

Marlene H. Dortch
April 11, 2016
Page 2

The text within the brackets of the heading is now omitted from the redacted version of the corrected presentation. No other changes have been made to the redacted version of Slide 4, nor to the accompanying presentation or the ex parte notice.¹

By today's submission, CenturyLink requests that the redacted version of its March 17, 2016 ex parte notice in WC Docket No. 15-247 (<http://apps.fcc.gov/ecfs/document/view?id=60001536230>), WC Docket No. 05-25 (<http://apps.fcc.gov/ecfs/document/view?id=60001536232>) and RM-10593 (<http://apps.fcc.gov/ecfs/document/view?id=60001536233>) no longer be viewable via ECFS. Alternatively, the corrected version of CenturyLink's redacted March 17, 2016 ex parte notice, as filed on April 11, 2016, will be available for accessing via ECFS in the three proceedings.

Please contact my colleague, Ross Dino (303-992-5823; ross.dino@centurylink.com) if there are any questions regarding this submission.

Sincerely,

/s/ Melissa Newman

Enclosure

¹ Inasmuch as there were no corrections or changes otherwise to the non-redacted version of Slide 4, CenturyLink is not resubmitting today the non-redacted version of its March 17, 2016 ex parte notice.



Melissa E. Newman
Vice President
Federal Policy and Regulatory Affairs
1099 New York Avenue NW, Suite 250
Washington, DC 20001
202.429.3120

REDACTED – FOR PUBLIC INSPECTION

Ex Parte Notice

Via ECFS

March 17, 2016 (**Corrected – Refiled April 11, 2016**)

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

Re: *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services
Tariff Pricing Plans, WC Docket No. 15-247; 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,
WC Docket No. 05-25, RM-10593*

Dear Ms. Dortch:

On March 15, 2016, Bill Check, Craig Brown, Carolyn Hammack and Melissa Newman, all of CenturyLink, and Russ Hanser of Wilkinson Barker Knauer, representing CenturyLink, met with Pamela Arluk, Michael Jacobs, William Layton, Deena Shetler and Matthew DelNero, all of the Wireline Competition Bureau.

The enclosed document was referred to in the meeting. The document contains highly confidential and confidential information that is the proprietary commercial information of CenturyLink and is entitled to protection from public disclosure by the relevant protective orders in the above-referenced dockets, as described in the Confidentiality Appendix attached to this letter.

In the meeting, CenturyLink discussed the history of the CenturyLink tariff plans currently under investigation, the Regional Commitment Plan (RCP) and Special Access Term Discount Plan

(TDP), both of which continue to be limited to the areas served by legacy Qwest and Embarq, respectively. Additionally, CenturyLink discussed the rapid migration from DS1s and DS3s Ethernet services, which are viewed as a ready substitute. CenturyLink particularly noted cable providers' prominent role in this migration and the dramatic extent to which they have won Ethernet customers in CenturyLink's ILEC footprint. CenturyLink also discussed dramatic changes in the special access marketplace itself—a marketplace in which CenturyLink is dwarfed by most of its competitors, in terms of market capitalization and revenues, and of a similar size to CLECs, such as Level 3, seeking to hobble CenturyLink and other price cap LECs with investment-choking regulation. CenturyLink further explained how each of the RCP and TDP terms and conditions under investigation are pro-competitive, lawful and often similar to those in competitive LEC agreements.

CenturyLink also referred to and summarized during the meetings many of the key points it made in its Direct Case of January 8, 2016 and the Rebuttal of February 26, 2016, both filed in the business data service tariff pricing plan investigation (WC Docket No. 15-247¹).

Although the highly confidential and confidential information is specifically protected from disclosure pursuant to the terms of the *Business Data Services Data Collection Protective Order* (Appendix A to the Order and Protective Orders in WC Docket No. 15-247) and the *Tariff Investigation Protective Order* (Appendix B to the Order and Protective Orders in WC Docket No. 15-247),² as well as the *Second Protective Order* and *Modified Protective Order* in WC Docket No. 05-25, et al.,³ the Confidentiality Appendix attached to this correspondence provides separate justification for highly confidential and confidential treatment under FOIA⁴ and the Commission's implementing rules, 47 C.F.R. §§ 0.457, 0.459.

¹ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Order Initiating Investigation and Designating Issues for Investigation, 30 FCC Rcd 11417 (Oct. 16, 2015); Order, DA 15-1423 (rel. Dec. 14, 2015).

² *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 15-247 and 05-25, RM-10593, Order and Protective Orders, 30 FCC Rcd 13680 (rel. Dec. 4, 2015) (Dec. 4th Protective Orders).

³ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, *Modified Protective Order*, 25 FCC Rcd 15168 (Oct. 28, 2010); *Second Protective Order*, 25 FCC Rcd 17725 (rel. Dec. 27, 2010) (*Special Access Rulemaking Protective Orders*).

⁴ 5 U.S.C. § 552.

Consistent with the highly confidential and confidential nature of the information enclosed with this submission, the non-redacted version is marked, consistent with the Dec. 4th *Protective Orders* and the *Special Access Rulemaking Protective Orders*, as “**HIGHLY CONFIDENTIAL AND CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDERS IN WC DOCKET NOS. 15-247 AND 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**”. This Highly Confidential and Confidential Information is competitively sensitive commercial information and thus should not be available for public inspection. Such information also would not ordinarily be made available to the public. Release of the Highly Confidential and Confidential Information would have a substantial negative competitive impact on CenturyLink. Accordingly, the submitted highly confidential and confidential information is appropriate for non-disclosure pursuant to the Dec. 4th *Protective Orders* and the *Special Access Rulemaking Protective Orders*, and under FOIA and sections 0.457(d) and 0.459 of the Commission’s rules (as detailed in the attached Confidentiality Appendix).

Consistent with the Dec. 4th *Protective Orders* and the *Special Access Rulemaking Protective Orders*, CenturyLink is filing two hard copies of its non-redacted submission with the Office of the Secretary (one for WC Docket No. 15-247 and one for WC Docket No. 05-25, RM-10593) and providing two hard copies of its non-redacted submission to the staff of the Wireline Competition Bureau (Marvin Sacks).

CenturyLink is also filing today via the Commission’s Electronic Comment Filing System (ECFS) a redacted version of its Ex Parte Notice. Consistent with the Dec. 4th *Protective Orders* and the *Special Access Rulemaking Protective Orders*, the redacted version of CenturyLink’s filing, in which the Highly Confidential and Confidential Information is omitted, is marked, “**REDACTED – FOR PUBLIC INSPECTION**”.

The text of this letter and the attached Confidentiality Appendix, which contain no Highly Confidential or Confidential Information, are the same for both the non-redacted and redacted versions except for the confidentiality markings and the manner of submission noted in the heading on the initial page.

Marlene H. Dortch
March 17, 2016 (Corrected – Refiled April 11, 2016)
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Pursuant to section 1.1206(b) of the Commission's rules, this notice is being filed in the above-referenced dockets. Please contact the undersigned with any questions.

Sincerely,

/s/ Melissa Newman

Enclosure

Copy via e-mail to:
Matthew DelNero
Pamela Arluk
Michael Jacobs
William Layton
Deena Shetler

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CONFIDENTIALITY APPENDIX

47 C.F.R. § 0.457

Information included with CenturyLink's March 17, 2016 Ex Parte Notice is entitled to highly confidential and confidential treatment under 47 C.F.R. § 0.457, and the Dec. 4th *Protective Orders* in WC Docket Nos. 15-247 and 05-25, RM-10593, as well as the *Special Access Rulemaking Protective Orders* in WC Docket No. 05-25, RM-10593. The types of Highly Confidential information being submitted include: the percentage decline in the number of DS1s provided by CenturyLink between 2012 and 2015; information on customer losses and commitment levels for CenturyLink Regional Commitment and Special Access Term Discount Plans; and information on termination fees imposed in a competitive LEC agreement. Each of these types of information falls within at least one of the categories of information that the Commission designated as "Highly Confidential" in the Dec. 4th *Protective Orders*. The type of Confidential Information being submitted includes: CenturyLink, MSO and competitive LEC percentage figures (2014 and 2015) for market shares for dedicated Internet access, private line and VPN applications. All of this information is highly sensitive commercial information regarding CenturyLink's business operations and product/service offerings (which is the type of information described in the *Business Data Services Data Collection Protective Order*, Attachment 1 to Appendix B of the *Tariff Investigation Protective Order* and ¶ 6 of the *Second Protective Order*). And, CenturyLink's customers and competitors may also consider some of the information to be proprietary and competitively sensitive. All of this highly confidential and confidential proprietary commercial information also is not routinely available from CenturyLink nor is it available for public inspection from the Commission and thus is protected from public availability under 47 C.F.R. § 0.457(d). Additionally, the Highly Confidential and Confidential Information are of the types that are appropriate for non-disclosure to the public pursuant to the Dec. 4th *Protective Orders* and the *Special Access Rulemaking Protective Orders*.

47 C.F.R. § 0.459

CenturyLink also considers the Highly Confidential and Confidential Information submitted with its Ex Parte Notice as protected from public disclosure pursuant to 47 C.F.R. § 0.459(b) as described as follows.

Information for which confidential treatment is sought

CenturyLink seeks highly confidential and confidential treatment for information included with its March 17, 2016 Ex Parte Notice in WC Docket Nos. 15-247 and 05-25, RM-10593, which is highly sensitive commercial information regarding CenturyLink's business operations and product/service offerings that is protected from public disclosure and availability.

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Commission proceeding in which the information was submitted

The Ex Parte Notice is being filed in WC Docket No. 15-247, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans* and in WC Docket No. 05-25, RM-10593, *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*.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The Highly Confidential Information included with CenturyLink's Ex Parte Notice that it considers commercially sensitive and proprietary includes: the percentage decline in the number of DS1s provided by CenturyLink between 2012 and 2015; information on customer losses and commitment levels for CenturyLink Regional Commitment and Special Access Term Discount Plans; and information on termination fees imposed in a competitive LEC agreement. The type of Confidential Information includes: CenturyLink, MSO and competitive LEC percentage figures (2014 and 2015) for market shares for dedicated Internet access, private line and VPN applications. All of this information is highly sensitive commercial information regarding CenturyLink's business operations and product/service offerings (which is the type of information described in the *Business Data Services Data Collection Protective Order*, Attachment 1 to Appendix B of the *Tariff Investigation Protective Order* and ¶ 6 of the *Second Protective Order*). And, CenturyLink's customers and competitors may also consider some of the information to be proprietary and competitively sensitive. All of this highly confidential and confidential proprietary commercial information also is not routinely available from CenturyLink nor is it available for public inspection from the Commission and thus is protected from public availability under 47 C.F.R. § 0.457(d).

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The types of Highly Confidential and Confidential Information included with CenturyLink's Ex Parte Notice would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that its release likely would produce competitive harm. The telecommunications services CenturyLink provides -- including the services that are at issue in the tariff investigation and the special access rulemaking proceedings -- are all competitive. The release of this highly confidential and confidential proprietary information would cause competitive harm by allowing competitors to become aware of sensitive commercial information regarding CenturyLink's business and internal operations, and the competitive markets in which CenturyLink operates. And, the

release of information CenturyLink's customers consider to be proprietary and competitively sensitive could also cause the company competitive harm.

Measures taken to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

CenturyLink has treated and treats the sensitive commercial information disclosed in its Ex Parte Notice as highly confidential and confidential, and has protected it from public disclosure.

Justification of the period during which CenturyLink asserts that the material should not be available for public disclosure

At this time, CenturyLink cannot determine any date on which the sensitive commercial information included with its submission should not be considered highly confidential and confidential.

Other information that CenturyLink believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable FCC and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

Special Access
WC Docket No. 05-25

FCC Meeting
March 15, 2016
(Corrected – Refiled April 11, 2016)

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Overview

- Rapid migration to non-ILEC Ethernet services obviates concerns about the CenturyLink plans under investigation.
 - CenturyLink's Regional Commitment Plan (RCP) and Special Access Term Discount Plan (TDP) were established prior to both the 1996 Act and the TDM-to-IP migration.
- At the time the plans were established, they were geographically limited to the legacy ILEC companies (Qwest and Embarq) footprint and continue to be.
- Despite claims of being “locked up” by these plans, most CLECs complaining about these plans have migrated to other providers or newer CenturyLink discount plans.
- The RCP and TDP terms and conditions under investigation are pro-competitive, lawful and often similar to those in CLEC agreements.



Rapidly Changing Competitive Landscape

Fierce Telecom
WINDSTREAM'S THOMAS: WE SEE AN OPPORTUNITY TO REDUCE \$1B IN SPECIAL ACCESS SPENDING

The New York Times
Comcast Creates New Enterprise Services Unit to Target Big Businesses

| VERTICAL SYSTEMS GROUP | | LEADERBOARD | |
|------------------------------------------------------------------------------------------|-------------------|-------------------|--|
| YEAR-END | U.S. CARRIER | ETHERNET SERVICES | |
| 2015 | | | |
| RANK ETHERNET PROVIDERS | | | |
| 1 | AT&T | | |
| 2 | Level 3 | | |
| 3 | Verizon | | |
| 4 | CenturyLink | | |
| 5 | Time Warner Cable | | |
| 6 | Comcast | | |
| 7 | Cox | | |
| 8 | XO | | |
| 9 | Windstream | | |
| CHALLENGE TIER (in alphabetical order) Bright House, Charter, Cogent, Lightpath, Zayo | | | |

FierceTelecom

U.S. Ethernet market grew by 20% in 2015, Vertical Systems says

ATLANTIC - ACM

GROWTH IN NETWORK CONNECTIVITY AND SMARTPHONE ADOPTION WILL DRIVE CONTINUED GROWTH IN CAPACITY NEEDS IN WHOLESALE

LEGACY PRODUCTS ARE IN DECLINE WHILE DEMAND FOR NEW TECHNOLOGY IS INCREASING AT A FEVERED PITCH

Special Access Marketplace in Transition

- **Special access customers are rapidly transitioning away from DS1s and DS3s.**
 - DS1s/DS3s are near the end of their lifecycle.
 - From the beginning of 2012 to the end of 2015, the number of DS1s provided by CenturyLink declined by **11**
- **Many of these DS1/DS3 customers are moving to Ethernet.**
 - Ethernet offers significant advantages in terms of scalability and increased capacity.
 - Between 2013 to 2015, CenturyLink's Ethernet demand has more than doubled.
- **Thus, special access customers clearly view Ethernet as a ready substitute for ILEC DS1 and DS3 services.**

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Cable is a substitute

Cable providers now serve [[
CenturyLink's service territory.

[[

]] of Ethernet customers in

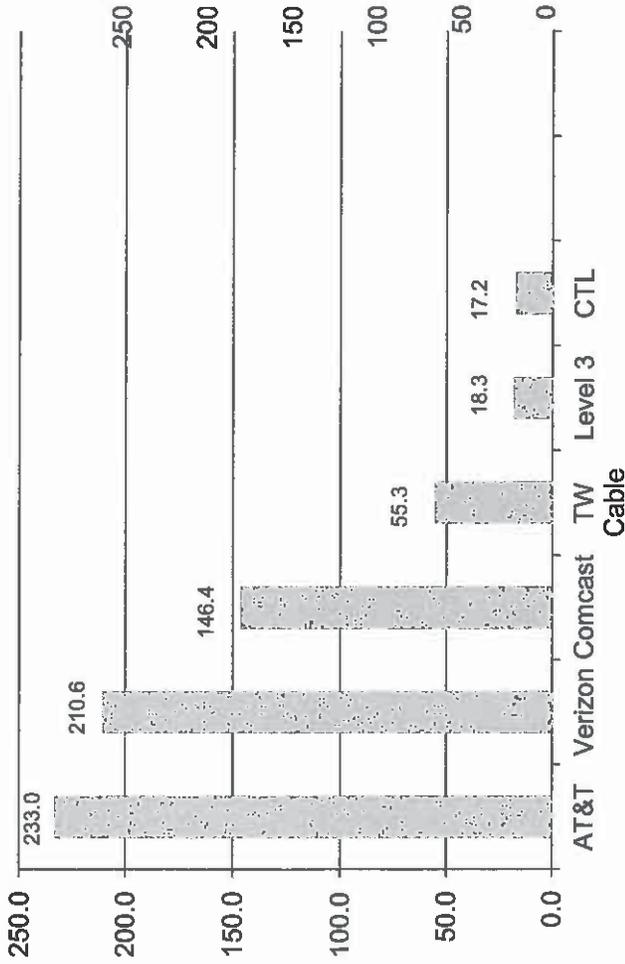
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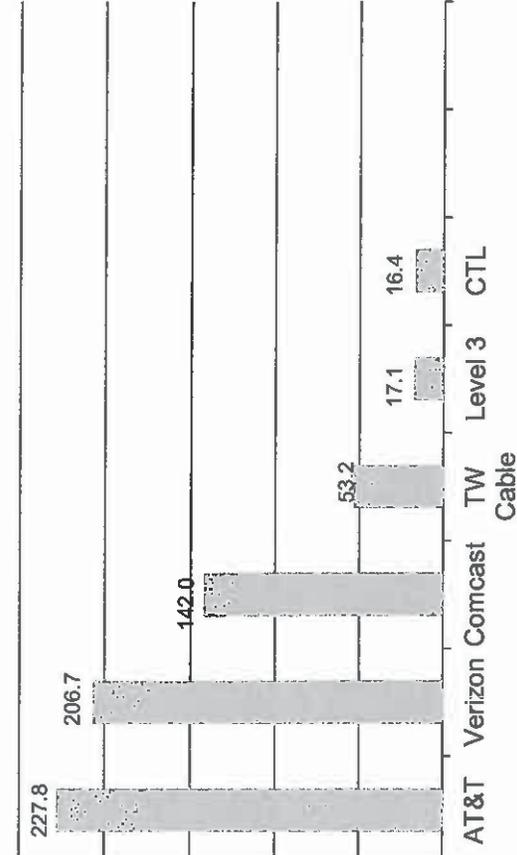


Special Access Marketplace in Transition

Market Cap (3/4/16) (billions)



Annual Revenue ('15 Annual Rpt.) (billions)



- CenturyLink is dwarfed both in market cap and annual revenue by its largest rivals, and is comparable to Level 3. In spite of its relatively small size, CenturyLink has invested \$15B in its network over the past 5 years.
- These investments facilitate jobs not only within the company but also in the communities we serve.
- CenturyLink has one of the largest fiber-enabled Gigabyte networks in the nation.
- CenturyLink's special access is more heavily regulated than TWC, Level 3 or Comcast.
- CenturyLink is the industry leader in 1G FTTH.



Customer Commitments in Special Access Contracts

- By its nature, a contract reflects quid pro quo commitments made by each party to the contract.
- For example, a buyer may agree to purchase a service or quantity of services for a particular term, in exchange for a discounted price.
- Contracts also include enforcement provisions to encourage each side to fulfill its contractual commitments.
- True in all industries, including telecommunications.
- In telecommunications, these enforcement provisions typically take the form of shortfall provisions or early termination penalties.
- Such provisions are found in both ILEC and CLEC agreements.

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Migration to Newer Discount Plans

- Prompted by losses to competitors' Ethernet services, CenturyLink introduced the Revenue Discount Simplification Plan (RDSP) in 2012.
- Provides volume discounts based on customer's purchase of both TDM and IP services.
- Allows CLECs to easily shift from DS1s/DS3s to Ethernet.
- Implemented via contract tariffs filed with the Commission.
- Most special access demand has shifted from the RCP and TDP to the RDSP and other plans.
- Only [[]] unaffiliated customers remain on the RCP.
- Only [[]] of Embarq's DS1s and DS3s are provided through the Embarq TDP.

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The RCP and TDP Are Pro-Competitive

- In the mid-1990s, US West and Sprint introduced the RCP and TDP, respectively, to address customer demands for circuit portability.
- Prior to that time, term discounts were available only on a circuit-by-circuit basis.
- The RCP provides a 22% discount, in exchange for the customer's commitment to maintain at least 95% of the quantity it decides to purchase at the start of the four-year term.
 - Customers can shift services among locations, as long as they meet revenue commitments.
 - Customers also can upgrade capacity and technology, if applicable conditions satisfied.
- The TDP provides discounts of up to a 30%, in exchange for commitment to maintain at least 90% of the quantity the customer opted to purchase at the beginning of the term.
 - Includes circuit and technology portability similar to RCP.
- The RCP and TDP function as term plans with circuit portability, rather than volume discount plans.
- Courts and commentators have consistently found that discount plans are pro-competitive.

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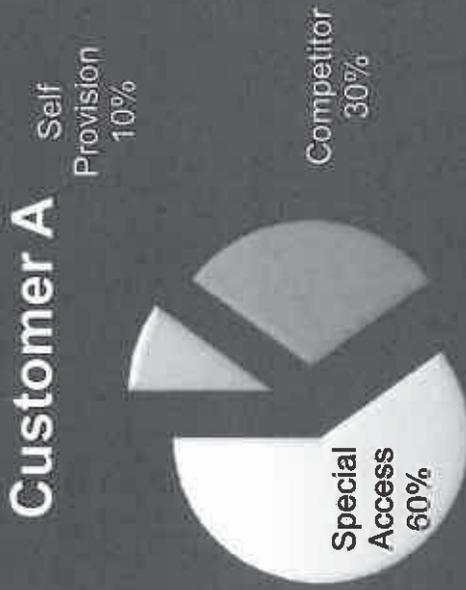


The RCP and TDP Are Not “Lock Up” Plans

- Neither of these plans establish exclusive dealing arrangements or otherwise undercut competition. Courts have repeatedly held that discount programs, such as the RCP and TDP, are not equivalent to exclusivity arrangements.
- A customer’s purchase level for a prior term has no bearing whatsoever on the amount or availability of its discount under either plan.
- Both the RCP and TDP permit customers to purchase as much service from third-party providers as they wish—whether DS1s/DS3s, Ethernet or UNEs.
- Both plans facilitate migration and upgrade of service and provide options the customer can employ to modify its commitment as demand levels change.
 - Several wireless providers have used the RCP technology migration process to increase capacity to their towers
- The percentage commitments utilized in the RCP and TDP permit customers to purchase any portion of their services from other providers. Before a customer enters a plan, they can switch a portion of their demand to other providers, which many have done.

RCP and TDP customers control how and with whom they spend their network dollars.

Customer A

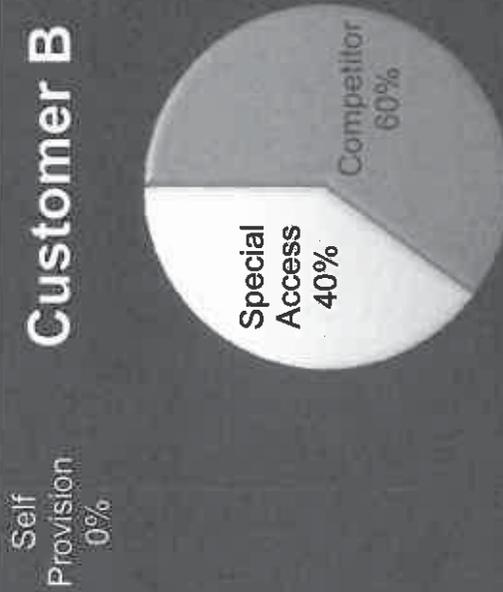


Customer can allocate any proportion of its total spend to CenturyLink with no effect on discount; all that matters is that customer fulfill (or come close to) its commitment.

Matters that have no bearing on the discount level in a given period:

- Customer's purchase volume in a prior period.
- The proportion of customer's total spend allocated to CenturyLink or to the specific tariff plan at issue.
- The amount of service customer self-provisions.
- The amount of service that customer purchases from other provider(s).

Customer B



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The RCP and TDP do not violate Sections 201 or 202, nor are they otherwise anticompetitive.

- Courts have repeatedly held that volume and term discounts are pro-competitive and do not violate antitrust laws.
- The RCP and TDP do not require a customer to commit all, or even a certain portion, of its total demand to CenturyLink.
- The RCP's and TDP's percentage commitments serve legitimate business purposes, by ensuring the revenue predictability necessary to enable circuit portability.
- The plans' uniform discounts are not discriminatory.
 - The RCP and TDP discounts are tied to the certainty provided by the percentage commitments over the term of the plan, rather than unit-cost savings associated with high volumes.
- CenturyLink should not be required to provide cost justifications for its terms and conditions, given the Commission's decades-long move away from cost-based regulation.



Shortfall Fees – RCP

- Under the RCP, a customer pays the agreed amount of its minimum purchase commitment each month, even if its monthly purchases fall below that level.
- This ensures that CenturyLink can recover the cost of provisioning and maintaining the connectivity the customer originally requested.
- This term is particularly important given the RCP's circuit portability, which requires CenturyLink to recover its costs over the entirety of the customer's RCP circuits, rather than on a circuit-by-circuit basis.
- Without this term, the customer could ignore its commitment without consequence.
- In the event of a shortfall, the customer receives a 22% discount on the full amount of its purchase commitment, and does not incur any additional fees beyond its purchase commitment.

Shortfall Fees – TDP

- Under the TDP, a customer's purchase commitment is enforced through early termination charges, rather than a shortfall provision.
- If a customer falls below its commitment level for less than 90 days, it continues to receive TDP discounts on its circuits in the plan, with no shortfall penalty or early termination charges.
- If the customer remains below its commitment level for more than 90 days, its commitment level is reduced and early termination charges are applied for the number of circuits below minimum commitment level.
- Customer does not incur any additional fees in this situation.

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Upper Percentage Thresholds

- RCP and TDP customers are not required to increase their percentage commitments when their purchases exceed their original commitments.
 - RCP commitment levels increase only if the customer's volume exceeds its commitment level at an annual review. RCP customers can, and do, manage their RCP volume to avoid this result. Of the [] times in which a customer exceeded its monthly commitment, only [] resulted in a commitment increase.
 - TDP commitment levels increase only if the customer's volume remains above 130% of its initial commitment level for 90 days and the customer does not shift its additional capacity elsewhere. Over the same 3 year period, the TDP had [] occurrences and [] commitment increases.
- Without these terms, a customer could get the benefit of RCP or TDP discounts and portability, without a corresponding commitment necessary to recover the cost of providing the service.
- These terms also provide predictability to assist CenturyLink's network personnel with purchasing and planning.

Overage Penalties

- Neither plan imposes an “overage penalty” (*i.e.*, a fee assessed on a customer for exceeding an upper percentage threshold).
- As noted, RCP customers almost always avoid “automatic” increases to their commitment levels, and TDP customers have more than 90 days to take steps to avoid month-to-month rates.
- These provisions provide a necessary backstop to enforce commitments necessary to recover the cost of providing the service and provide predictability for purchasing and planning purposes.

Term Commitments

- The RCP employs a 4-year term, while TDP customers can choose a 3-year or 5-year term.
- Such terms are common in all industries and standard in the capital-intensive communications industry.
- CLECs offer similar terms.
 - Many CLEC agreements contain 3-year terms.
 - When purchasing access from CLECs, CenturyLink generally requests 5-year terms, when available, to get the best rates.
- Without a multi-year commitment, a provider would not have a reasonable expectation of recovering its costs, potentially resulting in stranded facilities.
- Without such a commitment, the provider would have to charge higher recurring and/or non-recurring rates.

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Early Termination Fees

- For both the RCP and TDP, early termination fees are set at 50% of the remaining charges due under the contract.
- CLEC agreements also contain early termination fees.
- These CLEC fees sometimes exceed those in the RCP and TDP.
 - For example, [I

]]

- Without such fees, a customer could order circuits under the RCP or TDP, and then promptly disconnect them, without an opportunity for CenturyLink to recover the cost of installing those circuits.
- These fees recover a portion of the costs incurred while providing an incentive for the customer to fulfill its commitment.