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EX PARTE

March 29, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: **Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593**

Dear Ms. Dortch:

AT&T submits this letter in response to the Reply Comments and WIK Study submitted by BT Americas (BTA).[1] BTA has historically advocated for regulation of TDM-based special access services and has submitted multiple inaccurate comparisons of U.S. TDM-based services to those in other countries, which AT&T has debunked.[2] BTA's latest submission shifts position. BTA appears to no longer advocate stepped up regulation of TDM-based services. Instead, it acknowledges that TDM-based services are rapidly being replaced by next-generation Ethernet services, and that other countries are moving to *deregulate* TDM-based services to facilitate the transition to Ethernet.[3] BTA therefore now advocates for the regulation of *Ethernet* services in the U.S., which are not even subject to this proceeding.[4] BTA argues that a study it commissioned from WIK, shows that U.S. Ethernet prices are higher and uptake is lower compared to countries that regulate Ethernet services. In fact, as shown below, the data show nearly the exact opposite: U.S. Ethernet prices have declined faster and are today no higher than those in the four European countries cited by BTA that regulate Ethernet, and Ethernet uptake in the U.S. is on a faster trajectory.

The main price comparisons in the WIK Study are based on data from a 2013 report published by Ovum.[5] According to the WIK Study, this 2013 Ovum report indicates that Ethernet prices in the U.S. were higher than in the four European countries BTA cites as regulating Ethernet services. Specifically, relying on the 2013 Ovum data, WIK claims that unit prices for four

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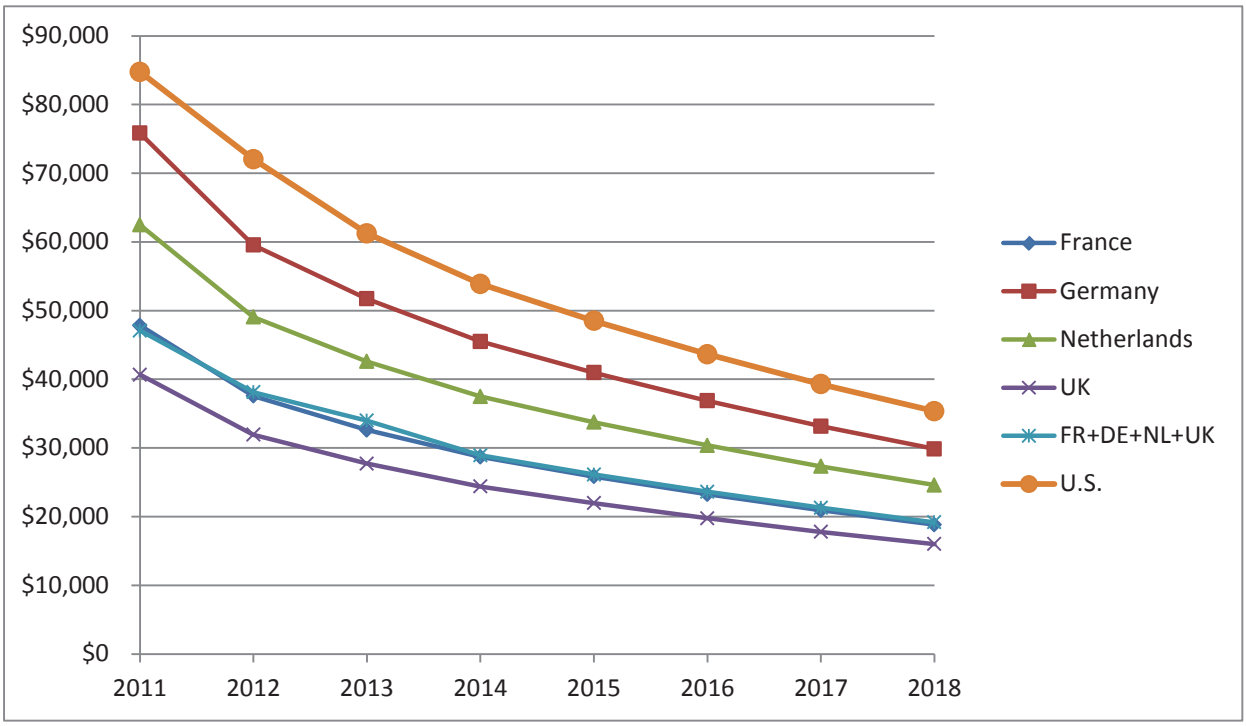
[1] Reply Comments of BT Americas, WC Docket No. 05-25, RM 105-93 (filed Feb. 19, 2016) & Appendix ("WIK Study").
[2] *See e.g.*, Letter from Keith M. Krom, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25 (filed Dec. 9, 2005); Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25, (filed Nov. 4, 2009) ("*AT&T 11/04/09Ex Parte*"); Reply Comments of AT&T Inc., WC Docket No. 05-25, RM-10593 (February 24, 2010); Blog entitled "BT's Tall Tale of Two Countries," by Eric Loeb, AT&T (September 8, 2015), http://www.attglobalpolicy.com/bts-tall-tale-of-two-countries/.
[3] WIK Study, at 31-33.
[4] *See* Reply Comments of AT&T, at 38-53.
[5] *See* WIK Study at 48 *citing to* Ovum, "Enterprise Ethernet Service Forecast Report: 2011-18" (August 1, 2013) and accompanying spreadsheet ("Ovum (2013)").

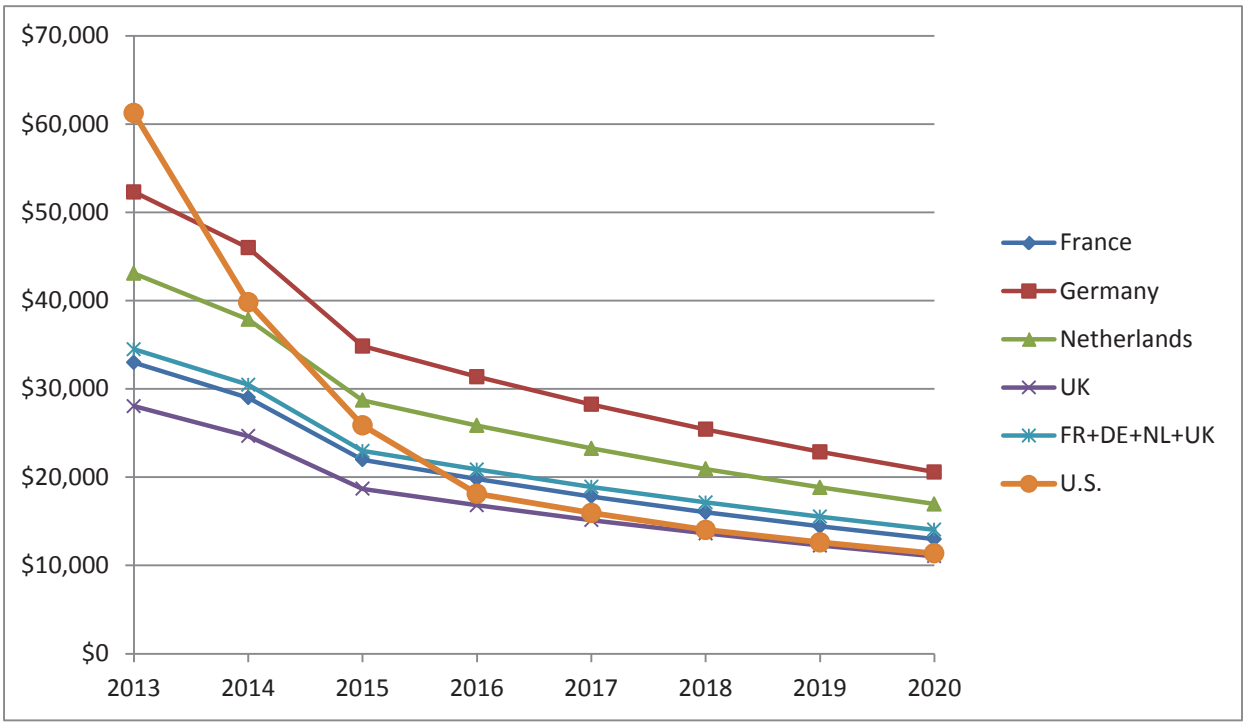
Ethernet speed tiers (10 Mbit/s, 100 Mbit/s, 1 Gbit/s and 10 Gbit/s) are lowest in the UK, higher in France and in the Netherlands, still higher in Germany, and highest in the U.S.[6] WIK purports to depict this in its Figure 19 – comparing the pricing of 10 Gbit/s metro Ethernet service.[7]

Figure 19: Effective unit price per 10Gbit/s metro Ethernet end points in France, Germany, the Netherlands, the UK, and the United States (unadjusted 2013 USD).



But the WIK Study ignores that Ovum updated these data on September 28, 2015.[8] This updated report shows that since 2013, U.S. Ethernet prices have fallen much faster than in the other countries in WIK's comparison and are now, or soon will be, below those in most of these comparison countries. For example, in 2013, Ovum reported U.S. prices for 1G metro Ethernet to be $31,060 per year.[9] But Ovum's 2015 report shows that this price had dropped by 36% and was $19,879 by 2015.[10] Declines in U.S. 10G service prices were even greater – dropping by nearly 58% from $61,237 in 2013 to $25,873 in 2015.[11] Moreover, Ovum's 2015 report projects that by the 2018-20 period, U.S. prices for 1G and 10G Ethernet service generally will be no higher (and sometimes cheaper) than the prices from the four European champions that WIK selects as comparators to the entire U.S.[12] If WIK had used these Ovum (2015) data, its above Figure 19 would look like this:

[6] WIK Study at 49.
[7] *Id*. WIK states that results for the other services would be similar.
[8] *See* Ovum, "Ethernet Services Forecast Report 2015-20" (September 28, 2015) and accompanying spreadsheet ("Ovum (2015)").
[9] Ovum (2013).
[10] Ovum (2015).
[11] Ovum (2013) and Ovum (2015).
[12] Ovum (2015).



Thus, the reality is that the Ovum data indicate that the absence of Ethernet regulation in the U.S. has resulted in more rapid declines in, and overall lower prices than, countries that have chosen to regulate Ethernet prices.

The WIK study also relied on the 2013 Ovum data for the proposition that the U.S. lags behind other countries that regulate Ethernet in terms of adoption of Ethernet services. But again, the updated Ovum 2015 data tell the opposite story. Over the 2015-20 time period, Ovum (2015) projects that U.S. metro Ethernet lines will grow at a compounded annual rate of 16.9%, while in the UK, France, Germany and the Netherlands they will grow only by 7.0%, 14.6%, 7.3% and 13.8%, respectively.

The WIK Study's interpretation of the Ovum Ethernet data are also refuted by Ovum's own analysis of the Ovum Ethernet data. According to Ovum, its data confirm that "North America remains the most dynamic Ethernet market," describing it as "an open market" with "the greatest numbers of . . . competitors."[13] These findings are consistent with those of other industry analysts. For example, Vertical Systems Group's most recent analysis found that, in the U.S., there are nine providers with port shares of four percent or more, including three CLECs and three of the nation's largest cable companies, and Level 3 is the second largest Ethernet provider in the U.S. measured by port share.[14] No provider has port share that exceeds one-fifth of the U.S. market.[15] According to Vertical Systems Group, "[t]he U.S. is the … *most competitive regional market* for Carrier Ethernet services."[16]

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[13] *Id.*
[14] Vertical Systems Group, Year-End 2015 U.S. Carrier Ethernet LEADERBOARD, (Feb. 25, 2016) http://www.verticalsystems.com/vsglb/2015-u-s-carrier-ethernet-leaderboard/.
[15] Vertical Systems Group.
[16] Vertical Systems Group, "Ethernet Worldwide Data: Regional," http://www.verticalsystems.com/ww-ethernet-10-years/ (emphasis in the original).

The other comparison in the WIK Study purports to compare U.S. Ethernet "rack rates" to the "rack rates" in other countries. But this comparison is apples-to-oranges. The "rack rates" for the European countries in WIK's comparison are the regulated rates from which providers generally cannot deviate.[17] In other words, they are the rates actually paid by customers in those countries. There is no analog to such rates in the U.S. Instead, the WIK Study assumes that the Ethernet prices listed in "service guides" by a few U.S. companies are the U.S. analog to European rack rates. However, as the WIK Study acknowledges, the actual rates paid by U.S. customers are generally negotiated at discounted levels dramatically below those in the service guides.[18] Thus, its comparison of European tariffed rates (which is what customers pay) to U.S. rack rates (which is often not what customers pay) is not a valid comparison.[19]

In short, far from supporting claims that the U.S. Ethernet market is not competitive and in need of price regulation, the most recent data from the very consultant cited by BTA refutes that claim and shows, instead, that "North America remains the most dynamic Ethernet market." As Emily Litella[20] would say – *Never mind*.

Sincerely,

/s/ Keith M. Krom

Keith M. Krom

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[17] WIK Study at 43.
[18] *Id.*
[19] That the "rack rate" comparison is invalid is further confirmed by the Commission's own comparisons that show the price of a 1 Gbps Ethernet transport in the US is below that of many of the European rack rates cited by WIK. In its Official Blog (https://www.fcc.gov/blog/dialogue-e-rate-pricing-data, the FCC reports the results of a poll it conducted of E-rate recipients to establish what these eligible entities (largely schools and libraries) paid for 1 Gbps Ethernet transport service – and the median figure is $1211. This median price places as-paid U.S. prices below the majority of tariffed European prices computed by WIK. (*Cf.*, AT&T 12/09/15 Ex Parte where AT&T demonstrated that the median rate of $1211 the Commission found for comparable service in the US. was approximately 10% less than BT's rate for comparable service.)
[20] https://en.WIKipedia.org/WIKi/Emily_Litella