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March 28, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers,
WC Docket No. 05-25*

Dear Ms. Dortch:

AT&T Inc. (“AT&T”) submits this letter to respond to the recent letters submitted by Level 3, tw telecom, and CALTEL¹ seeking immediate “relief” to address alleged harms based on their long-discredited theory that the term and volume discounts offered by incumbent local exchange carriers (“ILECs”) for time division multiplex-based (“TDM-based”) special access services harm competition by denying customers the ability to switch to alternative providers. This lock-in theory is even less sustainable today than it was when it was initially made. Today, TDM-based special access customers are migrating *en masse* to Ethernet services, including Ethernet services offered by non-incumbent providers, which dramatically refutes any notion that ILEC TDM-based customers are locked in.² As described below, the submissions and actions of non-incumbents likewise confirm that the terms and conditions under which ILECs provide TDM-based services have not materially affected their ability to migrate to other providers or to other types of services, including Ethernet services.

The record in this proceeding already overwhelmingly establishes that the special access volume and term discounts offered by ILECs are legitimate *pro-competitive* responses to

¹ See Letter from Michael J. Mooney (Level 3) to Marlene H. Dortch, WC Docket No. 05-25 (Feb. 22, 2012) (“Level 3 Letter”); Letter from Thomas Jones (tw telecom) to Marlene H. Dortch, WC Docket No. 05-25 (Feb. 27, 2012) (“tw telecom Letter”); Letter from Sarah De Young (CALTEL) Marlene H. Dortch, WC Docket No. 05-25 (Feb. 9, 2012) (“CALTEL Letter”).

² See Letter from Christopher Heimann (AT&T) to Marlene H. Dortch, WC Docket No. 05-25 (March 28, 2012) (“AT&T Data Request Letter”).

Marlene H. Dortch

March 28, 2012

Page 2

competition that benefit both providers and customers.³ The Commission itself has long recognized that “both volume and term discounts [are] generally legitimate means of pricing special access facilities so as to encourage the efficiencies associated with larger traffic volumes and the certainty associated with longer-term relationships.”⁴ Such discounts are commonplace in competitive markets,⁵ and the few responses to the Commission’s most recent data requests

³ See, e.g., Carlton-Shampine-Sider Reply Decl. ¶¶ 75-83 (attached to AT&T Reply, WC Docket No. 05-25 (Feb. 24, 2010) (“AT&T Reply”)) (special access term and volume “discounts are commonplace and can benefit consumers and enhance economic efficiency in a variety of ways” and “there are only limited circumstances in which such discounts may harm competition, and opponents do not show that such circumstances apply here”). Carlton-Sider Decl., ¶¶ 87-99 (attached to AT&T Comments, WC Docket No. 05-25 (Jan. 19, 2010) (“AT&T Comments”)) (same); Topper Decl., ¶ 62 (attached to Verizon Comments, WC Docket No. 05-25 (filed Jan. 19, 2010)) (“economic analysis suggests that the volume and term discounts and other provisions contained in some ILEC special access discount plans and contract tariffs are mutually beneficial, reflect an attempt by incumbent providers to differentiate their service offerings in response to customer demand and competitive pressure, and can enhance economic efficiency by reducing the costs of customer churn”); *id.* ¶ 67 (describing economic benefits for special access term and volume discounts for competition and consumers); see also AT&T Comments, at 72-82; AT&T Reply, at 59-72; Verizon Reply, WC Docket No. 05-25, at 49-54 (filed Feb. 24, 2010).

⁴ Fourth Memorandum Opinion And Order On Reconsideration, *Transport Rate Structure and Pricing*, 10 FCC Rcd. 12979, ¶ 13 (1995) (citing *Expanded Interconnection Order*, 7 FCC Rcd. 7369, ¶ 199 (1992)). See also, e.g., Report and Order, *Private Line Rate Structure and Volume Discount Practices*, 97 F.C.C. 2d 923, ¶ 40 (1984) (“[g]reater pricing flexibility in volume discounts may benefit large as well as small users, not injure competition, and not be discriminatory.”); Third Report and Order, *Access Charge Reform*, 11 FCC Rcd. 21354, ¶ 187 (1997) (volume and term “discounts should be permitted . . . because they encourage efficiency and full competition”).

⁵ Topper Decl. ¶ 66 (“The claim that discounts based on volume, term, and annual expenditure commitments are anticompetitive is difficult to square with the fact that such discounts are common practice in a number of industries that display vigorous competition, which suggests that such agreements are not generally harmful”); Carlton-Sider Decl. ¶ 90 (“Volume, term and loyalty discounts are prevalent in many industries. In the telecommunications industry, for example, wireless subscribers typically receive handset discounts in exchange for committing to new contracts. Similarly, wireless subscribers receive volume discounts in the form of lower per-minute rates when they purchase larger “buckets” of minutes. Consumers also receive bundled discounts when purchasing multiple communications services from LECs or cable operators. Typically, a “triple-play” bundle of telephone, Internet and video services can be purchased at a significant discount to “a la carte” prices. Similarly, discount programs such as frequent flyer programs which reward repeat customers are commonplace.”). See also, e.g.,

Marlene H. Dortch

March 28, 2012

Page 3

confirm that competitive providers also offer volume and term discounts when they sell DS1, DS3 and Ethernet services.⁶ The D.C. Circuit has held that these types of discounts are “most naturally viewed as a bargain containing terms that both benefit and burden its subscribers,” and the court admonished the Commission that complaints about the terms of such plans must be measured against the “critical fact” that ILECs have “no obligation to offer a discount plan at all” and thus that such plans, on their face, necessarily offer a benefit to consumers.⁷ Only last month, tw telecom itself cautioned the Commission that “[c]osts would go up exponentially for special access purchases if LECs discontinued (or if they were permitted to discontinue) all tariff discount plans.”⁸

AT&T (and other incumbents) provide and negotiate many different types of offers, and no customer is required to accept volume and term discount plans. AT&T has agreements that provide monthly plans with no discounts, plans that have only term but no volume commitment, and various other discount plans.⁹ The reality is that many customers that choose plans with both volume and term commitments can also choose to commit only a fraction of their volumes to those plans and thus have a significant amount of business that can readily be moved to competitive providers.¹⁰ This is especially true for wireless carriers, because the exploding growth of wireless usage makes it easy for wireless carriers that have made volume and term commitments to AT&T or other incumbents to meet their commitments and still enjoy

AT&T Jan. 19 Comments at 77-78 (describing many competitive industries where term and volume discounts are commonplace).

⁶ See, e.g., Letter from Randall Sifers to Marlene H. Dortch, WC Docket No. 05-25, attachment at 2 (Dec. 5, 2011) (public version of XO’s response to the First Voluntary Data Request) (XO offers DS1, DS3 and Ethernet services “on two or three [year] terms” and “higher volume sales will often include a discount from a single service sale”).

⁷ *BellSouth v. FCC*, 4689 F.3d 1052, 1060 (D.C. Cir. 2006).

⁸ tw telecom Letter, attached slide presentation, at 4.

⁹ See, e.g., Letter from Linda Vandeloop, AT&T to Marlene H. Dortch, FCC, dated July 15, 2011; AT&T Jan. 19 Comments, at 80-81 (Jan. 9, 2010).

¹⁰ See, e.g., AT&T Reply, at 65 (“[T]he revenue-based discount programs that AT&T typically negotiates have modest requirements. For example, AT&T recently negotiated a contract with one of the nation’s largest competitive suppliers of wireline and wireless services that provides very significant discounts on special access purchases in return for the customer agreeing to continue purchasing from AT&T an amount of special access services that is at least 50 percent of the amount the customer spent on such services with AT&T in the prior period. Since this customer already makes very significant purchases from CLECs and wireless providers (and likely cable companies) and has announced that it expects to continue to significantly expand its network, this arrangement covers far less than 50 percent of this customer’s total demand.”).

Marlene H. Dortch

March 28, 2012

Page 4

substantial flexibility in awarding business to alternative providers when they provide more attractive terms.¹¹ Thus, when special access customers agree to volume or term commitments, they do so as sophisticated buyers that have *negotiated* or otherwise voluntarily made particular commitments, typically following competitive bidding in which CLECs and others have made competing offers for all or some of the customer's business. Eliminating the ability of ILECs to offer such options would thus eliminate substantial benefits for customers.¹² Moreover, it is obvious that those customers are *not* locked into contracts with ILECs, because, as AT&T has recently documented,¹³ the ILECs' existing base of TDM circuits is entering a period of decline and customers are actively moving large portions of their services to non-ILEC Ethernet providers. Similarly, if there were any merit to the lock-in theory, one would expect to see decreased entry and a contraction of competitive offerings during the past decade during which such offerings were available. But the opposite has occurred. CLECs, cable companies, and wireless providers have invested (and continue to invest) billions of dollars in developing and expanding alternative special access offerings.

Not surprisingly, therefore, Level 3, tw telecom and CALTEL provide no credible evidence that they or any other CLEC is locked in to purchasing ILEC TDM-based special access services.

Level 3. Level 3 admits (at 22) that it has a contract tariff with AT&T that has allowed it to "move some of its circuits off of AT&T's network" and that those circuits are now "on Level 3's own network or on the networks of other CLECs," which confirms AT&T's prior showing

¹¹ See Reply Declaration of David A. Mayo, Senior Vice President, T-Mobile USA, Inc., submitted in Investigation 11-06-009 before the Calif. Pub. Utils. Comm'n, on Aug. 29, 2011, ¶ 18 ("Mayo CA Reply Decl."); Reply Declaration of Parley Casto, AT&T, submitted in Investigation 11-06-009 before the Calif. Pub. Utils. Comm'n, on Aug. 29, 2011, ¶¶ 12-15. In the words of James Crowe, CEO of Level 3, "the incredible growth rate" in wireless usage will continue generating "a very large opportunity" for alternative backhaul suppliers. Conference Call Tr., Level 3 Communications' CEO Discusses Q1 2011 Results—Earnings Call, Seeking Alpha (May 3, 2011), <http://seekingalpha.com/article/267352-level-3-communications-ceo-discusses-q1-2011-results-earnings-call-transcript?part=qanda>.

¹² See Topper Decl. ¶¶ 67, 68 ("[M]any purchasers of high-capacity services are large, sophisticated buyers. . . . They exert their substantial bargaining power by obtaining multiple bids from competing suppliers, switching providers to obtain lower prices and better non-price terms, and using the service of systems integrators." "Economists generally find that the voluntary mutually beneficial nature of such agreements makes the prospect of competitive harm unlikely. Customers are not forced to accept the terms of a discount plan or contract tariff; customers and suppliers alike enter these agreements voluntarily, hence both parties benefit"); see also AT&T Comments, at 80-82.

¹³ AT&T Data Request Letter, at 2-8.

Marlene H. Dortch

March 28, 2012

Page 5

that Level 3's current agreement gives Level 3 the flexibility to shift a substantial percentage of its circuits elsewhere.¹⁴

Because Level 3's agreements with AT&T do not "lock" Level 3 into AT&T's services, it argues that it *used to* have affiliates that were, once upon a time, subject to lock-in provisions. But the only "evidence" of this is Level 3's mischaracterization of a 2007 dispute between AT&T and Broadwing (a Level 3 affiliate).¹⁵ According to Level 3, Broadwing was subject to a "lock in" agreement with AT&T, and Broadwing was able to get out of that lock-in agreement only after filing a complaint against AT&T with the Commission.¹⁶ The truth is quite different: Broadwing was not trying to get out of its deal with AT&T, it was trying to force AT&T to *renew* a contract that had just *expired*, so that it could continue to have the same deal with AT&T that it had previously. In other words, Broadwing was already free to purchase services elsewhere – the opposite of being "locked in" – because its contract with AT&T had expired. These facts are plainly set forth in the public portions of Broadwing's complaint.¹⁷

Level 3 also mischaracterizes the AT&T tariffs that it cites. For example, Level 3 asserts (at 9) that AT&T conditions discounts on a volume commitment of "up to 100%" of the customer's past purchases, but the tariff it cites, AT&T SBC Tariff F.C.C. No. 73, § 7.2.22(E), says no such thing. That tariff provides for *term* discounts (1, 2, 3, 5, or 7 years) that are available *without* making any volume or revenue commitment.¹⁸ The portion of the tariff Level 3 cites merely provides customers who purchase under that term plan with an extra *optional* benefit that allows them to avoid early termination penalties if they cancel a circuit before the term has been met. Under this provision, if a customer agrees to maintain a certain number of circuits during the term of the commitment, the customer is allowed to cancel up to 20% of those circuits without incurring *any* early termination penalty. This provision is referred to as a "portability commitment," because it provides customers the ability to add and remove circuits subject to term discounts without being subject to any early termination penalties. For example, if an AT&T customer loses one of its own customers and no longer needs the circuits it purchased from AT&T to serve that customer, it can cancel the circuit without incurring early

¹⁴ Letter from Christopher M. Heimann, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25, dated March 7, 2011, at 5 & n.19.

¹⁵ Level 3 Letter, at 21.

¹⁶ *Id.*

¹⁷ *See Broadwing Communications, LLC, Complainant v. AT&T, Inc. et al*, Defendants, Formal Complaint, File No. EB-07-MD-005, ¶¶ 18-21 (filed Dec. 28, 2007).

¹⁸ Moreover, contrary to Level 3's assertions, companies need not make any commitment to be allowed to *move* circuits from one location to another. The tariff expressly permits customers that have purchased circuits under term commitments to move those circuits without incurring early termination penalties. AT&T SBC Tariff F.C.C. No. 73, § 7.2.22(C).

Marlene H. Dortch

March 28, 2012

Page 6

termination penalties, as long as it continues overall to purchase at least 80% of the total number of circuits it originally committed to purchase under the term plan.¹⁹ However, the rate discount the AT&T customer receives does not depend in any way on whether the customer chooses the optional portability commitment; the discount depends solely on the term period (1, 2, 3, 5, 7 years) chosen by the customer.

Level 3 likewise mischaracterizes AT&T's Ameritech Tariff F.C.C. No. 2, § 7.4.13, asserting that it requires AT&T's customers to maintain 90% of the number of channel terminations in service in order to get maximum discounts. Again, that is false. Here too, customers have a choice. They can purchase service under (1) AT&T's "Optional Payment Plan," which offers discounts based purely on term commitments and no volume or revenue commitments, but that include termination penalties if the customer cancels the circuit (no termination penalty, however, for merely moving the circuit) or (2) the "Discount Commitment Plan," under which the customer agrees to maintain a certain number of channel terminations, but does not incur termination penalties for disconnecting circuits as long as commitment levels are maintained. Under these provisions, the pure *term* plan actually offers *greater* discounts than the commitment plan,²⁰ so that Level 3's assertion that the customer needs to purchase under the Discount Commitment Plan to obtain the maximum discount is patently false. Moreover, to the extent that a customer ultimately decides that it would prefer not to be subject to any volume commitment it made under the Discount Commitment Plan, the customer is permitted to convert those circuits to the Optional Payment Plan, and reduce its Discount Commitment Plan commitment by that number of circuits, with no penalty as long as the customer agrees to the same or longer term for those circuits as existed under the Discount Commitment Plan.²¹

Level 3 also mischaracterizes other AT&T tariff provisions, including one called the "AT&T MVP Discount Plan" and one called the "HCTPP Discount Plan."²² The details of these misrepresentations are beside the point, however, because these two tariff provisions have been unavailable to new customers since 2007 and 2003, respectively, and the only customers that

¹⁹ Level 3's reliance on a number of other tariffs suffers from the same flaw. *See* Level 3 at 9-20 (*citing* PacBell FCC Tariff No. 1, § 7.4.18, Nevada Bell FCC Tariff No. 1, § 7.11.5.2, SNET FCC Tariff No. 39, § 2.11.1.1, Ameritech FCC Tariff No. 2 §§ 22.20.5, and SBC FCC Tariff No. 73, § 41.20). As with the SBC tariff discussed above, these tariffs offer purely term-based discounts, with the additional *option* to add a commitment that permits the customer avoid termination penalties if they want to flexibility to cancel up to 20% of their circuits prior to the expiration of the term.

²⁰ *See* AT&T Ameritech Tariff No. 2, § 7.5.9(b)(1).

²¹ Tariff F.C.C. No. 2, § 7.4.13(G).

²² *See* Level 3 Letter at 9-10.

Marlene H. Dortch

March 28, 2012

Page 7

purchase under them today are those who were grandfathered in and voluntarily *chose* to renew those tariffs after their initial terms expired.

Level 3 also relies heavily on filings made by Sprint and T-Mobile from 2005 to 2009.²³ But reliance on these years-old pleadings is absurd given recent marketplace evolution. For example, Level 3 claims that “in particular, Sprint and T-Mobile . . . have complained of being forced to enter such lock-up contracts,”²⁴ when in fact incontrovertible evidence *from 2011* shows that both of those carriers are in the final stages of a large-scale migration of their backhaul to dozens of non-ILEC Ethernet providers.²⁵

Equally important, Level 3’s proposed “remedies” for the “lock-ins” it has failed to document would be blatantly unlawful. Level 3 urges the Commission (at 28-29) to immediately issue an order limiting the terms under which the ILECs may offer discounts and requiring the “amend[ment]” of all “existing contract tariffs and tariff discount plans containing commitments” that would violate these standards. As Level 3 recognizes (*id.*), however, such “remedies” could not be imposed unless the Commission makes a predicate finding that all such practices violate Section 201(b); indeed, the Commission could not reform any existing contract without a specific determination that the discounts and commitments of that contract, in the full context of the negotiated bargain embodied in that contract, violate Section 201(b).²⁶ As noted above, however, such volume commitments are presumed to be legal under Section 201(b), and in all events the current record would not support any such findings. Indeed, in early 2011, Level 3 itself claimed that the Commission did not yet have a sufficient record with respect to contractual lock-up terms and argued for additional discovery,²⁷ and even now Level 3 relies only on pleadings that are several years old coupled with speculation regarding the confidential data submitted in response to the Commission’s voluntary data requests, which Level 3 admits

²³ See, e.g., Level 23 Letter at nn.2, 4, 15, 24, 34, 41, 48-57, 65, 72.

²⁴ Level 3 Letter at 21.

²⁵ AT&T Data Request Letter, at 2-8.

²⁶ The Commission may order a carrier to offer its services on different rates or terms only *after* it has conducted a hearing and made definitive findings both that the carrier’s existing charge or practice “is or will be in violation of any provisions of this Act” and of “what will be the just and reasonable” charge or practice “to be thereafter followed.” 47 U.S.C. § 205; *AT&T v. FCC*, 487 F.2d 865, 872-80 (2d Cir. 1973) (a “full opportunity for hearing” and express Commission findings that the carrier-initiated rate is unjust and unreasonable and the prescribed rate is just and reasonable “are essential to any exercise by the Commission of its authority” to prescribe rates or terms). See also Letter from Gary L. Phillips (AT&T) to Marlene H. Dortch, WC Docket No. 05-25, at 5-6 (Aug. 5, 2010).

²⁷ Letter from Erin Boone, Level 3, to Marlene H. Dortch, FCC, WC Docket No. 05-25, at 2 (March 7, 2011).

Marlene H. Dortch

March 28, 2012

Page 8

(at 21) it has not reviewed. Moreover, as AT&T has explained elsewhere, marketplace developments since 2010 demonstrate that special access customers are not locked in but are in fact shifting large amounts of traffic from legacy TDM services to Ethernet, as supplemental data requests to non-ILECs would confirm.²⁸ On the current record, the Commission would thus have no basis for the intrusive remedies Level 3 proposes – in which the Commission would second-guess and re-write negotiated contracts to preserve the existing discounts (the *quid*) while giving Level 3 a better bargain on its volume commitments, portability agreements, and termination penalties (the *quo*).²⁹

tw telecom. *tw telecom* likewise provides no evidence at all that that any AT&T tariff or other action locks in *tw telecom* to AT&T's TDM-based services. Foremost, *tw telecom* can make such claims only by ignoring its own marketplace successes: it is the third largest Ethernet provider in the country and its business Ethernet installations grew 31 percent in 2011.³⁰ Such marketplace success is hardly compatible with its assertions to the Commission that customers are locked into ILEC tariffs and contracts for TDM-based services. It is predictable, therefore, that *tw telecom*'s submission asserting the existence of anticompetitive lock-ins contains no supporting evidence. The AT&T Ameritech tariff that *tw telecom* attached to its submission expired in 2010.³¹ And, AT&T encourages the Commission to compare *tw telecom*'s list of ILEC "lock in" terms that it claims are ubiquitous to *tw telecom*'s own descriptions of the contracts and other AT&T tariffs under which it actually purchases services from AT&T.³²

CALTEL. *CALTEL*'s claim that AT&T has been able to "lock-up" demand for Ethernet backhaul in California by offering volume and term discounts that allegedly prevent wireless carriers from choosing other competitive suppliers is also baseless.³³ *CALTEL* does not grapple at all with the fact that wireless carriers' have shifted *en masse* to Ethernet backhaul supplied by both incumbent and competitive providers.³⁴ Instead, *CALTEL* rests its claims on a selective

²⁸ AT&T Data Request Letter, at 2-8.

²⁹ See Level 3, at 29 ("as a protective measure" the Commission should force all ILEC to "maintain current discount levels and other lock-up term benefits" notwithstanding the "expiration" or "revision" of any such terms pursuant to these remedies).

³⁰ See Press Release, "tw telecom Leads All Competitive Providers in Business Ethernet Services," February 14, 2012, available at <http://newsroom.twtelecom.com/index.php?s=24615&item=121588>.

³¹ The rest of *tw telecom*'s submission is mainly a list of "pros" and "cons" to various types of offers and prices paid by *tw telecom*.

³² See *tw telecom* Letter, Attachment C.

³³ *CALTEL* Letter, at 3-4.

³⁴ AT&T Data Request Letter, at 2-8.

Marlene H. Dortch

March 28, 2012

Page 9

sample of information from certain markets in one state, and primarily focuses on backhaul purchases by *one* wireless carrier, T-Mobile.³⁵ Further, the California-based information relied on by CALTEL – like the data previously collected by the Commission in this proceeding – did *not* include any comprehensive information from competitive suppliers regarding the facilities that they can and do use to provide backhaul. Accordingly CALTEL’s arguments add little or nothing to the record in this proceeding because the data it relies on is incomplete and the scope of its analysis is so narrow.

In fact, however, even CALTEL’s narrow claims as to “lock-up” – in which CALTEL posits that, because T-Mobile has purchased some backhaul services at discounts in return for making volume and term commitments to AT&T, T-Mobile is forced to purchase only AT&T’s Ethernet backhaul services³⁶ – has been refuted by T-Mobile, the supposed “victim.” T-Mobile has testified that CALTEL’s claims are “simply untrue,” and has specifically denied that its backhaul purchases from AT&T have resulted from any “coercion” but rather were primarily attributable to AT&T’s “highly attractive pricing” that beat the competition.³⁷ In fact, as T-Mobile has confirmed, its experience in switching to Ethernet backhaul followed those of other wireless carriers described above: T-Mobile has been able to switch a very significant percentage of cell sites to Ethernet, did not see “any barriers . . . to moving the traffic” to Ethernet, and believes that “any wireless carrier can make that transition.”³⁸ Further, contrary to CALTEL’s claims that T-Mobile is purchasing “all (or nearly all)” of its Ethernet backhaul from AT&T,³⁹ T-Mobile testified that it is using “numerous alternative access providers” at many thousands of cell sites – indeed, over half of the cell sites that it has converted to Ethernet are served by competitive providers rather than incumbents.⁴⁰

CALTEL’s letter also alleges that AT&T violated the Commission’s rules by failing to file pricing flexibility contract tariffs that it reached with T-Mobile,⁴¹ but these claims are simply

³⁵ See *id.* at 2, 4 (arguments limited to California data and to T-Mobile purchases from AT&T).

³⁶ CALTEL Letter, at 4.

³⁷ See Reply Declaration of David A. Mayo, Senior Vice President, T-Mobile USA, Inc., submitted in Investigation 11-06-009 before the Calif. Pub. Utils. Comm’n, on Aug. 29, 2011 (“Mayo CA Reply Decl.”). T-Mobile explained that it “was in no way constrained by volume and term commitments” in switching to Ethernet or in selecting alternative providers.

³⁸ Mayo CA Reply Decl. ¶¶ 3, 19-20.

³⁹ CALTEL Letter, at 4.

⁴⁰ Declaration of David A. Mayo, Senior Vice President, T-Mobile USA, Inc., submitted in Investigation 11-06-009 before the Calif. Pub. Utils. Comm’n, on Jul. 5, 2011, ¶ 8; Mayo CA Reply Decl. ¶ 16.

⁴¹ CALTEL Letter, at 5.

Marlene H. Dortch

March 28, 2012

Page 10

inaccurate. CALTEL points first to a contract amendment that merely added cell sites in MSAs already covered by an existing (and properly filed) price-flex contract tariff. No additional tariff was needed or drafted, and thus nothing was filed or required to be filed. CALTEL also points to another contract amendment with a provision that states that the parties “shall negotiate” new price-flex contract tariffs to implement certain provisions in the amendment. However, the parties are still negotiating open business issues related to the amendment, including material terms related to the new price-flex contract tariffs. Once the remaining issues are resolved, price-flex contract tariffs associated with this amendment will be filed with the FCC and will be available to other customers to the extent required by applicable federal rules. However, no such contract tariffs exist today, and thus, with respect to both of CALTEL’s allegations, AT&T continues to provide service to T-Mobile according to the rates, terms and conditions of its filed and effective tariffs. Service is not being provided pursuant to any price-flex contract tariffs that have not been properly filed with the Commission.

In sum, Level 3, tw telecom and other proponents of reregulation of special access services have failed to provide any credible evidence that special access customers are “locked into” AT&T’s services. Their lock-in theory is based on unsupported assertions and mischaracterizations of AT&T’s offerings that treat just about any volume- or revenue-based option as an anticompetitive “lock in,” and the intrusive re-writing of existing contracts they seek would be patently unlawful.

Sincerely,

/s/ David L. Lawson

David L. Lawson
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