a refusal to deal or price squeeze might be used by a vertically integrated monopolist to maintain its (upstream) input market monopoly by raising barriers to entry to (downstream) output market competitors that might use that toehold in order to enter the input market." ⁹⁶ With special access, a CLEC like Windstream may not initially build to a customer location, particularly for a customer with only a smaller amount of demand at that location; instead, it can add some customers through resale while it evaluates whether there are other potential customers at the location that would justify a build. The ILECs' price squeezes short-circuit this dynamic.

Finally, it is important to note that neither *LinkLine* nor *Trinko* preclude the Commission from taking action to enforce the Communications Act. ⁹⁷ Both those cases addressed situations in which there was no duty to deal under the antitrust laws, without addressing any such duty

⁹⁴ Baker Reply Declaration ¶ 15.

⁹⁵ Baker Reply Declaration ¶ 16.

⁹⁶ Steven C. Salop, *Refusals to Deal and Price Squeezes by an Unregulated, Vertically Integrated Monopolist*, 76 *Antitrust L.J.* 709, 711 n.7 (2010). *See also* Baker Reply Declaration ¶ 16.

⁹⁷ *See Pac. Bell Tel. Co. v. LinkLine Commc 'ns*, 555 U.S. 438 (2009); *Verizon Commc 'ns Inc. v. Law Office of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

under the communications laws. And as Justice Breyer noted in his concurrence in *LinkLine*, the party complaining of the price squeeze, “could have gone to the regulators and asked for petitioners’ wholesale prices to be lowered in light of the alleged price squeeze.”⁹⁸ That is exactly what Windstream is doing here.

B. The Comments Confirm that Large ILECs Are Charging More for Ethernet Capacity When Offered on a Wholesale Basis

The comments show that large ILECs are using their control of wholesale packet-based dedicated services inputs to tighten their vice grip in the downstream retail markets, particularly for lower bandwidth services.⁹⁹ Windstream has detailed the various ways in which large ILECs are raising their rivals’ costs to such levels that they are unable to compete effectively for retail customers.¹⁰⁰ The large ILECs complete this price squeeze by offering their own retail services that use those inputs at rates that put unsustainable pressure on competitors’ margins or, even worse, at rates that are lower than wholesale prices.¹⁰¹ Even when a competitive provider is able to obtain a small wholesale discount by making extraordinary commitments compared to the

⁹⁸ *LinkLine*, 555 U.S. at 459 (Breyer, J., concurring).

⁹⁹ See TDS Comments at 23-29; Loch Second Declaration ¶¶ 19-20; Windstream Dedicated Services Comments at 49-56; Windstream Declaration ¶¶ 86-96; XO Comments at 40-43; Anderson Declaration ¶¶ 20-23.

¹⁰⁰ See Windstream Dedicated Services Comments at 49-56; Windstream Declaration ¶¶ 86-105.

¹⁰¹ See Windstream Dedicated Services Comments at 50-51. *****BEGIN HIGHLY**

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retail user,¹⁰² those terms can be unilaterally revoked by the ILEC.¹⁰³ Moreover, ILECs are charging far more for comparable wholesale inputs when they transmit traffic in an IP, rather than TDM, format, especially at lower speed tiers, even though there is no cost-based justification for the higher prices.¹⁰⁴ The end result is that as the IP transition progresses, the ILECs are using the customer-by-customer pricing flexibility they have claimed for Ethernet services to stave off competition.¹⁰⁵

The experiences of other CLECs reflect Windstream’s own. In particular, XO explained in its comments that AT&T’s wholesale Ethernet prices are so high that where XO must rely on AT&T for Ethernet inputs, XO’s own retail prices are pushed to be approximately *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** higher on average than AT&T’s retail prices.¹⁰⁶ Importantly, this percentage *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL*****

¹⁰² *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** Windstream Dedicated Services Comments at 50; Windstream Declaration ¶ 94.

¹⁰³ See Windstream Dedicated Services Comments at 51-52.

¹⁰⁴ See Windstream Dedicated Services Comments at 52-53. See also Ad Hoc Comments at 14-15 (emphasizing the importance of lower bandwidth Ethernet services to its members).

¹⁰⁵ See Windstream Dedicated Services Comments at 54-56 (*****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL*****).

¹⁰⁶ See XO Comments at 43. See also Joint CLEC Comments at 5 (“[I]ncumbent LECs have powerful incentives to set wholesale prices high so as to place competitors in a price squeeze.”).

END HIGHLY CONFIDENTIAL¹⁰⁷

Likewise, TDS described the impact of wholesale Ethernet input prices that are higher than retail prices on its ability to compete for customers: “Ethernet purchased from the RBOCs at unregulated rates does not offer a cost-effective solution to meet the needs of the vast majority of SMBs.”¹⁰⁸ Indeed, TDS stated in the declaration supporting its comments that, based on a comparison of the “RBOC wholesale rates currently offered to TDS CLEC and the RBOC retail rates” quoted to TDS’s existing and prospective customers and reviewed by the declarant, “the wholesale rates available to TDS CLEC are typically higher.”¹⁰⁹

C. Multiple Commenters Recognize the Need for Commission Action to Stop Large ILECs’ Noncompliance with the 1996 Act.

Multiple commenters agree that the Commission should enforce the Telecommunications Act of 1996’s competition-promoting mandate that ILECs must offer telecommunications services at wholesale rates that are not only below retail rates, but also pass on to carrier customers the savings incurred (i.e., costs avoided) from selling at wholesale rather than retail. As the Joint CLECs and Windstream noted, Sections 251(c)(4) and 252(d)(3) of the Communications Act require ILECs to make available packet-switched dedicated services, when offered “at retail,” to wholesale purchasers at rates that are no higher than the retail price minus “the portion thereof attributable to any marketing, billing, collection, and other costs that will be

¹⁰⁷ See Anderson Declaration ¶ 22.

¹⁰⁸ TDS Comments at 28. See also Windstream Dedicated Services Comments at 55-56 (describing the consequences of the same margin pressure on Windstream’s SMB business).

¹⁰⁹ Loch Second Declaration ¶ 19.

avoided” by the ILEC.¹¹⁰ Enforcing the Communications Act’s discount requirement passes through the cost savings, generated by the efficiencies of selling telecommunications services on a wholesale basis, to the benefit of the larger communications ecosystem; but if it is not enforced, ILECs can thwart competition by raising their rivals’ costs.¹¹¹ To fully account for the efficiencies created by wholesale arrangements, the Commission’s rules that detail cost categories as the basis for avoided cost discounts should not be viewed as exhaustive.¹¹² As Windstream urged in its comments, the Commission should also take into account the benefits ILECs attain from longer term and/or volumes of wholesale arrangements.¹¹³ XO similarly urges the Commission to ensure that wholesale special access discounts relative to retail rates should not be less for packet-based dedicated services than for what has been traditionally provided for TDM special access.¹¹⁴

As observed by several commenters, current ILEC Ethernet wholesale prices are so high that CLECs are unable to compete unless they own or economically can build their own last-mile facilities, which the record shows is impossible at most locations.¹¹⁵ The examples cited by XO

¹¹⁰ Windstream Dedicated Services Comments at 69-71 (quoting 47 U.S.C. sec. 252(d)(3)); Joint CLEC Comments at 67. *See also* TDS Comments at 26 (“The higher wholesale prices demanded by the RBOCs that TDS CLEC competes with are unjust and unreasonable, in violation of § 201(b), and unreasonably discriminatory, in violation of § 202(a).”).

¹¹¹ *See supra* nn. 92-93.

¹¹² Windstream Dedicated Services Comments at 74 (citing 47 C.F.R. § 51.609).

¹¹³ Windstream Dedicated Services Comments at 73.

¹¹⁴ XO Comments at 57. *See also* Windstream Dedicated Services Comments at 74-75 (“As a means of evaluating the degree to which added term and volume reduces ILEC costs, the Commission could, for example, consider the pattern of discounts that ILECs have offered for TDM special access services—whereby carrier customers that make longer term and volume commitments on a wholesale basis have received additional discounts on last-mile inputs used for provisioning retail offerings at shorter durations.”)

¹¹⁵ *See* TDS Comments at 28; Declaration of Matthew J. Loch on Behalf of TDS Telecommunications Corporation ¶¶ 5, 8, attached to Letter from Thomas Jones, Counsel for

and TDS, as noted above, exemplify how, if the large ILECs continue to use their control of last-mile inputs to raise their rivals' costs, either the retail prices from both ILECs and CLECs will be at a supracompetitive level, or CLECs will have to exit the markets for those services entirely, which in turn allows the large ILECs to raise prices on their own retail customers.¹¹⁶ This is contrary to the Commission's objectives of "ensuring that as technology transitions proceed, end users do not lose service and continue to have choices for communications," and "preserv[ing] competitive carriers'] contributions to the market, which can include lower prices, higher output, and increased innovation and quality."¹¹⁷

But if the ILECs are required to release their single-handed grip on the efficiencies created by wholesale arrangements, large ILEC business customers will benefit from greater competition and increased fiber investment from both ILECs and CLECs. The Joint CLECs correctly summarize the importance of decisive Commission action to stop anticompetitive wholesale pricing practices:

[T]he Commission could enable a 'virtuous cycle' of innovation and investment in the business services marketplace. Competitors would be able to develop innovative higher-layer services that meet the diverse needs of business customers around the country. This would spur an increase in the demand for last-mile capacity, providing both incumbent and competitive LECs with greater incentives to deploy fiber to business customer locations, consistent with the goals of Section 706.¹¹⁸

TDS Telecommunications Corporation, to Marlene H. Dortch, Secretary, FCC (filed June 22, 2015); XO Comments at 5; Anderson Declaration ¶¶ 22-23.

¹¹⁶ See TDS Comments at 3 ("Wholesale customers, including TDS CLEC, who must pay unjust, unreasonable, above-retail rates for wholesale inputs cannot apply any competitive pressure on the RBOCs' retail rates."); XO Comments at 43.

¹¹⁷ *Technology Transitions*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97, 30 FCC Rcd. 9372, 9428 ¶ 101 (2015).

¹¹⁸ Joint CLEC Comments at 69.

These comments reaffirm Chairman Wheeler's recognition that "when CLECs offer competitive services, it creates an incentive for incumbents to invest more in their networks and offer better services to win their share of business customers. This is good, and another example of the virtuous cycle of network innovation."¹¹⁹

D. The Large ILECs' Pricing Practices Even Contradict Their Own Acknowledgments that Discounts Enhance Economic Efficiencies, Benefit Consumers, and Are Appropriate for the Pricing of Special Access Services.

While refusing to provide carrier customers discounted Ethernet rates that reflect cost savings created by the customers' wholesale purchasing arrangements, the large ILECs ironically emphasize in their tariff investigation direct cases, submitted just weeks ago, that providing term and volume discounts promotes economic efficiencies, benefits consumers, and is appropriate for the pricing of special access services. The large ILECs' appeals to legal and academic authority, as well as their statements about their own experiences, all also apply to the wholesale pricing of packet-based dedicated services inputs, and thus support Windstream's request for Commission action to promote competition by enforcing the discounting requirements of the Communications Act, including requiring that discounts reflect the cost savings and benefits from purchasing arrangements involving larger volumes and/or longer terms.

The large ILECs' direct cases point to extensive legal and policy precedent for the finding that special access volume and term discounts generate economic benefits. AT&T observes that "the courts, the Commission, and economists have overwhelmingly recognized that term and volume discounts are generally pro-competitive and appropriate in the special access

¹¹⁹ Remarks of FCC Chairman Tom Wheeler, COMPTEL Fall Convention & Expo (Oct. 6, 2014).

marketplace,”¹²⁰ and that “the Commission has held repeatedly that term and volume commitments are typically pro-competitive and, specifically, that they are appropriate for the pricing of special access services.”¹²¹ Likewise, Verizon observes that Commission precedent recognizes that “volume and term discounts have procompetitive effects.”¹²²

The large ILECs’ own declarations support Windstream’s position that the large ILECs should not be allowed to appropriate for themselves all the cost savings and benefits of volume and term commitments on packet-based services. According to Verizon, its discount plans “promote economic efficiency and are procompetitive. These plans allow Verizon to share with customers the efficiencies it achieves from reduced administrative costs and greater business certainty.”¹²³ Verizon argues that volume commitments “reduce transactions costs, permit nonrecurring costs to be recovered over a longer period, reduce uncertainty, (including by limiting the possibility of *ex post* opportunistic behavior), help realize economies of scale, and assist the seller in making appropriate investments in, and allocations of, capacity.”¹²⁴ “Longer term lengths,” according to Verizon, are “associated with larger discounts, as the increased term length provides greater certainty, reduces further the risk of stranded investment, and provides a

¹²⁰ See Brief of AT&T Inc. in Support of Its Direct Case at 5-6, WC Docket No. 15-257 (filed Jan. 8, 2016) (“AT&T Direct Case”).

¹²¹ *Id.* at 28.

¹²² Direct Case of Verizon at 11, WC Docket No. 15-247 (filed Jan. 8, 2016) (“Verizon Direct Case”). Among other decisions, Verizon cites a Commission order recognizing that “term discounts . . . can minimize the risk of stranded investment.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325, 11 FCC Rcd. 15,499, 15,849 ¶ 687 (1996).

¹²³ Verizon Direct Case at 12-13 (citing Declaration of Eric R. Emch, Ph.D. and Donald K. Stockdale, Jr. J.D., Ph.D. ¶¶ 46-52, attached to Verizon Direct Case (“Emch/Stockdale Declaration”)).

¹²⁴ Emch/Stockdale Declaration ¶ 50.

longer period over which to spread any nonrecurring costs.”¹²⁵ Thus, Verizon asserts, “[n]ot only are volume and term discounts pervasive, but they also are generally viewed as beneficial to both the buyer and seller. The seller may benefit by aligning prices more closely with costs, or simply by gaining profitable sales from rivals by offering a more attractive package. Buyers gain lower prices in return for providing more certainty to the seller.”¹²⁶ Likewise, AT&T cites its economists’ findings for the assurance that special access “discounts are commonplace and can benefit consumers and enhance economic efficiency in a variety of ways,” and concludes that “term discounts are legitimate pro-competitive responses to competition that benefit both providers and customers.”¹²⁷

CenturyLink echoes these points and focuses on implications for network investment in particular. While recognizing its own benefits from discount plans,¹²⁸ CenturyLink agrees that

¹²⁵ Verizon Direct Case at 35.

¹²⁶ Emch/Stockdale Declaration ¶ 48. Similarly, the large ILECs have recognized that network cost savings should flow through to customers in the intercarrier compensation context. *See, e.g.*, Reply Comments of Verizon and Verizon Wireless at 18-22, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed May 23, 2011) (“[C]onsumers benefit from the efficiencies achieved when pricing signals in the market more closely reflect the costs of the services and products consumers demand.”); Comments of AT&T Inc. at 18, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68 (filed Nov. 26, 2008) (asserting that “under elementary principles of economics,” long distance and wireless companies will pass on intercarrier compensation savings to consumers).

¹²⁷ AT&T Direct Case at 51 n.159 (citing Reply Declaration of Dennis W. Carlton, Allan L. Shampine and Hal S. Sider in Support of AT&T, Inc. ¶¶ 75-83, attached to Reply Comments of AT&T, Inc., WC Docket No. 05-25 (filed Feb. 24, 2010)).

¹²⁸ *See* CenturyLink White Paper at 33 (stating that volume commitments provide it “with the benefits of revenue predictability for an agreed period of time, allowing it to recover its costs over the life of the plan”); *id.* at 31 (“By offering a discount and then applying terms designed to encourage customers to use a quantity of service roughly equivalent to the amount it elected to purchase at the beginning of the term, CenturyLink essentially ‘purchases’ a degree of certainty that allows it to marshal network resources to accommodate anticipated demand, plan informed network expansion, and reduce marketing and other transaction costs that it would incur in the absence of customer commitments.”); *id.* at iii

the plans provide cost savings that it (and other large ILECs) can pass on to a wholesale purchaser: “The predictability and stability of revenue facilitates CenturyLink’s business and investment planning, generating efficiencies and savings, which it can share with the customer in the form of a discounted rate.”¹²⁹ Indeed, CenturyLink contends that discount plans promote the Commission’s larger investment objectives “by providing the business certainty for ILECs, CLECs, and wireless providers that allows for rational network planning and sustained capital investment” throughout the communications ecosystem.¹³⁰

Against this backdrop, it is particularly striking that the large ILECs offer only very limited term discounts for Ethernet services. AT&T’s Guidebook, for its Switched Ethernet Service (Interactive), for example, does not provide further term discounts for service terms beyond three years, even though for TDM services it has offered additional discounts and circuit portability for five- or seven-year options. *****BEGIN HIGHLY CONFIDENTIAL*****

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[REDACTED]

[REDACTED] *****END HIGHLY CONFIDENTIAL***** This is in

(“Courts and commentators have made clear that long-term supply contracts *promote* competition and consumer interest by enhancing stability and certainty in the marketplace.” (emphasis in the original)).

¹²⁹ *Id.* at 33.

¹³⁰ *Id.* at 2. CenturyLink’s conclusion that discount plans can “advance competition and promote the Commission’s deployment goals” is a particularly significant finding in light of the Commission’s conclusion just three weeks ago that “advanced telecommunications capability is not being deployed to all Americans,” including businesses, in a reasonable and timely fashion. CenturyLink White Paper at i; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, FCC 16-6 ¶¶ 1, 4 (2016).

contrast to Verizon's TDM special access tariffed offerings, which include five-year and seven-year options with higher discounts and circuit portability. These different pricing practices exacerbate the price squeeze on CLECs with respect to Ethernet services because, as Windstream explained in its comments, this means competitive carriers and their customers cannot share the cost savings and benefits that flow from longer term and higher volume commitments.¹³¹

IV. CONCLUSION

The large ILECs attempt to distract this Commission and obscure the core truth—that they retain significant market power with respect to dedicated services. As ILECs' own market behavior shows, best efforts services are not substitutes for dedicated services for businesses, government entities, and non-profits that need the bandwidth commitments, greater network availability, service quality, and other attributes of such services. The large ILECs have introduced their own best efforts services to serve customers with fewer requirements, and maintain significantly different prices for their dedicated services—which are priced much higher than best efforts. Similarly, the large ILECs own deployment behavior refutes their contention that once a competitive provider has fiber anywhere in a census block, it can easily serve any location in that census block. That is simply untrue.

The comments also confirm that the large ILECs have been executing price squeezes on their competitors, in violation of Sections 251(b)(1), 251(c)(4) and 252(d)(3) of the Communications Act. The Commission has the authority and jurisdiction to address and prevent these price squeezes, including ensuring that the large ILECs pass on the cost savings and benefits they achieve when a wholesale purchaser makes significant volume and term commitments. By so doing, in addition to what other steps it might take, the Commission can

¹³¹ Windstream Dedicated Services Comments at 75-77.

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help preserve competitive choices for businesses, government entities, and non-profits that need
Twenty-First Century communications solutions to carry out their missions.

Respectfully submitted,



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