

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Special Access for Price Cap Local Exchange Carriers;)	WC Docket No. 05-25
)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	

REPLY COMMENTS OF CENTURYLINK

In its Application for Review, CenturyLink asked the Commission to reverse the Wireline Competition Bureau’s decision to forego the collection of certain location-by-location facilities data from cable operators.¹ If permitted to stand, the Bureau’s revised data collection would fail to account fully for robust and growing cable-based competition and produce an “incomplete picture of competition in this market . . . [that is] likely to lead to inappropriate regulatory intervention.”² Moreover, such action would exceed the “limited” authority delegated to the Bureau to implement the *Data Collection Order*.

Nothing in the oppositions filed by Sprint, the cable associations, and the CLECs changes these facts.³ The Commission therefore should reverse the Bureau’s decision and initiate the comprehensive data collection envisioned in the *Data Collection Order*.⁴

¹ Application for Review of CenturyLink, WC Docket No. 05-25; RM-10593 (filed Oct. 22, 2013).

² Statement of Commissioner Ajit Pai on Bureau Adoption of Special Access Data Collection at 2 (Sept. 18, 2013).

³ See Opposition of the American Cable Association to Application for Review of CenturyLink (ACA); Opposition of Cbeyond, EarthLink, Integra, Level 3 and tw telecom (Cbeyond); Opposition of the National Cable & Telecommunications Association (NCTA); Opposition of Sprint Corporation to CenturyLink’s Application for Review (Sprint).

Indeed, Cbeyond readily admits that this exemption will omit from the data collection some *Connections* that are “currently capable” of providing a *Dedicated Service*.⁵ For *Locations* served by those *Connections*, the revised data collection will systematically understate the number of competitive alternatives to ILEC-provided DS1s and DS3s. While Cbeyond theorizes that the number of excluded locations will be “very small,” it presents no data to corroborate this assertion,⁶ which is at best questionable in light of cable operators’ ability to use hybrid-fiber coaxial (HFC) facilities to provide *Dedicated Services*.⁷ In fact, the number of affected *Locations* is simply unknown. Thus by ignoring the Commission’s clear direction, the Bureau’s action threatens the integrity of the location-by-location facilities data at the heart of the data collection.

As justification, both the Bureau and its supporters claim that cable operators’ facilities are properly excluded from the data collection unless they are connected to a *Node* capable of providing Metro Ethernet (or its equivalent) *and/or* were used during the reporting period to provide a *Dedicated Service* or a service incorporating a *Dedicated Service*. That is because a cable operator’s *Connection* to a *Location* supposedly fails to indicate “expectations . . . of

⁴ Cbeyond asserts that the Commission’s decision to adopt a “comprehensive” collection did not necessarily entail collecting information on *every Connection* owned or leased by a *Provider*. Cbeyond at 3, 11. Yet the data collection constructed by the Commission would do that very thing. See *Data Collection Order*, 27 FCC Rcd 16318, 16331 ¶ 30, 16364-65 (Appendix A, Question II.A.4) (2012). The capitalized and italicized terms in this document (*e.g.*, *Connections*) refer to terms defined in Appendix A of the *Data Collection Order*.

⁵ Cbeyond at 7-8.

⁶ See *id.* at 8.

⁷ See Insight Research Corporation, *Cable TV Enterprise Services: 2012-2017* at 76 (Sept. 2012) (“MSOs can support the basic needs of small businesses and commercial offices using their existing HFC plant[.]”); *id.* at 100 (“While MSO networks have principally been developed to support residential services, much of the existing HFC infrastructure can be leveraged to support commercial services for small business with 20-50 employees.”).

sufficient demand for *Dedicated Service[s]* and [a] source[] of potential competition.”⁸ This claim is flawed in several respects:

- It erroneously assumes that cable operators initially extended facilities to commercial locations to comply with historical franchising obligations (and thus do not necessarily plan to use those facilities to serve the high-capacity *Dedicated Services* market).⁹ Rather, they did so to meet perceived demand -- just like non-cable *Competitive Providers* -- and can be expected to provide *Dedicated Services*.
- Given that cable operators now routinely provide *Dedicated Services* to even the smallest businesses (and particularly those formerly purchasing ILEC-provided DS1s),¹⁰ every *Location* served by cable facilities should be presumed to have sufficient demand for *Dedicated Services*.
- The Bureau and opponents of CenturyLink’s Application make incorrect assumptions about the network architecture employed by cable providers in offering *Dedicated Services*. Cable facilities clearly are “capable” of providing *Dedicated Services* even if they are not linked to a *Node* capable of providing Metro Ethernet (or its equivalent).¹¹
- All such in-place facilities represent potential competition to ILEC DS1 and DS3 services.¹² That is the case even if they are not currently being used to provide

⁸ *Bureau Order*, DA 13-1909, ¶ 26 (footnote omitted).

⁹ In CenturyLink’s experience, franchise commitments typically focus on residential locations.

¹⁰ *See, e.g.*, Comcast website, available at <http://business.comcast.com/landingpage/metro> (“Comcast Metro Ethernet does what legacy technologies like T1 can’t.”). *See also, e.g.*, Statement of Michael J. Angelakis, Vice Chairman & Chief Financial Officer, Comcast Corp., Bank of America Merrill Lynch Global Telecom & Media Conference (June 4, 2013) (“And by the way, we’re going into those businesses with a integrated voice and data product. Sometimes, we offer video. If you go again to a small restaurant or small doctor’s office, we can put video in the waiting room or in the private office. Our competitors can’t do that. Typically, those competitors offer a DSL-type service. We’re coming in with anywhere from 1 megabit to 10 gigabits. We’re coming in with a unified voice service in terms of the whole voice IP product. So the product comparison is not even close, and that business is doing just fine.”); Statement of Donald F. Detampel, President-Commercial Services & EVP-Technology, Charter Communications, Inc. Q2 2013 Earnings Call (Aug. 6, 2013) (“[T]he Small Business segment, those businesses that have less than 20 employees, are very much a sweet spot for us and we can easily serve those customer requirements with our coax plant.”).

¹¹ *See supra* 2-3.

¹² Likewise, Sprint articulates an unreasonable conception of potential competition that would ignore all cable facilities not *already* upgraded to provide Ethernet services. Sprint’s approach would obviate the entire concept of potential competition, such that only *actual*, in-service

Dedicated Services.¹³ Thus it is unreasonable for the Bureau to ignore cable operators' *Connections* to *Locations* that are not linked to a *Node* capable of providing Metro Ethernet or its equivalent.

- The inclusion of these facilities in the data collection will not “skew” the results of that collection. On the contrary, the *absence* of data regarding these facilities will skew the remaining location-by-location data by omitting “capable” facilities to some *Locations*.
- The Commission will not obtain the same information in other census block data, none of which will reflect the existence of cable facilities to particular *Locations*.

The Bureau's action also is incompatible with its delegated authority and therefore is unlawful.¹⁴ While the Commission delegated authority to the Bureau to take certain actions to implement the *Data Collection Order*, that authority was not unbridled. The Commission directed that all such actions “must be consistent with the terms of this Report and Order.”¹⁵ And the Commission explicitly specified that “it would not be consistent with this Report and Order

competition would fall into the “potential” competition category. This result would conflict with Commission precedent, including in this very proceeding. *See Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent LEC Rates for Interstate Special Access Service*, 27 FCC Rcd 10557, 10607 n.275 (2012) (noting that under the *LEC Classification Order* the Commission must consider firms that are “potential” suppliers in a given market). *See also Triennial Review Remand Order*, 20 FCC Rcd 2533, 2558 ¶ 43 (2005) (adopting an approach relying “on the inferences that can be drawn from one market regarding the prospects of competitive entry in another”); *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004) (requiring FCC consideration of potential competition in markets where no competition existed for purposes of network unbundling determinations).

¹³ Indeed, according to Atlantic ACM, “Ethernet Transport revenues are forecasted to double . . . [by] 2018, with cable gaining 10.0% of total revenue share.”) Atlantic ACM, *Strategic Services Take the Stage: U.S. Telecom Wired and Wireless Sizing and Share 2013-2018* at 94 (2013). Cable operators' tremendous success in providing *Dedicated Services* aptly demonstrates their ability to provide such services to any *Location* to which they have facilities. Such providers also have incentives to upgrade their *Nodes* to provide more robust services to all customers served by those *Nodes*.

¹⁴ Application at 6-7. The CLECs and cable associations seek to ignore the plain language of the Commission's delegation to the Bureau. For example, Sprint and NCTA claim that CenturyLink's references to the Commission's explicit direction not to “amend the data collection to require census block information rather than location-by-location information” is somehow a “red herring[.]” and “formalistic.” Sprint at 16; NCTA at 6.

¹⁵ *Data Collection Order*, 27 FCC Rcd at 16340 ¶ 52.

for the Bureau to amend the data collection to require census block information rather than location-by-location information required by paragraph 31 about such facilities.”¹⁶ Of course there is no inconsistency between the Commission delegating authority to the Bureau to take these steps, including addressing Paperwork Reduction Act concerns,¹⁷ while placing limits on how that authority is exercised.¹⁸

For all these reasons, the Commission should reverse the *Bureau Order* in the respects noted in the Application and refrain from initiating the now incomplete data collection until taking action on this Application.

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November 18, 2013

¹⁶ *Id.* ¶ 52 n.112.

¹⁷ While Sprint denies that the Bureau’s decision to exclude the cable data in question was “part of its PRA analysis,” Sprint at 15, the Bureau itself suggested otherwise. *Bureau Order* ¶ 58 (“The actions taken in the Report and Order are based on comments received during the initial 60-day PRA comment period, meetings with industry, and our own internal further review to enhance the quality, utility, and clarity of the connection [citation omitted].”) *See also* NCTA at 1 (“the specific action . . . being challenged by CenturyLink attempts to somewhat ameliorate . . . PRA concerns . . .”).

¹⁸ Hence Sprint’s claim (at ii) that the Commission “permitted the Bureau to take any . . . actions necessary to implement the Commission’s *Data Collection Order*” ignores the specific limitation placed on that delegation.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF CENTURYLINK to be served via First Class United States mail,
postage prepaid, on the parties listed on the attached service list.

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