



April 21, 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 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 highly confidential treatment the marked portions of the attached documents pursuant to the Second Protective Order<sup>1</sup> 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 of the highly confidential version with the Secretary, and sending two copies of the highly confidential versions to Marvin Sacks.

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<sup>1</sup> *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).

**REDACTED - FOR PUBLIC INSPECTION**

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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 Services, LLC*

Attachment

cc: Amy Bender  
Nicholas Degani  
Rebekah Goodheart  
Travis Litman



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Exchange Carrier Rates for Interstate Special Access Services*, RM-10593

Dear Ms. Dortch,

On April 19, 2016, 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, had meetings with Amy Bender, Wireline Legal Advisor to Commissioner O’Rielly; Nicholas Degani, Wireline Legal Advisor to Commissioner Pai; Rebekah Goodheart, Legal Advisor to Commissioner Clyburn; and Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel, regarding the above-referenced proceedings.

Windstream expressed its support of efforts 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 business data solutions (“BDS”) 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 by focusing on providing them with high-level, high-quality services and solutions, and leveraging off of its nationwide fiber backbone and regional networks and investing in its customer service. If traditional CLECs, such as Windstream, are forced to curtail the extent of their activities in the market, consumers will lose these high-quality options, and the pressure that they put on the Bells, and cable providers, to improve their services and the value provided to customers. Windstream emphasized that competition for complete enterprise solutions for business, government, educational and healthcare institutions, and non-profits hangs in the balance in the pending proceeding. Prompt action to establish a prudent regime governing the BDS markets is necessary to preserve competition, which improves service and prices to customers and promotes further investment and innovation.

Windstream is in full agreement with the basic principle that price regulation is necessary in areas where competition is not sufficient to constrain market power, and is not necessary in areas where competition is robust. Windstream urged care in proceeding to define how to draw those lines. It noted that it is appropriate to conclude, based on the record, that best efforts is not a substitute for dedicated services. Moreover, Windstream’s experience is consistent with a

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tentative conclusion that the market for dedicated services at 50 Mbps and below is not generally competitive. However, Windstream's experience would not be consistent with any suggestion that the market for dedicated services above 50 Mbps is robustly competitive. While the large ILECs provide such dedicated services throughout their service areas, the incumbent cable providers do not; cable providers' fiber networks remain limited in scope, and their Ethernet over Hybrid-Fiber Coaxial Cable only reaches speeds of 10 Mbps, well below the level of greater than 50 Mbps dedicated services.<sup>1</sup> Windstream itself does not generally build out to serve 100 Mbps capacity to a single location, as it is generally not economically feasible to do so. Moreover, Windstream noted that it has found publicly-available large ILEC retail contracts with retail Ethernet prices substantially below that same ILEC's contract wholesale prices to Windstream, even at bandwidth levels of 1 Gbps.<sup>2</sup>

Accordingly, Windstream urged the Commission—in the item currently on circulation in the above-referenced proceedings—not to reach a tentative conclusion that the BDS markets above 50 Mbps are competitive. Drawing the line incorrectly here will harm competition just as did premature deregulation of the large ILECs' Ethernet services. The result will be continued monopoly pricing for Ethernet at key capacity levels, with the Bells able to leverage pricing for many locations to limit both competition for the overall business solutions to dedicated services customers, and for multilocation customers, particularly those that may be able to be served in part on CLECs' own fiber-based last-mile facilities, but that also have smaller locations for which buildout is not feasible. Instead, the Commission should specifically seek comment on whether there is a bandwidth level at which the large ILECs appear to be constrained so as to prevent anticompetitive practices, including with respect to wholesale prices.

Windstream also asked that the Commission, as it pursues a technology-neutral solution, leave open the possibility of solutions, at least for the interim, that focus on ILECs. ILECs still are the only dedicated services providers to a significant majority of locations (77 percent based on the analysis of the Commission's data performed by economist Jonathan Baker).<sup>3</sup> Even where cable has last-mile connections, capping the ILEC's rate is likely to be the most effective way to cap the market rate, especially if ILEC-only and ILEC/cable areas are adjacent. Moreover, Windstream emphasized that retaining an obligation for ILECs to provide unbundled DS1 and DS3 capacity loops is a good way to destabilize an ILEC/cable duopoly because UNE prices are not moored to ILEC special access prices. Finally, considering ILEC-focused solutions maintains leverage on ILECs and discourages mischief through the rulemaking process.

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<sup>1</sup> Letter from Matthew A. Brill, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 3, WC Docket No. 05-25 (filed Mar. 25, 2016)

<sup>2</sup> See e.g., *AT&T Switched Ethernet Service (with NETWORK ON DEMAND) Pricing Schedule Provided Pursuant to Custom Terms* at 3-4, attached to *Report to City Council* (Mar. 2, 2016), [http://www.cityofmadera.ca.gov/web/guest/documents?p\\_p\\_id=20&p\\_p\\_lifecycle=1&p\\_p\\_state=exclusive&p\\_p\\_mode=view&\\_20\\_struts\\_action=%2Fdocument\\_library%2Fget\\_file&\\_20\\_folderId=6021559&\\_20\\_name=DLFE-44205.pdf](http://www.cityofmadera.ca.gov/web/guest/documents?p_p_id=20&p_p_lifecycle=1&p_p_state=exclusive&p_p_mode=view&_20_struts_action=%2Fdocument_library%2Fget_file&_20_folderId=6021559&_20_name=DLFE-44205.pdf).

<sup>3</sup> Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services at 26, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016).

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Windstream encouraged the Commission to use the pending item to ask questions to ensure it is fully informed and has the ability to develop the record to support reform later in the year. Among the topics addressed, Windstream suggested the Commission's Notice of Proposed Rulemaking should be sure to inquire about:

- What portions of the ILEC network do wholesale (i.e., carrier) Ethernet customers purchasing last-mile inputs utilize as compared with typical retail Ethernet customers?
- What are the price cap ILECs' relative expenses for each of retail sales and marketing, customer service, technical support and uncollectibles, as compared with wholesale offerings?
- What are the incremental costs of a fiber-based network that supports dedicated services, as compared to best efforts service?
- Could the Commission establish or modify an existing cost model to provide a basis for establishing Ethernet rate benchmarks within price cap LEC service areas, and how specifically could that be achieved?
- At what Ethernet bandwidth levels do any price cap ILECs charge retail rates below those of (or otherwise offer more favorable terms for) commercially negotiated wholesale arrangements (including, in both cases, credits and discounts)?
- To the extent that the data shows some effect on ILEC prices from the presence of nearby competitors, but with rates above levels with multiple in-building competitors, does this indicate that nearby competitors render a market workably competitive or that remaining barriers to entry continue to prevent the market from fully disciplining the exercise of market power to raise rates above competitive market levels?
- How do price cap ILECs' wholesale guidebook rates and terms and conditions compare to ILEC retail offerings?
- What, if any, measures are needed to ensure that BDS providers do not engage in "backdoor price increases" (via special construction charges, volume commitment penalties, etc.) to inappropriately drive up revenues that they derive from these services?
- Are any transitional or otherwise incremental policy actions appropriate as the Commission moves to a comprehensively reformed BDS policy regime (e.g., through enhanced enforcement of existing statutory or regulatory provisions)?

Finally, Windstream noted that, to preserve competition, the solution adopted for the BDS markets must place wholesale prices substantially below retail prices. 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]



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