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of products “such that a hypothetical profit-maximizing firm that was the only present and future seller of those products (‘monopolist’) likely would impose at least a ‘small but significant’<sup>81</sup> and nontransitory’ increase in price” (“SSNIP”).<sup>82</sup> In those markets where there is insufficient information to apply the SSNIP test (as is likely the case here), secondary information may be used. Such secondary information includes the prices and characteristics (e.g., the extent to which the service delivers a dedicated or shared network connection) of the services analyzed, and whether a company’s own marketing and advertising materials and strategies reflect the extent to which its customers view products as substitutes.<sup>83</sup>

Importantly, alternative products that some customers, even a significant percentage of customers, buy in response to a price increase are excluded from the product market *if such substitution is insufficient to prevent the price increase from yielding a profit.*<sup>84</sup> There are therefore

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demand.” See PHILIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION ¶ 507(a) (3d ed. 2007) (“*Areeda*”) (“[T]he price elasticity of demand measures the percentage change of the quantity demanded of some good in response to a given price change.”). Demand substitutability and elasticity are also key to measuring market power. See *id.* ¶ 506(a) (“[T]he degree of market power depends on the response of buyers to price changes. Greater responsiveness (greater elasticity of demand) minimizes market power.”).

<sup>81</sup> The Guidelines suggest that a five percent increase in price would be considered “significant” in most cases. *Guidelines* § 1.11.

<sup>82</sup> See *Guidelines* § 1.11 (“Specifically, the Agency will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed at least a ‘small but significant and nontransitory’ increase in price, but the terms of sale of all other products remained constant. If, in response to the price increase, the reduction in sales of the product would be large enough that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Agency will add to the product group the product that is the next-best substitute for the merging firm’s product.”); see also *Areeda* ¶ 506(c) (“Whether a defendant accounting for the entire production of one product has market power notwithstanding the availability of...substitutes depends on several factors: (i) Within the range of output choices realistically available to the defendant, how many buyers consider other products to be interchangeable? (ii) At what relative prices do those buyers consider the products interchangeable? (iii) What are the relative costs of the defendant and those producing the substitute commodities? (iv) Can the defendant discriminate in price among buyers by charging a lower price only to those for whom other products are highly interchangeable?”).

<sup>83</sup> See TWTC Comments at 7.

<sup>84</sup> The inflection point between profit and loss is reached at the “critical sales loss.” See *Areeda* ¶ 536; *id.* at n.1 (“The critical sales loss is defined as the decrease in sales resulting from a hypothetical price increase that is just large enough to make the price increase unprofitable.”) (internal cites omitted)); see also PHILIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION ¶ 562(d) (Supp. 2009) (citing *FTC v. Whole Foods Market, Inc.*,

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many circumstances in which a product market (consisting of product A) excludes a product (call it product Z) even though a large (but insufficient) percentage of purchasers of A view Z as a substitute for A.<sup>85</sup> When these principles are applied to cable companies' HFC-based services and fixed wireless services, it is clear that neither service belongs in the same product market as special access service.

**A. Services Provided Via Cable HFC Plant Are Not Substitutes for Incumbent LEC Special Access services**

In its unbundling orders, the FCC determined that HFC-based services were not a viable substitute for DSn-based services.<sup>86</sup> Nothing has changed since the release of those orders. The available evidence in the record indicates that most customers of special access service do not view

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502 F.Supp. 2d 1 (D.D.C. 2007)) (“There is a profit detriment to the price increase equal to the product of the per unit gross margin and the number of units lost. But there is also an economic gain from the increased gross margin earned from the higher price on each remaining unit sold. The ‘critical loss’ is the amount of lost sales at which the economic detriment equals the economic gain. It is a ‘critical’ loss because any greater loss will result in the economic detriment exceeding the economic gain, thereby rendering the price increase unprofitable.”).

<sup>85</sup> For example, the FTC found that so-called “superpremium” ice cream constitutes a separate product market because enough ice cream purchasers would continue to purchase superpremium ice cream even if the price were increased such that a price increase would be profitable. *See DOJ-FTC Commentary on the Horizontal Merger Guidelines*, at 6 (Mar. 2006), available at <http://www.usdoj.gov/atr/public/guidelines/215247.pdf> (discussing *Nestle-Dryer's* (FTC-2003)) (“Ice cream is differentiated on the basis of the quality of ingredients. Compared to premium and non-premium ice cream, superpremium ice cream contains more butterfat, less air, and more costly ingredients. Superpremium ice cream sells at a substantially higher price than premium ice cream. Using scanner data, Commission staff estimated demand elasticities for the superpremium, premium, and economy ice cream segments. Staff’s analysis showed that a hypothetical monopolist of superpremium ice cream would increase prices significantly. This, together with other documentary and testimonial evidence, indicated that the relevant market in which to analyze the transaction was superpremium ice cream.”).

<sup>86</sup> *See TRRO* ¶ 39 & n.119 (“To the extent that [cable companies] compete in other product markets, like the enterprise services market, such competition is evolving more slowly and in more limited geographic areas.”); *id.* ¶ 193 (“Competitive LEC commenters explain that bandwidth, security, and other technical limitations on cable modem service render it an imperfect substitute for service provided over DS1 loops. Commenters also note that businesses that do require DS1 loops are willing to pay significantly more for them than the cost of a cable modem connection, which also indicates that the two are not interchangeable. Finally, at least two competitors maintain that, based on their internal data, they rarely lose enterprise customers to cable providers.”); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, ¶ 40 (2003) (“*TRO*”), *subsequent history omitted*.

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HFC-based services as substitutes for special access services because HFC networks are not capable of providing the features demanded by special access customers such as guaranteed bandwidth and service level agreements.<sup>87</sup> Indeed, the FCC has recently found that cable company HFC facilities are only capable of providing best-effort, typically asymmetrical services. This is true even when HFC facilities are equipped with DOCSIS 3.0 equipment.<sup>88</sup> Such facilities cannot therefore offer a viable substitute for wireline DS1s and DS3s. In fact, in their recent comments, the incumbent LECs now argue that the asymmetrical HFC-based cable modem service and special access services do not occupy the same market because of their different service attributes.<sup>89</sup>

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<sup>87</sup> See, e.g., Workshop Response of tw telecom *et al.*, GN Dkt. No. 09-51, WC Dkt. Nos. 07-245 *et al.*, CC Dkt. No. 98-147, at 6 (filed Sept. 15, 2009) (“Most business customers also demand reliable and stable bandwidth speeds. One workshop panelist asserted that even a next-generation DOCSIS 3.0 cable modem system cannot provide stable and reliable bandwidth because bandwidth is shared near the edge of the network at a local node.”); Reply Declaration of Kenneth Coker on Behalf of NuVox ¶¶ 5-6, attached to Reply Comments of *Covad et al.*, WC Dkt. No. 05-25 (Aug. 15, 2007) (“*Covad et al. 2007 Reply Comments*”) (“NuVox...uses no loop facilities provided over cable company infrastructure as it has not found them to be viable to meet NuVox’s needs. NuVox has found that the hybrid fiber-coaxial infrastructures in use by cable companies are not optimized for the delivery of DS1 or DS3 services due to the limitations imposed on upstream bandwidths in most systems.”); Reply Declaration of Ajay Govil on Behalf of XO ¶ 6, attached to *Covad et al. 2007 Reply Comments* (“*Govil Reply Decl.*”) (“Those coaxial systems use different forms of modulation not compatible with our equipment types. For these reasons, and the reasons set forth in my initial Declaration, XO uses no loop facilities provided over cable company infrastructure.”); *Covad et al. 2007 Comments* at 25 (“Where cable television networks reach business customers, they generally lack the capacity to serve large number of business customers that require telecommunications and Internet services at DS1 and higher speeds. While some cable networks have been developed to provide high bursts of speeds to smaller customers, few cable systems are capable of meeting the high bandwidth requirements of larger customers like those serviced by XO, Covad, and NuVox.”); *Govil Decl.* ¶ 22 (“Some ILECs have suggested that CLECs could opt to use cable television systems for alternative DS-1 and DS-3 loop facilities to serve their small to medium-sized business customers. In our experience, that is just ILEC rhetoric. To my knowledge, no cable television company has ever offered to provide DS-1 and DS-3 level loops to XO over its cable television plant. That should not be surprising, since cable television systems simply were not designed to provide this type of service.”).

<sup>88</sup> See *Broadband Cost Report* at 104 (“[C]able systems provide shared bandwidth in the last mile, with multiple [locations] sharing a fixed amount of bandwidth at a single node. Ultimately, bandwidth-per-customer is driven both by the number of customers (and their usage) per node and the total bandwidth available per node....Actual figures, however, depend on a large number of variables, including not only the DOCSIS specification, but also spectrum allocation and use and the number of [locations] per node.”).

<sup>89</sup> See *Carlton-Sider Decl.* ¶¶ 23-25.

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Moreover, as the FCC concluded in the *TRRO*, the substantial price difference between DSn-based services and HFC-based services supports the conclusion that they occupy separate product markets.<sup>90</sup> A substantial price gap between even DOCSIS 3.0 “business class” HFC-based services and DSn-based services persists today, indicating a continuing absence of substitutability. For example, Covad charges a price for 6/6 Mbps symmetrical bonded DS-1 service that is over ten times higher than the price that Cablevision charges for 101/15 Mbps “business-class” DOCSIS 3.0 service.<sup>91</sup> Cablevision’s lesser service attributes likely make its service unattractive for the vast majority of customers currently receiving special access service. Despite the bandwidth advantage provided by Cablevision’s service, it is, like other HFC-based services, only a “best effort” service. In contrast, Covad provides robust service and bandwidth guarantees demanded by most business customers.<sup>92</sup>

This is not to say that cable companies do not offer DS1 and DS3 services. As the incumbents insist, cable companies do offer last-mile DSn-based services over their fiber facilities. Indeed, they have been doing so for years.<sup>93</sup> But to the extent that cable companies seek to deploy last-mile fiber facilities to provide DS1 and DS3 services, they face entry barriers that resemble those faced by “traditional” CLECs.<sup>94</sup> Those entry barriers limit the extent to which competitors can expand their network reach to many commercial buildings. Moreover, as many analysts have noted, cable companies provide services to businesses and residential customers only within their highly fractured franchise footprints<sup>95</sup> which often cover only parts of integrated metro markets.<sup>96</sup> These limitations

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<sup>90</sup> See *TRRO* ¶ 193 (“Commenters also note that businesses that do require DS1 loops are willing to pay significantly more for them than the cost of a cable modem connection, which also indicates that the two are not interchangeable.”).

<sup>91</sup> Compare Covad Communications, Covad Business T-1 Service, at [http://www.covad.com/web/services/internet/business\\_t1.html](http://www.covad.com/web/services/internet/business_t1.html) (selling its 6/6 service for service for \$1259 on a three year contract), with Optimum Business, Pricing & Packages, at <http://www.optimumbusiness.com/pricing/ool.jsp> (selling its 101/15 service “starting at” \$79.95 per month).

<sup>92</sup> See *id.*

<sup>93</sup> *TRO* ¶ 40 (“Cable companies have also deployed networks to serve business customers. These are generally not the historic hybrid-fiber-coaxial cable networks providing service to residential customers but newly deployed facilities specifically designed to serve enterprise customers.”).

<sup>94</sup> See *Govil Reply Decl.* ¶ 6 (“Many cable companies now construct much of their networks using SONET and DWDM architectures, and have the ability to sell unused portions of their networks, but only in a limited number of locations. Those locations are core to the cable companies’ networks, primarily head-ends and hub locations, where XO employs common network architectures and equipment types.”).

<sup>95</sup> See Frost & Sullivan/Stratecast, *The SMB Voice Service Opportunity for Cable Operators: Why - and How - to Pursue It*, at 3 (2008), available at

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make it difficult for cable companies to win multi-location customers' business. For these reasons, cable companies are simply not significant players in the market for businesses that demand special access services. As Moody's recently concluded: "On the business side, we expect wireline telecoms to leverage the significant reach advantage of their networks to carry the ever-growing Internet traffic and do not expect cable to materially impact the enterprise and wholesale business over the next 12-18 months at least."<sup>97</sup>

**B. Services Provided Via Fixed Wireless Networks Are Not Substitutes for Incumbent LEC Special Access services**

The case against inclusion in the relevant market is at least as strong for fixed wireless as it is for HFC-based services. As with HFC-services, there are no doubt some wireline special access customers that are ready and willing to shift to wireless service. But the evidence indicates that, today, wireless service is not a viable substitute for special access service in most geographic areas. Wireless service is most often used in locations, such as rural areas, where line-of-sight issues are minimal and there are few wireline facilities available.<sup>98</sup> As XO has explained, its owned fixed wireless services "can only be economically used for very high capacity (at least 10 megabits) and can only be used to

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<http://www.level3.com/downloads/The%20SMB%20Voice%20Service%20Opportunity%20for%20Cable%20Operators.pdf> ("[A] large enterprise will usually have more locations and many of them will be beyond the reach of the [cable] operator.").

<sup>96</sup> For example, while Comcast serves Washington D.C., Cox serves Fairfax County, VA including the high-tech, high-demand areas of Tysons Corner and the Dulles Corridor. Therefore, many multi-location businesses in the D.C. Metro Area are unable obtain service from a single cable company.

<sup>97</sup> Mary Lenninghan, *U.S. Fixed-line Market Stabilising Despite Moves to Mobile - Moody's*, Total Telecom, May 11, 2010, available at <http://www.totaltele.com/view.aspx?ID=455400>.

<sup>98</sup> See *Broadband Cost Paper* at 76 ("[Microwave links have] a requirement for line of sight from one Microwave tower to the next."); see also Statement of Ed Evans, Chairman and CEO, Stelera Wireless, National Broadband Workshop: Deployment Wireless - General, Transcript at 39-40 (Aug. 12, 2009) ("[W]hile DSL is prevalent in a lot of rural markets, I mean, candidly, there's a lot of bad DSL that's out there....As you get farther and farther away from that central office, we've seen DSL speeds that cap out at 256k [and] it's been very easy to cherry pick those guys off the edge of their network until you get closer to their CO where, you know, their speeds are closer to [1.5 Mbps]."), available at [http://www.broadband.gov/ws\\_deployment\\_wireless.html](http://www.broadband.gov/ws_deployment_wireless.html). Said another wireless provider "I would definitely agree. You know, in our markets, we don't try and compete with DSL and cable. I mean, quite frankly, we can't do that. You know, we can't deliver what they can deliver, but, again, in our rural areas, we go where DSL and cable aren't." Statement of Scott Zimmer, President, Air Advantage, National Broadband Plan Workshop: Deployment Wireless - General, Transcript at 41 (Aug. 12, 2009), available at [http://www.broadband.gov/ws\\_deployment\\_wireless.html](http://www.broadband.gov/ws_deployment_wireless.html).

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reach commercial buildings that meet a set of highly limiting engineering criteria.”<sup>99</sup> Verizon’s own panelist at the broadband workshops observed that Verizon’s LTE and WiMax technologies are a complement to, not a substitute for, *consumer grade* wireline broadband service.<sup>100</sup> In addition, Sprint and T-Mobile recently demonstrated that incumbents have engaged in substantial puffery regarding the availability and carriers’ demand for wireless backhaul services. As Sprint argues, “[e]ven Clearwire, of which Sprint is the majority owner, is expected to build wireless links to only 10% of Sprint’s cell sites over the next several years.”<sup>101</sup>

Verizon and Qwest’s fiber backhaul deployment plans further demonstrate the limitations of wireless backhaul and the incumbent LECs’ continued control over the wireline special access facilities necessary to provide backhaul. Verizon recently announced that it is planning to deploy its own fiber to “90% of the cell sites in its territory within the next 5 years.” As Verizon’s CTO, Tony Melone, explained, “[i]f fiber is available, it’s the better alternative.”<sup>102</sup> Verizon is able to rely almost exclusively on its own facilities because of the substantial scale and scope of its existing network.<sup>103</sup> Similarly, Qwest, which provides wireless service under a resale arrangement with Verizon, “plans to run fiber to 7,500 of the 17,000 cell sites in its territory.”<sup>104</sup> Those 7,500 sites constitute the majority of the cell sites in the Qwest region that Qwest believes cannot be served with its copper-based DS-

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<sup>99</sup> Declaration of Michael Lasky ¶ 4, attached to Comments of XO *et al.*, WC Dkt. No. 09-135 (Sept. 21, 2009).

<sup>100</sup> See Statement of Tom Sawanobori, Vice President, Network and Technology Strategy, Verizon, National Broadband Workshop: Deployment Wireless - General, Transcript at 17, 51-52 (Aug. 12, 2009), available at [http://www.broadband.gov/ws\\_deployment\\_wireless.html](http://www.broadband.gov/ws_deployment_wireless.html).

<sup>101</sup> *Ex Parte* Letter from Charles W. McKee, VP-Regulatory Affairs, Fed. and State Regulatory, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25, at 4 (May 6, 2010).

<sup>102</sup> Phil Goldstein, *Verizon’s Melone Details 4G Plans for Backhaul, Antennas and Backup Power*, Fierce Wireless, Sept. 22, 2009, available at <http://www.fiercewireless.com/story/verizons-melone-stresses-collaboration-4g/2009-09-22>.

<sup>103</sup> See Doug Allen, *Verizon Partner Solutions Offers Wireless Ethernet Backhaul on Wholesale Basis*, Telecom Engine, Apr. 2, 2009, available at [http://www.telecomengine.com/archives/article.asp?HH\\_ID=AR\\_5085](http://www.telecomengine.com/archives/article.asp?HH_ID=AR_5085) (“Currently [Verizon’s network] passes or is within reach of 85 percent of Verizon’s cell sites. Extending its fiber build to support backhaul applications is a win-win for Verizon, as it gives Verizon Wireless access to a fiber network that will support its LTE rollout, while [Verizon] profits from wireless providers looking for more robust backhaul transport.”) (“*VPS Partner Solutions*”).

<sup>104</sup> Ed Gubbins, *Fiber-fed Wholesale Wireless Backhaul Market Takes Off*, Connected Planet, Nov. 9, 2009, available at <http://connectedplanetonline.com/mobile-apps/news/fiber-fed-wireless-backhaul-1109/>

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1s.<sup>105</sup> Qwest's conduct therefore supports the conclusion that wireless services are not yet a viable substitute for wireless backhaul service on a widespread basis.

The incumbents also acknowledge that wireless carriers will continue to rely on copper-based DS-1 backhaul for years to come. For example, in a recent earnings call, Qwest asserted that only "approximately 50% of the [cell] sites [in its region] will need fiber by 2014."<sup>106</sup> Moreover, even at those cell sites where fiber is deployed, incumbents expect to continue to earn revenue from DS-1 special access services.<sup>107</sup> Analysts believe that Verizon's decision to deploy fiber to 90 percent of its towers will "initially have 'low' impact on the wireless backhaul market because existing T-1 services still meet mobile carrier needs today."<sup>108</sup> Incumbents want to do everything they can to hold on to their existing DS-1 backhaul revenue due to the profits those circuits provide. According to analysts, "[t]he T-1 [backhaul] business offers among the highest profit margins of all telecom services."<sup>109</sup> This conclusion cannot be squared with the view that fixed wireless service poses a significant threat to incumbent LEC wireline special access service.

## **VI. The FCC Must Take Initial, Interim Steps To Diminish The Extent To Which Incumbent LECs Can Exercise Market Power In Phase II Areas**

Given the overwhelming evidence that the current pricing flexibility regime is harming American businesses by allowing incumbent LECs to exercise their market power in the provision of DS1 and DS3 special access services in Phase II areas, the FCC should adopt interim measures to rein in unreasonable Phase II prices. Such remedies should apply until the conclusion of this proceeding and should include the following: (1) reducing all special access prices in Phase II areas to the level of prices subject to price caps; and (2) refusing to grant any further petitions for Phase II pricing flexibility. As explained, the FCC has more than enough information in the record to support these interim steps.

Going forward, the FCC can and should collect whatever additional data it believes are necessary to complete the final steps of its evaluation of the special access market. For example, TWTC suggested employing a test similar to the approach taken by Ofcom (and proposed by BT in

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<sup>105</sup> See Qwest Communications Int'l, Q4 2009 Earnings Call Transcript (Feb. 16, 2010), at <http://seekingalpha.com/article/188812-qwest-communications-international-inc-q4-2009-earnings-call-transcript?page=-1>.

<sup>106</sup> *Id.*

<sup>107</sup> See *id.* ("Right now we feel like we are taking a large market share [of fiber backhaul] inside the 14 states. The other good news is it also protects our copper. While some cell sites will continue to have copper that allows us to maintain that revenue and then overlay with fiber into it.")

<sup>108</sup> *VPS Partner Solutions.*

<sup>109</sup> *Sprint's Secret to Cost-Cutting: WiMAX*, Red Orbit, Dec. 27, 2006, available at <http://www.redorbit.com/news/business/781495/sprints-secret-to-cost-cutting-wimax/index.html>

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this proceeding) which would, among other things, examine actual and potential deployment on a zip code or postal code basis.<sup>110</sup> To do so, the FCC would need to collect information on the location of competitors' local fiber transport networks and buildings demanding special access services. Based on its examination of this information, the FCC should determine (1) whether there are any services, such as DS1s or low-bandwidth Ethernet services, that, due to their limited revenue potential, are not subject to competitive supply in any geographic market and should remain subject to price caps in all locations; and (2) for other special access products, identify the geographic areas in which the incumbent LECs possess market power.

In addition, as part of its inquiry, the FCC must reevaluate its decision to eliminate price cap regulation for packet-switched special access services, including Ethernet, in all geographic areas without regard to the level of competition faced by the incumbent LEC. As the undersigned and others have explained, given incumbent LECs' market power over the facilities necessary to provide all special access services (both TDM and packet-switched), there was no logical reason to exclude all Ethernet services from regulation. Moreover, the evidence submitted by many commenters proves that neither bare copper nor TDM-based inputs are viable replacements for packet-switched special access services in many instances.<sup>111</sup>

The FCC must also examine whether prices charged by incumbent LECs for services subject to price cap regulation are unreasonably high. Given that incumbent LECs' price cap rates are both higher than their forward looking costs and higher than competitors' rates, this is likely the case. If the FCC makes such a finding, it must establish a new x-factor or other mechanism to reduce price cap prices over time.

Finally, the FCC should closely examine and, if necessary, prohibit anticompetitive terms and conditions in incumbent LEC volume/term and contract tariff discount offers. As explained, this is a critical inquiry.<sup>112</sup>

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<sup>110</sup> See TWTC Comments at 26-31; BT Comments at 24-33.

<sup>111</sup> See, e.g., Letter of Thomas Jones, Counsel, tw telecom, to Marlene H. Dortch, Secretary, FCC, GN Dkt. Nos. 09-51 *et al.*, at 9-10 (Dec. 22, 2009); Letter from Joshua M. Bobeck, Counsel, Alpheus Communications, L.P., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-125, at 3-5 (Oct. 9, 2007); *Ex Parte* Letter from Aryeh Friedman, BT Americas Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 06-125 & 06-147, at 1-2 (Oct. 5, 2007); *Ex Parte* Letter from Brad E. Mutschelknaus *et al.*, Counsel, NuVox Communications *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 04-440 *et al.*, at 7 (Sept. 19, 2007); *Ex Parte* Letter from Laura H. Carter, Vice President, Government Affairs, Fed. Regulatory, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 06-125 *et al.*, at 7-8 (Aug. 30, 2007); Opposition of Time Warner Telecom, Inc. *et al.*, WC Dkt. Nos., 06-125 & 06-147, at 16-20 (Aug. 17, 2006).

<sup>112</sup> However, if the FCC does its job to ensure that non-discounted rates are just and reasonable, the FCC need not concern itself with the terms of such tariffs. Specifically, the FCC need not regulate the terms of contracts if it (1) ensures that incumbent LECs' non-discounted price cap rates (e.g., 1-5 year

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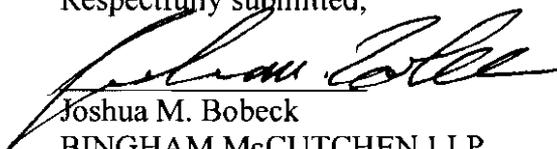
All of this will take time, however. In the meantime, the Commission should adopt the interim measures proposed herein that are narrowly tailored to diminishing the harms to consumer welfare caused by the existing regulatory regime.

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term rates) are reasonable and (2) only allows incumbent LECs pricing flexibility for those services and in those areas where competition actually restrains the ability of incumbent LECs to set prices at supracompetitive levels. If these conditions are met, competitors need not agree to onerous and discriminatory terms in order to obtain reasonable rates. The existence of a reasonable undiscounted rate would allow competitors and incumbents to freely negotiate for additional discounts.

REDACTED-FOR PUBLIC INSPECTION

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joshua M. Bobeck", is written over a horizontal line.

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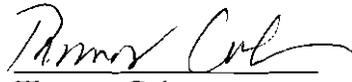
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A handwritten signature in cursive script, appearing to read "Thomas Cohen", written in black ink.

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