

March 15, 2013

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Special Access Rates 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, WC Dkt. No. 05-25, RM-10593; Petition of CenturyLink for Forbearance Pursuant to 47 U.S.C. § 160(c) from Dominant Carrier and Certain Computer Inquiry Requirements on Enterprise Broadband Services, WC Dkt. No. 12-60*

Dear Ms. Dortch:

On March 13, 2013, on behalf of tw telecom inc., I discussed the appropriate analytical framework for the Commission's special access rulemaking and for the Commission's review of the pending CenturyLink petition for forbearance from dominant carrier regulation of certain non-TDM special access services with Eric Ralph of the Wireline Competition Bureau.

During the discussion, I stated that the Commission could rely on its established test for determining whether a firm has market power as the analytical framework for the special access proceeding. I explained that regulations adopted based on a careful application of that framework, along with appropriate benchmarks for prescribing prices, would withstand the inevitable incumbent LEC appeals.

As to the CenturyLink petition, I stated that CenturyLink has not come close to meeting its burden of proving that dominant carrier regulation is no longer necessary to ensure just and reasonable rates for non-TDM special access services or to protect customers of those services. *See* 47 U.S.C. § 160(a)(1)-(2). Nor has CenturyLink shown that forbearance would be consistent with the public interest. *See id.* § 160(a)(3).

I further stated that the Wireline Competition Bureau's recent initiative to do CenturyLink's work for it by gathering market data¹ is both unnecessary and too late. It is

¹ *See* Letter from Julie A. Veach, Chief, Wireline Competition Bureau to Craig J. Brown, Associate General Counsel, CenturyLink, Inc., WC Docket No. 12-60 (March 5, 2013); Public Notice, *Competition Data Requested in CenturyLink Forbearance Petition*, WC Docket No. 12-60 (March 5, 2013).

unnecessary because CenturyLink's failure to make a serious attempt to provide a market analysis that would justify forbearance is by itself sufficient grounds to deny the petition. Indeed, if CenturyLink had really thought it could prove that forbearance is appropriate, it would have already submitted the information (as well as other information) that the Bureau has now requested. But the data gathering process is in all events too late because interested parties will not have sufficient time to analyze and comment on the information submitted in response to the data requests. Nor will interested parties have a meaningful opportunity to analyze and comment on the Commission's own assessment of the data, which should be made available for comment. All of this could and should have been done far earlier in the proceeding, when prejudicial time constraints did not exist.

Respectfully submitted,

/s/ Thomas Jones

Attorney for tw telecom inc.

cc: Eric Ralph