

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

CenturyLink's Petition for Forbearance
Pursuant to 47 U.S.C. § 160(c) from Dominant
Carrier Regulation and *Computer Inquiry*
Tariffing Requirements on Enterprise
Broadband Services

CenturyLink's Alternative Petition for Interim
Waiver of Dominant Carrier Regulation and
Computer Inquiry Tariffing Requirements
Imposed on Enterprise Broadband Services

WC Docket No. 14-9

REPLY COMMENTS OF VERIZON

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The marketplace for enterprise broadband services is robustly competitive, and the Commission should apply the forward-looking standard that it consistently applied in the *Enterprise Broadband Forbearance Orders*² to grant CenturyTel's Petition. Because CenturyLink has met the statutory forbearance test, the Commission need not address CenturyLink's Alternative Waiver Petition.

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. ("Verizon").

² *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*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) ("*AT&T Forbearance Order*"); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) ("*ACS Dominance Forbearance 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*; *Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S. C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) ("*Embarq & Frontier Forbearance Order*"); *Qwest Petition for Forbearance Under 47 U.S. C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) ("*Qwest Forbearance Order*") (collectively "*Enterprise Broadband Forbearance Orders*").

The enterprise broadband marketplace has long been highly competitive, and it has grown even more so since the Commission issued, in 2007 and 2008, the *Enterprise Forbearance Orders* granting the forbearance petitions of AT&T, BellSouth, legacy Embarq, Frontier, and legacy Qwest. Those forbearance petitions sought the same regulatory relief that CenturyLink now seeks.³ And in the wake of the Commission granting those petitions, competitive providers have thrived, innovation has flourished, and the marketplace has grown. Enterprise broadband services are now poised to grow even more competitive as innovative technologies and rapidly expanding demand for bandwidth create new opportunities for both existing service providers and new entrants.

Competition has exploded in particular for two of the most critical segments of the enterprise broadband marketplace: business Ethernet and wireless backhaul services. Today, at least half of the ten largest Ethernet providers nationwide are providers other than traditional local telephone companies. Each of the major cable companies is providing Ethernet services to business customers, and they report rapidly growing revenues for these services. Cable companies have also established themselves as major mobile backhaul providers. For example, Comcast recently reported to analysts that its business revenues for 2013 were \$3.2 billion, making it “the second largest contributor to Cable revenue growth” and representing an increase of “26.4% for the full year” with “a substantial opportunity for additional growth.”⁴ Time Warner Cable has told analysts

³ See *Petitions of AT&T Inc. and BellSouth Corp. for Forbearance*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) (“*AT&T Forbearance Order*”), *petitions for review denied*, *Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903 (D.C. Cir. 2009); *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.*, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) (“*Embarq & Frontier Forbearance Order*”); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) (“*Qwest Forbearance Order*”) (collectively, the “*Forbearance Orders*”).

⁴ Thomson Reuters Streetevents, CMSA - Q4 2013 Comcast Corporation Earnings Conference Call, at 4-5 (Jan. 28, 2014) (statement of Michael Angelakis, CFO, Comcast).

that it already earns over \$2 billion from business services, that it is “committed to making that a \$5 billion business in the next four to five years.”⁵

Verizon has felt the effects of these trends, including intense competition for wireless backhaul services within its region. For example, when Verizon bid to supply Sprint with wireless backhaul within Verizon’s region to support Sprint’s aggressive network expansion, Verizon won *fewer than 6 percent* of the sites within its region, and Sprint announced that it had selected 25 to 30 other significant providers — including cable operators and fixed wireless providers — to provide backhaul.

CenturyLink has submitted into the record an overwhelming amount of evidence documenting this competition.⁶ It provided pages and pages of evidence detailing the competitive enterprise broadband services that cable companies, CLECs, and others provide. Similarly, Verizon in April 2013 presented profiles of dozens of competitive enterprise broadband providers and the services they offer.⁷ In the six years since the Commission issued the last of the *Enterprise Broadband Forbearance Orders*, these and other marketplace developments have vindicated the Commission’s predictive judgment that dominant carrier regulation and certain *Computer Inquiry* requirements are no longer necessary to ensure just and reasonable rates or to protect consumers of enterprise broadband services. The data demonstrate that the marketplace for enterprise broadband services is competitive and that it has only grown more competitive since the incumbent LECs received forbearance.

⁵ December 19, 2013 UBS Conference (Statement of Rob Marcus, CEO, Time Warner Cable).

⁶ See CenturyLink Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Dominant Carrier Regulation and *Computer Inquiry* Tariffing Requirements on Enterprise Broadband Services, Attachments 1 – 32, WC Docket No. 14-9 (filed Dec. 13, 2013).

⁷ See Comments of Verizon at Appendix A, Petition of Ad Hoc Telecommunications Users et al., To Reverse Forbearance from Dominant Carrier Regulation of Incumbent LECs’ Non-TDM-Based Special Access Services, WC Docket 05-25, RM-10593 (filed April 16, 2013).

Instead of confronting this evidence that shows that forbearance is appropriate, the Joint Commenters,⁸ Sprint, and COMPTTEL attack the Commission’s long-standing view that it should analyze broadband services using a forward-looking approach that accounts for both actual and potential competition. But their arguments lack merit. The Commission has applied its forward-looking framework to enterprise broadband services for the last ten years. The D.C. Circuit approved this approach in *Earthlink, Inc. v. FCC*,⁹ and the FCC recently affirmed its commitment to this approach in the special access proceeding.¹⁰ Given the Commission’s lengthy and positive track record in this area, the Commission should reject calls to abandon that approach in favor of the approach the Commission applied in the *Qwest Phoenix Order*.¹¹ In the *Enterprise Broadband Forbearance Orders*, the Commission extensively explained the reasons for adopting its approach to petitions seeking forbearance with respect to enterprise broadband services. Those reasons apply equally today.

I. The enterprise services marketplace has long been robustly competitive.

Since October 2007, when the Commission issued the *AT&T Forbearance Order*, the marketplace for enterprise broadband services has grown increasingly competitive and innovative. No true incumbents exist in this marketplace segment, because demand is shifting rapidly from TDM-based services to Ethernet and other innovative technologies that every provider is deploying. The Commission has long recognized that “competition in the enterprise market is robust”¹² and

⁸ The “Joint Commenters” are tw telecom, Level 3, Integra, EarthLink, and Cbeyond.

⁹ *EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006).

¹⁰ *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012).

¹¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010) (“*Qwest Phoenix Order*”), petition for review pending, *Qwest Corp. v. FCC*, No. 10-9543 (10th Cir. filed July 30, 2010).

¹² *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 73 & n.223 (2005).

that “myriad providers are prepared to make competitive offers” to enterprise customers such that no provider exerts market power.¹³ In addition, the customer base for these services is “highly sophisticated” and capable of “negotiat[ing] for significant discounts.”¹⁴ This is particularly true in two increasingly important areas: business Ethernet and mobile backhaul.

A. Competition for business Ethernet services continues to grow rapidly.

Since the Commission granted forbearance, demand for business Ethernet services has exploded. Customers increasingly use Ethernet services as an alternative to traditional services like ATM, Frame Relay, SONET, and Private Line,¹⁵ and analysts widely expect this “robust” growth to continue.¹⁶ This rising demand for business Ethernet service has attracted and facilitated increased innovation and competition, including falling prices.¹⁷

¹³ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 74 (2005).

¹⁴ *Id.* ¶ 75; *see also id.* ¶ 76 (noting that this level of sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice” to “seek out best-price alternatives”).

¹⁵ *See, e.g.,* Nav Chandler, IDC, *U.S. Carrier Ethernet Services 2013-2017 Forecast*, IDC #243425, at (Sept. 2013) (“Demand for Ethernet connectivity remains robust, in particular for high-bandwidth usage and as an alternative to frame relay or even private line.” “Many service providers are seeing enterprises migrate their existing T1 and T3 access for IP VPN services to Ethernet.”) *Id.* at 23; The Insight Research Corporation, *US Carriers and Ethernet Services: 2013-2018*, at 73 (Aug. 2013) (“Customers continue leaving private line and frame relay for Ethernet, as well as placing new applications on Ethernet rather than expanding their use of legacy services.”); Ian Redpath, Ovum, *Enterprise Ethernet Service Forecast Report: 2011-18*, TE008-001356, at 1 (Aug. 1, 2013) (“Ethernet and IP VPN are the two essential data-optimized WAN connectivity technologies that are supplanting many legacy data connectivity technologies.”).

¹⁶ Nav Chandler, IDC, *U.S. Carrier Ethernet Services 2013-2017 Forecast*, IDC #243425, at 5 (Sept. 2013) (Ethernet services growth will “remain robust,” with expected growth “from \$5.2 billion in 2012 to \$10.1 billion in 2017, a [compound annual growth rate] of 14.2%.”).

¹⁷ *See, e.g.,* Frost & Sullivan, *Demystifying Carrier Ethernet Services* at 1 (providers “are increasingly focusing on enhancing the depth of their offerings,” and “there are more flavors of Ethernet available today in the market as compared to three years ago, which provides business customers with more choices.”); The Insight Research Corporation, *US Carriers and Ethernet Services: 2013-2018*, at 7 (Aug. 2013) (“prices [for Ethernet service] have declined about 10 percent annually – and this trend is likely to continue”); Nav Chandler, IDC, *U.S. Carrier Ethernet Services 2013-2017 Forecast*, IDC #243425, at 16, 19 (Sept. 2013) “[p]ricing declines will continue

Cable companies are now among the largest providers of business Ethernet services in the country.¹⁸ From 2013 to 2018, cable companies’ “commercial services revenue will grow from \$8.8 billion to \$15.7 billion at a [compound annual growth rate] of 12.4%.”¹⁹ Compared to even a few years ago, cable operators are offering a much wider range of Ethernet services — including “Ethernet private line (EPL), Ethernet virtual private line (EVPL), Ethernet LAN service, Ethernet over Fiber . . . , and hybrid Ethernet over multiprotocol label switching (MPLS).”²⁰ By one estimate, cable companies “have secured close to 30 percent of the Ethernet market, more so within the metro, a share which is certain to grow as Comcast, the largest MSO, continues to ramp up its Ethernet penetration.”²¹

to occur, especially in the 100-1,000Mb range and with increased availability of switched Ethernet service choices,” noting that “[p]ricing declines are forcing some carriers to do early renewals of existing Ethernet customers to reduce churn.”)

¹⁸ See Vertical Systems Group, *2013 U.S. Carrier Ethernet LEADERBOARD* (Feb. 12, 2014) available at <http://www.verticalsystems.com/vsglb/2013-u-s-carrier-ethernet-leaderboard/>; Frost & Sullivan, *Cable MSO Ethernet Strategy* 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 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.”).

¹⁹ The Insight Research Corporation, *Cable TV Operators, Telecom Services, and the Push into the Enterprise*, at 9, 118 (Nov. 2013).

²⁰ Frost & Sullivan, *Cable MSO Ethernet Strategy* at 7 (Mar. 2012). See also Mike Sapien, Ovum, *Expanding into the Enterprise: US Cable Companies Get Down to Business*, TE007-000716, at 1 (Nov. 28, 2013) (“the cable companies . . . are all serious about the enterprise market and starting to challenge the major players. . . . putting pressure on the large telecoms incumbents, and also on other competitors in the enterprise market landscape, including [] (CLECs) and [] (ISPs).”); Nav Chandler, IDC, *U.S. Carrier Ethernet Services 2013-2017 Forecast*, IDC #243425, at 23 (Sept. 2013) (“larger cable operators will continue to leverage their Ethernet network assets because of widespread deployment of Ethernet for mobile backhaul applications, into offering Ethernet services to enterprises with 50-1,000 employees from the same infrastructure.”).

²¹ The Insight Research Corporation, *US Carriers and Ethernet Services: 2013-2018*, at 69 (Aug. 2013).

Comcast has “invested about \$2.5 billion over the last five years in building [its] business services business,”²² and experienced a 26.4 percent increase in business services revenue in 2013.²³ Comcast Business states that “[w]ith over 147,000 national route miles of fiber, [its] network is the largest facilities-based last mile alternative to the phone company”²⁴ and that Ethernet services are available throughout its entire cable footprint.²⁵ Comcast’s Ethernet footprint is poised to grow significantly as a result of its proposed merger with Time Warner Cable, which serves 624,000 business customers over a network that “reache[s] more than 850,000 buildings,” including 55,000 buildings connected in 2013 alone.²⁶ Time Warner Cable experienced a 21.6 percent increase in revenue from business services to approximately \$2.3 billion in 2013,²⁷ and has “established a target of growing business services to exceed \$5 billion in annual revenue by 2018.”²⁸

Other cable operators also provide Ethernet services extensively. Charter Business has deployed more than 55,000 route miles of fiber nationwide, connecting to more than 5,500

²² Comcast Corporation at Goldman Sachs Communacopia Conference - Final FD (Fair Disclosure) Wire, Transcript 092413a5170261.761 (Sept. 24, 2013) (statement by Comcast CFO Michael Angelakis).

²³ Comcast Corporation, Form 10 K, at 54 (SEC filed Feb. 12, 2014), *available at* <http://www.sec.gov/Archives/edgar/data/902739/000119312514047522/d666576d10k.htm>.

²⁴ Comcast, *Comcast Business Class — The Comcast Network*, *available at* <http://business.comcast.com/docs/default-source/brochures/network-brochure.pdf?sfvrsn=0>.

²⁵ *Comcast Corporation at Wells Fargo Technology Media & Telecom Conference — Final*, FD (Fair Disclosure) Wire, Transcript 110712a4939421.721 (Nov. 7, 2012) (statement by Comcast Vice Chairman & CFO Michael Angelakis).

²⁶ Time Warner Cable Inc, Form 10-K, at 32 (SEC filed Feb. 18, 2014), *available at* <http://www.sec.gov/Archives/edgar/data/1377013/000119312514056642/d640670d10k.htm>; *Q4 2013 Time Warner Cable Inc. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 013014a5264185.785 (Jan. 30, 2014) (statement by Time Warner Cable Inc. COO Phil Meeks).

²⁷ Time Warner Cable Inc, Form 10-K, at 32 (SEC filed Feb. 18, 2014), *available at* <http://www.sec.gov/Archives/edgar/data/1377013/000119312514056642/d640670d10k.htm>.

²⁸ Time Warner Cable Inc., Form 10 Q, at 32 (SEC filed Jan. 30, 2014), *available at* <http://www.sec.gov/Archives/edgar/data/1377013/000119312514056642/d640670d10k.htm>.

buildings,²⁹ and reported 20.4 percent year-over-year growth for business services revenues in the third quarter of 2013.³⁰ Cablevision Lightpath’s “advanced fiber optic network” “has more than doubled in size in just six years,” and now spans 5,442 route miles with more than 6,000 buildings on-net.³¹ Cox claims that it serves “more than 25,000 fiber and 340,000 HFC commercial locations in 25 markets”; that it is “deploying a seamless Ethernet platform across all of [its] markets as quickly as [it] can”; and that it is “providing Ethernet-based services over [its] HFC [network] . . . as well as fiber.”³²

In addition to cable operators, business Ethernet services are “being offered by numerous non-incumbents, including . . . CLECs and formerly IP/MPLS virtual network operators (VNOs).”³³ The top ten business Ethernet service providers include tw telecom (#3), XO (#7), and Level 3

²⁹ Telecom Ramblings, *Metro Fiber and On-Net Buildings List* (July 2013), available at <http://www.telecomramblings.com/metro-fiber-provider-list/>; Charter Business, *Presentation at the comptel plus Spring 2012 Convention*, at 17 (Apr. 16, 2012) (presentation by Charter Business Senior Director of Carrier Sales Stephen Webster), available at <http://www.nprg.com/Media/PDF/28-cable-wholesale-your-guide-to-solutions-that-will-shape-the-market>.

³⁰ Charter Communications Press Release, *Charter Announces Third Quarter 2013 Results* (Nov. 5, 2013), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=1872371&highlight=>.

³¹ Cablevision Systems Corp., Form 10-K, at 2 (SEC filed Feb. 28, 2013), available at <http://www.sec.gov/Archives/edgar/data/784681/000114036113009832/form10k.htm>; Lightpath Press Release, *Lightpath Expansive Network Now Connects 6,000 Fiber-Lit Locations* (Sept. 12, 2013), <https://golightpath.com/20130912litbuildings>.

³² Cox Communications, *Metro Ethernet for Financial Institutions*, available at <http://ww2.cox.com/wcm/en/business/datasheet/metro-ethernet-brochure-finance.pdf>; Cox Communications, *Metro Ethernet*, available at <http://ww2.cox.com/business/data/metro-ethernet.cox>; FierceTelecom, *Cox Business: Anticipating Carrier, Commercial Ethernet Growth* (Jan. 5, 2011), available at <http://www.fiercetelecom.com/special-reports/phil-meeks-vice-president-cox-business-reaching-its-1-billion-sales-milesto> (Cox Business Senior Vice President Phil Meeks).

³³ Charles Carr, Yankee Group, *Forecast: Carrier Ethernet Is Finally Unleashed*, at 4 (Apr. 26, 2011).

(#9).³⁴ tw telecom, states that it has “Ethernet ubiquity across 75 markets,”³⁵ that it provides these services using its “extensive fiber facilities,” which “connect[] to 20,255 buildings served directly by [tw telecom’s] local fiber facilities,” and that it “continue[s] to extend [its] fiber footprint within [] existing markets.”³⁶ XO states that its network includes “[m]ore than 1 million metro fiber miles” with more than 3,300 buildings on-net in 40 U.S. cities.³⁷ Level 3 touts its “advanced and extensive fiber optic network,” and states that “[o]ver 115,000 enterprise buildings are located within 500 feet of the Level 3 Network.”³⁸ In addition, there are at least 30 other competitive providers providing business Ethernet services in various regions of the U.S.: Alpheus Communications, American Telesis, Bright House Networks, BT Global Services, Cbeyond, Charter, Cogent, EarthLink Business, Expedient, FiberLight, Fibertech, Integra Telecom, Lightpath, Lighttower, LS Networks, Lumos Networks, Masergy, MegaPath, NTT America, Orange Business, Reliance Globalcom, Sprint, SuddenLink, Tata, TelePacific, US Signal, Virtela, Windstream, WOW!Business, and Zayo.³⁹

³⁴ Vertical Systems Group, *2013 U.S. Carrier Ethernet LEADERBOARD* (Feb. 12, 2014) available at <http://www.verticalsystems.com/vsglb/2013-u-s-carrier-ethernet-leaderboard/>.

³⁵ tw telecom, *Telecom Solutions: Why tw telecom?*, available at <http://www.twtelecom.com/telecom-solutions/wholesale/why-tw-telecom/>.

³⁶ tw telecom, Form 10-K, at 14, 4 (SEC filed Feb. 14, 2014), available at <http://www.sec.gov/Archives/edgar/data/1057758/000105775814000007/twtc201310-k.htm>.

³⁷ XO Communications, *Network Reach*, available at <http://www.xo.com/why/the-right-network/reach/>.

³⁸ Level 3 Communications, Inc., Form 10-K, at 5 (SEC filed Feb. 26, 2013), available at http://www.sec.gov/Archives/edgar/data/794323/000079432313000003/lvlt-123112_10k.htm; Level 3 Communications, Inc., *Data Center Networking*, available at <http://www.level3.com/en/solutions/business-need/data-center-design/>.

³⁹ Vertical Systems Group, *2013 U.S. Carrier Ethernet LEADERBOARD* (Feb. 12, 2014) available at <http://www.verticalsystems.com/vsglb/2013-u-s-carrier-ethernet-leaderboard/>.

B. *There is extensive competition for mobile wireless backhaul services.*

There is also extensive and growing competition for mobile backhaul services. Dramatic increases in wireless data traffic are fueling this competition for mobile backhaul services,⁴⁰ and making it necessary to upgrade to higher-capacity facilities in all areas. As of 2013, mobile backhaul continued to experience “high double-digit growth rates supporting bandwidth demands for data mobility growing from the smartphone explosion and the conversion of data cell sites to Ethernet from TDM.”⁴¹ Moreover, this “[g]reater competition among vendors, as well as competing backhaul platforms, is creating downward pricing pressures for backhaul service providers”.⁴²

Cable providers’ revenues from mobile backhaul services are expected to reach approximately \$900 million by 2015.⁴³ Comcast — which has “increased [its] number of installed towers by about 79% since 2010”⁴⁴ — “anticipates the addressable backhaul market within its footprint is roughly \$1 billion.”⁴⁵ Time Warner Cable reported reaching a milestone in the second quarter of 2013,

⁴⁰ In 2010, Commission staff reported that “mobile data demand is expected to grow between 25 and 50 times current levels within 5 years.” FCC Staff Technical Paper, *Mobile Broadband: The Benefits of Additional Spectrum*, at 5 (Oct. 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302324A1.pdf.

⁴¹ The Insight Research Corporation, *US Carriers and Ethernet Services: 2013-2018*, at 6 (Aug. 2013).

⁴² Frost & Sullivan, *U.S. Mobile Backhaul Services Market* at 6.

⁴³ 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 (citing Heavy Reading Senior Analyst Alan Breznick).

⁴⁴ *Q1 2012 Comcast Corporation Earnings Conference Call — Final*, FD (Fair Disclosure) Wire, Transcript 050212a4767051.751 (May 2, 2012) (statement by Comcast Chairman & CEO Brian Roberts).

⁴⁵ Jennifer Pigg, Yankee Group, *4G Trends, Wholesale Mobile Backhaul: There’s Gold in Them There Hauls* at 4 (June 2011).

when it was “delivering backhaul service to more than 10,000 cell towers.”⁴⁶ This quickly grew to 12,000 towers, and with its acquisition of DukeNet, Time Warner Cable is now connected to 14,000 towers.⁴⁷ Time Warner Cable believes mobile backhaul and other wholesale transport solutions comprise “a roughly \$20 billion total market opportunity” in its footprint.⁴⁸ Charter reported that its “carrier segment has been strong, fueled a lot by cell tower backhaul.”⁴⁹ Mobile backhaul accounts for approximately one-third of Charter’s capital expenditure.⁵⁰ Suddenlink attributed growth in its commercial business revenues in part to “increases in cell tower and backhaul revenues from carrier customers.”⁵¹

II. The Commission should adhere to its long-standing framework for addressing petitions for forbearance involving broadband services.

The Commission has previously recognized that the marketplace for enterprise broadband services is still developing, creating opportunities for all competitive providers to deploy new services.⁵² As shown above, this is exactly what is occurring. The Joint Commenters, Sprint, and

⁴⁶ Time Warner Cable Press Release, *Time Warner Cable Reports 2013 Second-Quarter Results* (Aug. 1, 2013), available at http://www.timewarnercable.com/content/twc/en/about-us/press/time_warner_cable_reports_2013_second_quarter_results1.html.

⁴⁷ Q4 2013 Time Warner Cable Inc. Earnings Conference Call FD (Fair Disclosure) Wire, Transcript 013014a5264185.785 (Jan. 30, 2014) (statement by Time Warner Cable Executive Vice President and Chief Operating Officer of Business Services Philip G. Meeks).

⁴⁸ Q1 2013 Time Warner Cable Inc. Earnings Conference Call FD (Fair Disclosure) Wire, Transcript 042513a5042571.771 (Apr. 25, 2013) (statement by Time Warner Cable President and Chief Operating Officer Rob Marcus).

⁴⁹ *Q2 2013 Charter Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 080613a5123262.762 (Aug. 6, 2013) (Statement by Charter Executive Vice President and Chief Financial Officer Don Detampel).

⁵⁰ *Q2 2013 Charter Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 080613a5123262.762 (Aug. 6, 2013) (Statement by Charter Chief Executive Officer and Executive Vice President Chris Winfrey).

⁵¹ Suddenlink News Release, *Suddenlink Reports Third Quarter and Year-to-Date 2013 Financial and Operating Results* (Nov. 12, 2013), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=213551&p=irol-newsArticle&ID=1875223&highlight=>.

⁵² *AT&T Forbearance Order* ¶ 20 (We also continue to believe. . . . that it is appropriate to view a broadband marketplace that is emerging and changing . . . from the perspective of the larger trends

COMPTEL seek to minimize this evidence, but they provide no basis for the Commission to deny Century Link’s petition. The Commission has repeatedly acknowledged that it “should not intervene in the market except where there is evidence of a market failure”⁵³ and that, in the absence of a marketplace failure, the Commission generally will “rel[y] on market forces, rather than regulation.”⁵⁴

Instead of confronting the marketplace evidence — which speaks “directly to the question at issue” and provides “data against which to test the [relevant] proposition[s]” regarding the alleged need for these regulations⁵⁵ — the commenters urge the Commission to change the framework it has consistently applied in the *Enterprise Broadband Forbearance Orders* for analyzing this marketplace.⁵⁶ But the rationale the Commission provided for adopting that framework in the specific context of enterprise broadband services applies with equal force today, whereas none of the reasons that the Commission gave in the *Qwest Phoenix Order* for departing from this framework apply in this context.

First, the Commission in the *Qwest Phoenix Order* stated that, in light of “subsequent developments” in the Omaha MSA, there did “not appear to be a basis for relying on the predictive

that are shaping the marketplace.”); *Id.* ¶ 23 (holding that it was not “essential” to have “detailed market share information for particular enterprise broadband services” and that, moreover, it “would not give significant weight to static market share information” in this “emerging and evolving” marketplace “in any event.”).

⁵³ *Amendment of 47 CFR § 73.658(j)(1)(i) and (ii), the Syndication and Financial Interest Rules*, Tentative Decision and Request for Further Comments, 94 F.C.C.2d 1019, ¶ 107 (1983).

⁵⁴ *Orloff v. Vodafone Airtouch Licenses LLC, d/b/a Verizon Wireless*, Memorandum Opinion and Order, 17 FCC Rcd 8987, ¶ 22 & n.69 (2002) (citing this language with approval), *aff’d*, *Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003); *see also Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, ¶ 173 (1994) (“[I]n a competitive market, market forces are generally sufficient to ensure the lawfulness of . . . terms and conditions of service by carriers who lack market power.”).

⁵⁵ *See BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006).

⁵⁶ *See tw telecom, Level 3, Integra, EarthLink & Cbeyond Opposition to CenturyLink’s Forbearance Petition at 4-15; Sprint Corp. Opposition at 3; COMPTEL Opposition at 1-2.*

judgments” the Commission had made.⁵⁷ Here, by contrast, the marketplace for the services at issue here has only increased in competitiveness since the *Enterprise Broadband Forbearance Orders*, proving true any predictive judgments the Commission made in that order.

Second, the Commission stated in the *Qwest Phoenix Order* that it was appropriate to adopt a different framework because it previously failed to “adequately explain why” it did not apply a traditional market-power analysis in the context of petitions for forbearance from unbundling obligations.⁵⁸ With respect to the *Enterprise Broadband Forbearance Orders*, by contrast, the Commission provided an extensive explanation for its approach, including relying on statutory provisions that reflect specific congressional judgments about how best to promote broadband, which have no analog in the context of unbundling requirements for legacy PSTN facilities. The Commission found that its framework for analyzing enterprise broadband services was “entirely consistent” with both sections 7(a) and 706 of the 1996 Act, which set forth Congress’s goal of promoting the deployment of broadband facilities and broadband services by reducing regulation of those services.

Third, the *Qwest Phoenix Order* expressed a concern with the “focus” in the prior analysis on “the extent to which a single provider” was offering competitive, facilities-based services.⁵⁹ In the context of enterprise broadband services, however, the Commission relied on its “find[ing] that a number of entities currently provide broadband services in competition with AT&T’s services” and that there are “a myriad of providers prepared to make competitive offers” for such services.⁶⁰ As shown above, such providers continue to compete successfully to provide these services today.

⁵⁷ *Qwest Phoenix Order* ¶ 24; *see id.* ¶¶ 26, 33-36 (same).

⁵⁸ *Id.* ¶ 25; *see id.* ¶ 26 (same)

⁵⁹ *Id.* ¶ 29; *see id.* ¶¶ 30-33.

⁶⁰ *AT&T Forbearance Order* ¶ 22.

III. The Commission need not address the alternative waiver petition.

Granting CenturyLink’s Forbearance Petition would render its Alternative Waiver Petition moot. Because CenturyLink has met the statutory forbearance test, there is no reason for the Commission to address the Alternative Waiver Petition, in which CenturyLink seeks an interim waiver of the same requirements from which it seeks relief in the Forbearance Petition. It should grant the Forbearance Petition and not address the Alternative Waiver Petition.

CONCLUSION

The Commission should grant CenturyLink’s Forbearance Petition and should not address CenturyLink’s Alternative Waiver Petition.

Respectfully submitted,

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