

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Petition of Ad Hoc Telecommunications Users  
Committee, BT Americas, Cbeyond, Computer &  
Communications Industry Association, EarthLink,  
MegaPath, Sprint Nextel, and tw telecom To Reverse  
Forbearance from Dominant Carrier Regulation of  
Incumbent LECs' Non-TDM-Based Special Access  
Services

WC Docket No. 05-25

RM-10593

**REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS**

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The enterprise broadband services marketplace continues to be robustly competitive and is growing more so, just as the Commission predicted in the *Forbearance Orders*. The record confirms that incumbents face increasing competition from cable companies, fixed wireless providers, and CLECs, particularly for business Ethernet services and mobile backhaul services.<sup>2</sup> Cable companies' revenues from business Ethernet services are growing by 10 percent annually,<sup>3</sup> and their revenues from mobile backhaul services are expected to increase to \$900 million in 2015 from \$600 million in 2012.<sup>4</sup> Sprint recently awarded mobile backhaul contracts to

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively, "Verizon").

<sup>2</sup> See Comments of Verizon at 4-17 & Appendix A; Comments of AT&T at 22-32; Comments of CenturyLink at 22-28.

<sup>3</sup> The Insight Research Corporation, *The 2013 Telecommunications Industry Review: An Anthology of Market Facts and Forecasts, 2012-2017*, at 297 (Jan. 2013).

<sup>4</sup> Jeff Baumgartner, *Cable's Cut of the Biz Services Pie To Eclipse \$7B*, Light Reading (Nov. 29, 2012), available at [http://www.lightreading.com/document.asp?doc\\_id=227457&site=lr\\_cable&f\\_src=lrailynewsletter](http://www.lightreading.com/document.asp?doc_id=227457&site=lr_cable&f_src=lrailynewsletter) (citing Heavy Reading Senior Analyst Alan Breznick).

between 25 and 30 *different providers*,<sup>5</sup> with Verizon winning fewer than six percent of the sites in its incumbent wireline footprint.<sup>6</sup>

Every commenter agrees that demand for enterprise broadband services is booming — even those that support the Petition.<sup>7</sup> For example, COMPTTEL concedes that the enterprise broadband services marketplace is “evolving” and acknowledges that business Ethernet is “the fundamental building block” of IP-based technologies today being deployed.<sup>8</sup> The evidence is undeniable: business Ethernet use has increased tenfold in the past five years.<sup>9</sup>

Like Petitioners, the few supporting commenters do not — and cannot — demonstrate that, despite rapid growth and technological innovation, the marketplace for enterprise broadband is not competitive and is failing consumers. In contrast, and even though it is not their burden to do so, Verizon, AT&T, and CenturyLink have provided the Commission with compelling evidence that this marketplace is working well and that rapid growth and technological innovation are creating new opportunities for all providers and end users. And this evidence continues to mount. For example, the CFO of Lightpath, a division of Cablevision, recently told investors that business Ethernet service is “a much more competitive market than it

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<sup>5</sup> Carol Wilson, *Sprint To Reveal Backhaul Contract Winners Friday*, Light Reading (Oct. 5, 2011), *available at* [http://www.lightreading.com/document.asp?doc\\_id=213050](http://www.lightreading.com/document.asp?doc_id=213050).

<sup>6</sup> *See* Ex Parte Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Sept. 12, 2012).

<sup>7</sup> *See* Comments of the New Jersey Division Rate Counsel at 9 (“[E]nterprise customers’ demand for packetized services is increasing.”); Comments of MACC at 2 (“[N]on-TDM-based special access services, such as Ethernet, are replacing DSn services. Over time, Ethernet and non-TDM-based special access services will be the primary means by which business in this country transmit information.”); Comments of Level 3 at 3 (“Level 3 does agree that there had been a drastic increase in the importance of the non-TDM special access market.”).

<sup>8</sup> Comments of COMPTTEL at 7.

<sup>9</sup> Vertical Systems Group, *U.S. Ethernet Bandwidth Surpasses Legacy Bandwidth: Milestone Coincides with the MEF’s Ten Year Anniversary* (July 26, 2011), *available at* <http://verticalsystems.com/prarticles/stat-flash-2011-July.html>.

had been” in the past.<sup>10</sup> The record evidence overwhelmingly supports the Commission’s prediction that forbearance would foster competition and innovation for enterprise broadband services.

Finally, as Verizon and other commenters explained,<sup>11</sup> the Commission should continue to rely on a framework that analyzes enterprise broadband services using a forward-looking approach that accounts for all forms of actual and potential competition. The Commission recently reaffirmed its longstanding approach in the *Notice*,<sup>12</sup> and the Petition’s criticisms of it are just recycled arguments that the Commission and the D.C. Circuit have rejected.<sup>13</sup> And the Commission cannot simply disregard potential competition for enterprise broadband services, as one commenter suggests. Potential competition is a critical component of a competitive analysis, and it is especially critical here, given the enterprise broadband marketplace’s dynamism.

## **I. THE ENTERPRISE BROADBAND SERVICES MARKETPLACE IS ROBUSTLY COMPETITIVE**

### **A. The Marketplace for Enterprise Broadband Services Is Highly Competitive**

Although it is not their burden to offer evidence in this proceeding, Verizon, AT&T, and CenturyLink have all come forward with considerable evidence that the enterprise broadband services marketplace is highly competitive and is poised to become even more competitive in the near future. Verizon included an Appendix with its opening comments that contains detailed profiles of 40 of its competitors, which include cable companies, fixed wireless providers, other

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<sup>10</sup> 2013 Cablevision Systems Corp. Earnings Conference Call at 16 (May 9, 2013).

<sup>11</sup> See Comments of Verizon at 25-29; Comments of AT&T at 7, 21, 33; Comments of CenturyLink at 10, 19; Comments of Hawaiian Telcom, Inc. at 8-9.

<sup>12</sup> Report and Order and Further Notice of Proposed Rulemaking, *Special Access for Price Cap Local Exchange Carriers*, 27 FCC Rcd 16318, ¶ 67 (2012) (“*Notice*”).

<sup>13</sup> *Earthlink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006).

ILECs, and CLECs (including several of the Petitioners).<sup>14</sup> AT&T's and CenturyLink's comments contain similar evidence. AT&T stresses that since 2005 incumbents' Ethernet retail port shares have *decreased* by more than 20 percent and the largest cable companies *tripled* their shares.<sup>15</sup> CenturyLink notes that wireless carriers' investment in "OCx and above" enterprise broadband services, like Ethernet, *doubled* from 2008 to 2011 as measured as a percentage of their overall spending on local transport.<sup>16</sup>

The record demonstrates that competition is particularly robust for the two most rapidly growing segments of the enterprise broadband marketplace: business Ethernet and mobile backhaul. With respect to business Ethernet services, providers include cable companies, CLECs, VNOs, as well as other ILECs competing outside their respective regions.<sup>17</sup> At least 29 non-incumbents offer business Ethernet.<sup>18</sup> Several cable companies recently have declared that they intend to make significant new investments to provide business Ethernet services in the near future.<sup>19</sup> As a result, analysts estimate that from 2012 to 2017, cable companies' commercial

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<sup>14</sup> See Appendix A, Comments of Verizon.

<sup>15</sup> See Comments of AT&T at 6 (citing Vertical Systems Group, Year End Ethernet Port Share Reports 2005-2012).

<sup>16</sup> Comments of CenturyLink at 6.

<sup>17</sup> Charles Carr, Yankee Group, *Forecast: Carrier Ethernet Is Finally Unleashed*, at 4 (Apr. 26, 2011).

<sup>18</sup> Vertical Systems Group, *2012 U.S. Business Ethernet LEADERBOARD* (Jan. 29, 2013), available at [http://www.verticalsystems.com/prarticles/stat-flash-YE\\_2012\\_US\\_Leaderboard.html](http://www.verticalsystems.com/prarticles/stat-flash-YE_2012_US_Leaderboard.html) ("Vertical Systems Group, *2012 U.S. Business Ethernet LEADERBOARD*").

<sup>19</sup> Frost & Sullivan, *Cable MSO Ethernet Strategy* at 5 (Mar. 2012) ("To satisfy [ ] exploding demand for high-capacity and very high-reliability connectivity, mid-market businesses are turning to Ethernet-based solutions. As such, the cable multi-system operators (MSOs) are aggressively expanding their network reach beyond their traditional footprints, cross-country, with an extensive range of Ethernet and hybrid WAN, MAN and [mid-band Ethernet (MBE)] access solutions."); *id.* at 6-7 ("The MSOs began to transform their business strategy and services mix as early as a decade ago; but, until the last few years, were not

services revenue will grow at a compound annual growth rate of 10 percent.<sup>20</sup> For example, Cox, the fifth largest business Ethernet provider,<sup>21</sup> expects to double its market share among small businesses and its wholesale carrier revenue over the next four years.<sup>22</sup>

With respect to mobile backhaul services, the list of competitive providers is equally strong and includes cable companies, fixed wireless operators, CLECs, and out-of-region ILECs.<sup>23</sup> Moreover, given mobile data's massive and inexorable growth, mobile backhaul demand is expected to grow nearly tenfold between 2011 and 2016<sup>24</sup> and this growth in demand will bring new expansion and entry opportunities. Competitive wholesalers "are being particularly aggressive in targeting new wireless backhaul opportunities," and cable operators "such as Charter Communications, Comcast Business, Cox Carrier Services and Time Warner

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competitive in the more complex, metro-WAN networking environment. However, their product sets, network reach and capabilities have evolved extensively during this time to a level competitive with the ILECs — and to the benefit of the mid-market businesses taking advantage of this situation.”).

<sup>20</sup> The Insight Research Corporation, *The 2013 Telecommunications Industry Review: An Anthology of Market Facts and Forecasts, 2012-2017*, at 297 (Jan. 2013).

<sup>21</sup> Vertical Systems Group, *2012 U.S. Business Ethernet LEADERBOARD*.

<sup>22</sup> *Cable Providers Push into Middle Market and Enterprise Sectors*, Communications Daily (Jan. 3, 2012).

<sup>23</sup> Frost & Sullivan, *U.S. Mobile Backhaul Services Market: Wireless Service Provider Spending Trends*, BCS5-8, at 6 (Oct. 2011) (“Frost & Sullivan, *U.S. Mobile Backhaul Services Market*”); see also Jennifer Pigg, Yankee Group, *4G Trends, Wholesale Mobile Backhaul: There's Gold in Them There Hauls* at 4 (June 2011); Synesael & Charbonneau, *Telecom and Data Services, Industry Overview, Fiber: A Sector Evolves* at 17-18.

<sup>24</sup> See *U.S. Mobile Backhaul Demand Forecast To Grow More Than Nine Times in the Next Four Years* (Mar. 13, 2012), available at <http://www.fiercemobilecontent.com/press-releases/us-mobile-backhaul-demand-forecast-grow-more-nine-times-next-four-years>. The global demand for mobile backhaul equipment is projected to reach \$10.4 billion in 2014 (compared to \$7.2 billion in 2009). See Infonetics Research Press Release, *Shift Seen in Operator Strategy for Mobile Backhaul; Equipment Spending Up 21%* (Apr. 21, 2010), available at <http://www.infonetics.com/pr/2010/Mobile-Backhaul-and-Microwave-Market-Highlights.asp>.

Cable Business Class have become a credible threat in the wireless backhaul race.”<sup>25</sup> According to analysts, robust competition in the mobile backhaul services market is driving down prices for emerging platforms like Ethernet.<sup>26</sup>

**B. Commenters’ Claims that Enterprise Broadband Services Are Not Competitive Are Unsupported**

A few commenters contend that the marketplace for enterprise broadband services is failing.<sup>27</sup> But like the Petitioners themselves, none has come forward with credible evidence.

COMPTEL for example contends that ILEC Ethernet prices are excessive. This argument relies on a deeply flawed analysis that COMPTEL “commissioned” from ETC Group LLC.<sup>28</sup> As an initial matter, it is unclear who ETC Group even is: it advertises itself as a “network” of “independent professionals,” but none of these supposed professionals is identified, the document is unsigned and unverified, and COMPTEL does not provide the drafters’ qualifications.<sup>29</sup> And the analysis itself is meritless. It purports to draw a broad and irrelevant conclusion about ILEC Ethernet prices from the unremarkable observation that a service’s price is not the same as the cost of providing an entirely different service. ETC Group compares AT&T and CenturyLink’s published retail prices for a finished Ethernet service in urban and suburban markets to the lower wholesale price in the NECA tariff for a broadband transmission service that is not “end user ready.” That’s equivalent to demonstrating that the price of an apple is not the same as the cost of growing an orange. Worse, the report explicitly ignores the

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<sup>25</sup> Sean Buckley, FierceTelecom, *Telco BackHaul Strategies: Wireline Wholesale Carriers Feed Off the Wireless Backhaul Bonanza* at 2 (Nov. 2011), ebook available at <http://www.zayo.com/sites/default/files/fiercetelecom-mobile-backhaul-ebook11.14.11.pdf>.

<sup>26</sup> Frost and Sullivan, *U.S. Mobile Backhaul Services Market* at 16.

<sup>27</sup> See Comments of COMPTEL at 10; Comments of MACC at 6.

<sup>28</sup> *Id.* at 10.

<sup>29</sup> About Us, ETC Group LLC, [http://etcgroup.net/About\\_Us.html](http://etcgroup.net/About_Us.html).

discounts that AT&T publicly advertises,<sup>30</sup> and it admits that the wholesale offering would need to be “augmented with additional components” — at additional costs.<sup>31</sup> The ETC Group “analysis,” therefore, provides no support for the Petition’s assertion that the enterprise broadband marketplace is suffering from a market failure that warrants reimposing regulation.

In addition, COMPTTEL attempts to downplay the enterprise broadband marketplace’s dynamic nature as it argues that the Commission should reverse course and analyze the emerging enterprise broadband marketplace using the same framework it has applied in analyzing static markets. COMPTTEL contends that enterprise broadband is no longer an “emerging service,” and therefore it argues that the Commission’s forward-looking framework for analyzing the market for emerging services does not apply to enterprise broadband.<sup>32</sup> But the facts on which COMPTTEL relies do not support these claims. Instead, the facts COMPTTEL cites prove the opposite. COMPTTEL observes that Ethernet is now being widely deployed, that Ethernet services make up an increasing percentage of wireline revenues, and that customers are migrating to next generation IP services.<sup>33</sup> All of these facts show that there continues to be rapid growth in demand for new IP-based data services, which are replacing legacy TDM-based services, and that this growth is fostering opportunities for expansion for all providers. A forward-looking mode of analysis is necessary to draw accurate conclusions about this dynamic marketplace.

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<sup>30</sup> Comments of COMPTTEL, Appendix A at note 6.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> Comments of COMPTTEL at 7.

<sup>33</sup> *Id.* at 10.

Level 3 represents that it “believes” that high-capacity service providers are imposing unjust rates and terms on customers “through confidential, unfiled contracts.”<sup>34</sup> It claims that it cannot offer proof to validate this belief because the ostensibly unjust contracts “are invisible to everyone except the party forced to agree to them” — that is, the customer.<sup>35</sup> But this excuse is no substitute for evidence and, in any case, it suffers from a serious limitation. Level 3 buys high-capacity services and is fully aware of the rates it pays and the terms of its contracts, but it raises no complaints about either. Level 3 cannot seriously contend that its belief that *other* customers are being victimized pursuant to secret contracts is well founded when it raises no complaints about the very contracts of which it has direct knowledge — its own.

## **II. THE PETITION FAILS ON PROCEDURAL GROUNDS AND ITS MERITS**

Every commenter to address the Petition’s procedural propriety has reached the same conclusion: the Petition is an untimely request for reconsideration of the *Forbearance Orders*.<sup>36</sup> The Petition claims to find five “flaws” with the Commission’s reasoning in the *Forbearance Orders*,<sup>37</sup> and it reargues the merits of whether forbearance was appropriate based on the factual records that existed in those proceedings, which concluded in 2006, 2007, and 2008.

The Commission cannot entertain a petition for reconsideration of the *Forbearance Orders* today for at least two reasons.<sup>38</sup> *First*, Section 10 prohibits the Commission from reconsidering a years-old grant of forbearance. Section 10 provides that a petition is “deemed granted” if the Commission does not deny the petition within one year (or, if the Commission

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<sup>34</sup> Comments of Level 3 at 5.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *See, e.g.*, Comments of AT&T at 3; Comments of ITTA at 3-4; Comments of Hawaiian Telcom, Inc. at 9.

<sup>37</sup> *Id.* at 26-27.

<sup>38</sup> *See* Comments of Verizon at 18-20.

grants an extension, one year and ninety days) from when it was filed.<sup>39</sup> The Commission, therefore, cannot use reconsideration to deny a forbearance petition *after* that statutory deadline. *Second*, a petition for reconsideration is untimely under the provisions in the Communications Act and the Commission’s regulations that apply to reconsideration petitions generally; both require petitions for reconsideration to be filed within 30 days of a Commission decision.<sup>40</sup>

In addition, every commenter to address the issue agrees that, as the proponents of agency action, Petitioners bear the burden of proof in this proceeding.<sup>41</sup> To meet this burden, Petitioners would have to prove to the Commission that at least one of Section 10’s criteria currently is *not* satisfied: (1) regulation *is necessary* to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory; (2) regulation *is necessary* to protect consumers; or (3) forbearance *is not consistent* with the public interest, meaning that forbearance has or will undermine competitive market conditions and reduce competition among providers of telecommunications services.<sup>42</sup> The Petitioners would have to identify a market failure and show — based on a new record that reflects the current state of competition — that additional enterprise broadband regulation is necessary to discipline rates, protect consumers, and allow competition. This is no different from the showing required in a rulemaking to establish regulations in the first instance. And the Petitioners haven’t made or even attempted to make that showing.

Only one commenter, the Midwest Association of Competitive Communications (“MACC”), contends that the Petitioners have met this burden and shown that Section 10’s

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<sup>39</sup> 47 U.S.C. § 160(c).

<sup>40</sup> *See* 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

<sup>41</sup> *See* Comments of Verizon at 20-21; Comments of AT&T at 4; Comments of Hawaiian Telcom, Inc. at 9-10.

<sup>42</sup> *See* 47 U.S.C. § 160.

criteria are not met.<sup>43</sup> As support, MACC cites three pages of the Petition: 8, 57, and 58. But on page 8, Petitioners simply allege that ILECs are exploiting their market power, without citing evidence. And, on pages 57 and 58, the Petitioners cite ex parte letters from 2009 (tw telecom) and 2010 (BT Global). Both ex parte letters are years old. Neither represents a current record, and the Petitioners could not rely on either to carry their burden to prove that Section 10's criteria are not met today. Moreover, BT Global's ex parte offered the misguided prediction that "Ethernet access services . . . are unlikely to constitute a significant portion of global corporations' access spend in the U.S. in the near future."<sup>44</sup> In fact, Ethernet use has increased tenfold in the past five years and continues to grow.<sup>45</sup>

Finally, the Petitioners have recently asserted that the Commission need not issue a notice of proposed rulemaking before acting on the Petition.<sup>46</sup> The Petitioners thus misunderstand the critical defect in the Petition — it is not a lack of notice, but a lack of current record evidence. Indeed, as the Commission recognized in characterizing arguments about "whether a forbearance proceeding more closely resembles rulemaking or adjudication [as] largely beside the point," the "main issue is the *adequacy of the record* regardless of the nature of the proceeding."<sup>47</sup> Here, the

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<sup>43</sup> Comments of MACC at 6.

<sup>44</sup> See Letter from Sheba Chacko, BT Global Services, to Marlene Dortch, FCC, at 2, WC Docket No. 05-25 & RM-10593 (Feb. 24, 2010).

<sup>45</sup> Vertical Systems Group, *U.S. Ethernet Bandwidth Surpasses Legacy Bandwidth: Milestone Coincides with the MEF's Ten Year Anniversary* (July 26, 2011), available at <http://verticalsystems.com/prarticles/stat-flash-2011-July.html>.

<sup>46</sup> See Letter from Thomas Jones, Willkie Farr & Gallagher LLP, to Marlene H. Dortch, FCC, at 1-2, WC Docket No. 05-25 & RM-10593 (May 24, 2013) ("Petitioners' May 24 Letter"); Letter from Thomas Jones, Willkie Farr & Gallagher LLP, to Marlene H. Dortch, FCC, at 1-2, WC Docket No. 05-25 & RM-10593 (May 1, 2013).

<sup>47</sup> Report and Order, *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, As Amended*, 24 FCC Rcd 9543, ¶ 20 & n.76 (2009) (emphasis added).

Petitioners have failed to proffer evidence that could satisfy their burden to prove that regulation is necessary to remedy a failure in the marketplace for enterprise broadband services.

### **III. THE COMMISSION SHOULD RETAIN ITS LONG-STANDING FRAMEWORK FOR ADDRESSING PETITIONS FOR FORBEARANCE INVOLVING BROADBAND SERVICES**

The Commission considered “larger trends” in the “emerging and changing” broadband marketplace in the *Forbearance Orders*.<sup>48</sup> It took into account not only the “many significant providers of Frame Relay services, ATM services, and Ethernet-based services” but also the competitors that could “readily” enter this market.<sup>49</sup> The Commission recently reaffirmed in the *Notice* that it must consider potential competition in an evolving market. The Commission stated that it will evaluate “actual and potential competition,” which are “good predictors of competitive behavior,”<sup>50</sup> as part of its analysis and will “not . . . conduct a simple market share or market concentration analysis.”<sup>51</sup>

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<sup>48</sup> Memorandum Opinion and Order, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, 22 FCC Rcd 18705, ¶ 20 (2007) (“*AT&T Forbearance Order*”); Memorandum Opinion and Order, *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements, et al.*, 22 FCC Rcd 19478, ¶ 19 (2007) (“*Embarq & Frontier Forbearance Order*”); Memorandum Opinion and Order, *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, 23 FCC Rcd 12260, ¶ 23 (2008) (“*Qwest Forbearance Order*”).

<sup>49</sup> *Qwest Forbearance Order* ¶ 26.

<sup>50</sup> *Id.*; *see id.* ¶ 48 (“[W]e agree with commentators who argue that to understand the impact of competition in special access, it is important to grasp the effects of potential, as well as actual, competition.”).

<sup>51</sup> *Id.* ¶ 67; *see id.* ¶ 16 (noting that “[e]vidence of competitive effects can inform market definition, just as market definition can be informative regarding competitive effects.”).

Some commenters repeat the Petition’s argument that the Commission should apply the market power analysis it used in the *Qwest Phoenix Order* to enterprise broadband services.<sup>52</sup> But, as Verizon and other commenters noted,<sup>53</sup> the *Qwest Phoenix Order* explicitly states that it does not apply to broadband services. In the *Qwest Phoenix Order*, the Commission changed its approach to analyzing forbearance petitions with regard to TDM services, but it recognized that “a different analysis may apply when the Commission addresses advanced services, *like broadband services*, instead of a petition for legacy services”<sup>54</sup> because these newer markets continue to “evolve and develop.”<sup>55</sup>

The New Jersey Division Rate Counsel goes even further, urging the Commission not to consider potential competition, not because potential competition does not affect prices, but because the Commission is not competent to gauge the extent of potential competition.<sup>56</sup> To the contrary, the Commission is capable of evaluating potential competition. And under a proper competitive analysis, it must. Even the Commission’s traditional market power analysis has a potential competition component, as the Commission noted in the *Qwest Phoenix Order*: “as directed by the D.C. Circuit, the Commission’s . . . traditional market power analysis[ ] considers

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<sup>52</sup> See Comments of MACC at 4; Comments of Level 3 at 2.

<sup>53</sup> See Comments of Verizon at 28; Comments of AT&T at 7, 21, 33; Comments of CenturyLink at 10, 19; Comments of Hawaiian Telcom, Inc. at 8-9.

<sup>54</sup> Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, ¶ 39 (2010) (“*Qwest Phoenix Order*”) (emphasis added).

<sup>55</sup> *Id.* ¶ 39.

<sup>56</sup> See Comments of the New Jersey Division Rate Counsel at 7 (“There is a clear history of predictive judgment mis-gauging the extent of competition that would actually occur in special access markets.”); *id.* at 8 (“If in doubt, the Commission should reject speculations about potential entry — the Commission’s past predictions have not proven out.”).

evidence of both actual and potential competition.”<sup>57</sup> The Commission cannot simply disregard potential competition, and its evaluation of potential competition is particularly important given the high-capacity services marketplace’s dynamic nature.

### CONCLUSION

The Commission should deny the petition.

Respectfully submitted,

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<sup>57</sup> *Qwest Phoenix Order* ¶ 38 (emphasis added) (citing *USTA v. FCC*, 360 F.3d 554, 574-75 (D.C. Cir. 2004)).