HWG | HARRIS, WILTSHIRE & GRANNIS LLP

April 15, 2016

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

Re: *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 and Second Protective Order for the above-referenced proceedings, Windstream Services, LLC ("Windstream") herein submits a redacted version of the attached ex parte filing in the above-referenced proceedings.

Windstream has designated for confidential and highly confidential treatment the marked portions of the attached documents pursuant to the Modified Protective Order[1] and Second Protective Order[2] in WC Docket No. 05-25 and RM-10593. Highly confidential treatment is required to protect information about the extent to which Windstream relies on last-mile facilities and local transport facilities to provide special access-like services.

Pursuant to the protective order, Windstream is filing a redacted version of the document electronically via ECFS, one copy each of the confidential and highly confidential version with the Secretary, and sending two copies each of the confidential and highly confidential versions to Marvin Sacks.

* * *

---

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).

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

Sincerely,

John T. Nakahata
Counsel to Windstream Services, LLC

Attachment

cc: Jonathan Sallet
Matthew DelNero
Stephanie Weiner
William Dever
Deena Shetler
Eric Ralph
Pamela Arluk
David Zesiger
William Layton
Chris Koves
Rebekah Goodheart
Travis Litman
Nicholas Degani
Amy Bender

HWG | HARRIS, WILTSHIRE & GRANNIS LLP

April 15, 2016

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *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

Dear Ms. Dortch:

On April 13, 2016 Tony Thomas, President and CEO, Eric Einhorn, Senior Vice President of Government Affairs, and Jennie Chandra, Vice President – Public Policy and Strategy of Windstream Services, LLC ("Windstream"), and I, on behalf of Windstream, spoke with Jonathan Sallet, General Counsel, Matthew DelNero, Wireline Competition Bureau Chief, Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler, and William Dever of the Office of the General Counsel regarding the above-referenced proceeding.

Windstream expressed its support of the Chairman's effort to achieve a longer term, technology-neutral regime of appropriate controls on dedicated business data service rates in areas where competition is not sufficient to discipline those rates and the marketplace behavior of the largest carriers. Competition is essential to delivering high quality, affordable business communications solutions to enterprise business, non-profit, and governmental customers. This competition occurs in many ways – not just on price. Windstream's enterprise business, for example, targets mid-market customers, focusing on providing them with high performing, personalized services and solutions by leveraging its nationwide fiber backbone and regional networks and investing in its individualized customer service. If CLECs, such as Windstream, are forced to curtail the extent of their activities in the market, consumers will lose these important alternatives, and the pressure that they put on the Bells, and cable providers, to improve services and value provided to customers.

By far, the largest component of Windstream's costs in serving its business data customers is last-mile access – which now represents approximately ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****. In addition to these costs, Windstream incurs costs to provide network access – i.e., transport and long haul over its own network and those of third parties – and the personnel costs of selling and running its networks. ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****, which leaves Windstream and other CLECs particularly vulnerable to efforts by their largest competitors, which are also their largest last-mile access providers, to increase last-mile charges in an effort to push up Windstream's own prices for its overall dedicated business connectivity solutions.

As the Commission moves forward, a critical component of the solution is to ensure that wholesale rates retain a proper and pro-competitive relationship to retail rates. As Congress recognized when it drafted the Telecommunications Act of 1996, when providers have market power, as the Bells historically have had, wholesale rates must be lower than the retail rates charged for similar services. In the case of business data services, this means not only subtracting the costs associated with sales, marketing, and customer support, which are much higher for retail customers than for carrier customers, but also subtracting the costs of network access – transport and backhaul beyond the last-mile – which a wholesale carrier-purchaser, unlike a retail purchaser, does not use. Properly estimated, this would result in wholesale last-mile inputs with rates substantially lower than retail rates charged for end-to-end service solutions, even though it would still permit the provider with market power to earn monopoly or duopoly profits. For widespread, vibrant competition to exist beyond only a monopoly or stable duopoly, substantial wholesale discounts are essential.

Windstream noted that ILECs execute their raising-rivals'-costs and price squeeze strategies through a variety of means. In some cases, they charge retail prices that are below wholesale rates, even though the wholesale purchaser consumes far fewer network and personnel resources than the retail customers. They also can manipulate shortfall penalties to maintain TDM-based revenues (via the penalties themselves or driving unnecessary TDM purchases to meet commitments), even as customers and the market as a whole moves to Ethernet. Some also charge special construction fees when they are not warranted, or assess them at exorbitant levels. The Bells attempts to repudiate their obligations to provide unbundled DS1 and DS3 capacity loops – which Windstream can use in combination with its own network and equipment to deliver Ethernet services – are yet other ways that the Bells are seeking substantially to raise rivals' costs and drive out competitive choices currently available to business data customers.

Windstream also explained that the level of wholesale rates is not a significant factor in its decisions to build out its own last-mile facilities.[1] Buildout determinations usually are determined simply by comparing the size of the revenue opportunity at the target building to the costs for deployment. In the vast majority of cases, the revenue opportunity is not large enough

---

[1] *See* Letter from Jennie B. Chandra, Vice President – Public Policy and Strategy – Windstream, to Marlene H. Dortch, Secretary, FCC, at 8, GN Docket Nos. 13-5, 12-353, WC Docket Nos. 05-25, 15-1, RM-10593 (filed June 8, 2015) ("Windstream Ex Parte"); *id.* Attach. A, CostQuest Associates, Analysis of Fiber Deployment Economics for Efficient Provision of Competitive Service to Business Locations, at 2 ("Current wholesale Ethernet rates, even if less than retail rates, may not have a meaningful impact on a CLEC's decision to deploy its own-last mile facilities. In particular, the analysis suggests that an economically rational CLEC will not self-deploy to serve a single customer with less than 1 Gbps of capacity per building even if building offers a more attractive option than wholesale lease payments.").

to sustain the opportunistic deployment that Windstream must undertake as a CLEC.[2] Unlike Windstream in its ILEC areas, and unlike a cable company operating within its franchise areas, in the areas in which Windstream enters as a CLEC, it cannot spread the costs of its network across a wide base of residential and small business customers.

As it moves forward, the Commission should be sure to leave itself a wide range of tools to address market-power problems that exist in business data services markets today, and that are likely to persist. These include existing statutory remedies, as well as such new remedies as the Commission may create in the coming months.

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

Sincerely yours,

John T. Nakahata
Counsel to Windstream Services, LLC

cc: Jonathan Sallet
Matthew DelNero
Stephanie Weiner
William Dever
Deena Shetler
Eric Ralph
Pamela Arluk
David Zesiger
William Layton
Chris Koves
Rebekah Goodheart
Travis Litman
Nicholas Degani
Amy Bender

---

[2] Windstream Ex Parte at 2 ("[The CostQuest] paper demonstrates that the revenue required to support CLEC overbuilding of a last-mile fiber facilities—in the face of the lower market share that CLECs can expect—remains prohibitively high for most business locations.").