

April 22, 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:

On April 21, 2016, on behalf of Level 3 Communications, LLC and Windstream Services, LLC, I spoke by telephone with Eric Ralph, Chief Economist of the Wireline Competition Bureau, and William Layton, Assistant Division Chief of the Pricing Policy Division of the Wireline Competition Bureau.

During that conversation I set forth economic reasons why it would be inappropriate for the Commission to presume that markets for business data services (“BDS”) with connections above 50 Mbps perform competitively. Accordingly, I indicated that any further inquiry into appropriate benchmarks for identifying markets without market power should be framed as questions rather than presumptive conclusions, and, if a benchmark based on the bandwidth of BDS connections is employed for that purpose, the benchmark should be set at a level well above 50 Mbps.

The economic reasons I referenced are set forth in detail in the four declarations I have submitted in these proceedings.¹ More specifically, I explained that the regression results relating prices to the number of providers are likely biased away from identifying an inverse relationship, so do not reliably demonstrate that any markets for BDS

¹ Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services (*attached to* Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed Jan. 28, 2016)); Reply Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services (*attached to* Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed Feb. 19, 2016)); Supplemental Reply Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services (*attached to* Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed March 2, 2016)); Second Supplemental Reply Declaration of Jonathan B. Baker on Market Power in the Provision of Dedicated (Special Access) Services (*attached to* Letter from Jonathan B. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593 (filed April 21, 2016)).

connections are competitive, including markets with connections over 50 Mbps. I further explained that most buildings are served by an ILEC alone or an ILEC and a CLEC, and that ILECs are likely to exercise market power under such circumstances. I referenced my empirical analysis of the data submitted in response to the mandatory data collection, which (taken at face value) shows that ILEC retail prices do not fall much in practical economic terms until there are four in-building providers, not two, and observed that there is no reason to think that ILEC prices are competitive even with four in-building providers.

I also explained that potential competition from nearby providers does not make markets with BDS connections above 50 Mbps competitive. I referenced my empirical analysis of the data, which (taken at face value) shows that nearby providers have less than one-third the price effect of in-building providers on ILEC retail prices. I further explained that these markets are not contestable because CLECs must make sunk expenditures to build last-mile connections. I also referenced ex parte submissions from Level 3 and Windstream and a Level 3 declaration indicating that it is often not economically feasible to build new connections to serve a customer location even when the customer demands a connection with a bandwidth substantially in excess of 50 Mbps.²

Please contact me at 202-274-4315 if you have any questions regarding this submission.

Sincerely yours,

/s/ Jonathan B. Baker

Jonathan B. Baker
FTI Consulting

Outside Consultant to Level 3, LLC and Windstream Services, LLC

cc: Eric Ralph
William Layton

² Letter from John T. Nakahata, Counsel for Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM 10593, at 2 (filed April 21, 2016); Letter from Thomas Jones, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 05-25, 15-247 & RM 10593, at 4 (filed April 21, 2016); Declaration of John Merriman on Behalf of Level 3 Communications, LLC (*attached as App.* to Reply Comments of Birch, EarthLink, and Level 3, WC Docket No. 05-25, RM-10593 (filed Feb. 19, 2016)).