offerings they seek.[51] The "one size fits all" tariff offerings are particularly ill-suited for responding to RFPs for multiple locations from purchasers with highly-varied individual needs and preferences, depriving customers of a full range of choices and rates. At the same time, national purchasers of enterprise broadband services frequently seek uniformity throughout the area served by a given arrangement in the rates and unique terms and conditions they specify. Such uniformity makes it much easier for customers to manage all aspects of the services they are purchasing.[52]

Customers' preference for uniform contracts directly conflicts with the disparate regulation that currently applies to CenturyLink's ILEC affiliates, and frequently requires the customer to purchase via tariff from CenturyTel and Embarq and by commercial agreement from legacy Qwest, potentially at different rates, terms and conditions for all three CenturyLink affiliates.[53] Sprint argues that CenturyLink brought the current patchwork of disparate levels of regulation on itself as a result of its mergers and that forbearance should not be granted merely "to ease the administrative burden of an individual service provider."[54] As demonstrated in the Petition, however, it is CenturyLink's customers that bear much of the burden of the inconsistent regulatory obligations imposed on the company. The disparate regime imposed by the disjointed

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[51] *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19496 ¶ 28, 19502 ¶ 42; *Qwest Forbearance Order*, 23 FCC Rcd at 12279 ¶ 32.

[52] Petition at 42.

[53] *Id.* at 43. COMPTEL argues, at 16, that CenturyLink could create uniform offerings throughout its service area through a CLEC affiliate that would obtain inputs from its ILEC operating companies on the same terms as any other CLEC, but that approach would preclude the synergies otherwise available from the CenturyTel-Embarq and CenturyLink-Qwest mergers and would not provide the necessary pricing flexibility.

[54] Sprint Opp. at 4.

regulations governing CenturyLink's different affiliates has required needlessly complicated transactions that vainly attempt to emulate the uniform arrangements sought by customers, frustrating customers' desired serving arrangements.[55] Moreover, in granting forbearance, the Commission has recognized the "*customer*[] . . . benefit of a single regime for . . . [enterprise] broadband offerings."[56]

More broadly, regulatory constraints on a single provider of services in a vigorously competitive market are not merely a problem for the regulated provider; they represent losses to consumers.[57] As the Commission has found, it is "*customers*" that "*benefit* from the ability of all competitors to respond to competing market-based price offerings," and "*customers . . . benefit* by our granting . . . relief from [dominant carrier] regulation" of enterprise broadband services because such regulation "reduces [the] ability to respond in a timely manner to . . . *customers'* demands for innovative service arrangements."[58] It is "competition," not dominant carrier regulation, that "protect[s] consumers" of enterprise broadband services.[59]

Accordingly, when CenturyLink loses a potential customer's business because it cannot freely respond to a competitive offering, the customer has lost the benefit of the lower price that CenturyLink could have offered. Opponents quibble with CenturyLink's showing that dominant

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[55] Petition at 56-57.

[56] *AT&T Forbearance Order*, 22 FCC Rcd at 18729 ¶ 42 (emphasis added). *See also Qwest Forbearance Order*, 23 FCC Rcd at 12284 ¶ 45; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19501 ¶ 41.

[57] *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29, 18725 ¶ 33, 18726 ¶ 35, 18730 ¶ 43; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19496 ¶ 28, 19497 ¶ 32, 19498 ¶ 34, 19502 ¶ 42; *Qwest Forbearance Order*, 23 FCC Rcd at 12279 ¶ 32, 12280-81 ¶ 36, 12282 ¶ 38, 12285 ¶ 46.

[58] *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29, 18725 ¶ 33 (emphasis added).

[59] *Id.* at 18730 ¶ 43.

carrier regulation over part of its enterprise broadband operations prevents it from responding to competition in a timely manner with the nationwide uniform rates, terms and conditions that customers want.[60] To remove any doubts on this score, CenturyLink attaches the Declaration of Julie Brown, Director of Wholesale Pricing, Marketing and Training in CenturyLink's Wholesale Markets Group, with detailed data regarding the **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in lost potential wireless backhaul revenue experienced by CenturyLink since 2010 arising from RFPs lost to competitors.[61]

During that period, CenturyLink lost at least **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** RFPs issued by wireless providers, covering approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** cell sites in areas served by legacy Embarq and CenturyTel. Incorporated into the Brown Declaration is a highly confidential table with details of each of the 26 lost RFPs. Each of these losses was to a competitor authorized to negotiate customized service arrangements, with the uniform rates, terms and conditions demanded by wireless providers.[62] Hobbling one relatively small competitor in this way misallocates resources and raises costs, thereby reducing consumer welfare. Forbearance thus would protect consumers of enterprise broadband services.

3. Forbearance is Consistent With the Public Interest

In making the public interest determination under the third prong of the Section 10 standard, the Commission must consider, pursuant to Section 10(b), "whether forbearance from

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[60] Petition at 47.

[61] *See* Declaration of Julie Brown (Feb. 27, 2014), appended as Attachment B.

[62] *Id.* at ¶¶ 3-4.

enforcing the provision or regulation will promote competitive market conditions."[63] In this case, forbearance would further the public interest in broadband deployment and regulatory parity and would promote competitive market conditions.

Given the competitiveness of the enterprise broadband market, and the freedom of most providers from dominant carrier regulation, the primary effect of the current regime is to inhibit the remaining regulated entities from competing effectively. As explained in the Petition, the Commission held in the *AT&T Forbearance Order* that forbearance for AT&T would "serve the public interest by eliminating the market distortions [caused by] asymmetrical regulation" of AT&T and its competitors and "promoting regulatory parity among providers of these services."[64] The Commission further found that such regulatory parity would "promote competitive market conditions and enhance competition among providers of telecommunications services as contemplated by section 10(b) [and] . . . in a manner consistent with the public interest."[65]

In the *USTelecom Forbearance Order*, the Commission also cited the competitive and other public interest benefits of equal regulatory treatment as a significant consideration in various forbearance grants, *e.g.*, that forbearance would "foster competition by removing regulatory requirements and the resulting costs that affect only ILECs subject to the rules and not

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[63] 47 U.S.C. § 160(b).

[64] *AT&T Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46, 18732 ¶ 49.

[65] *Id.* at 18731 ¶ 47. The other *Enterprise Broadband Forbearance Orders* found the same public interest benefits. *See Qwest Forbearance Order*, 23 FCC Rcd at 12287 ¶ 50; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19503-04 ¶ 46; *see also ACS Dominance Forbearance Order*, 22 FCC Rcd at 16356 ¶ 118.

their competitors,"[66] and "promote competitive market conditions and . . . competition among providers . . . because [forbearance] removes . . . obligations that only apply to certain carriers" and "ensure[s] that competing providers face a level playing field."[67] Similarly, customers will benefit from a "level playing field"[68] in the enterprise broadband market following the grant of this petition. Forbearance will enable CenturyLink to respond more quickly to customer requests for individualized offerings tailored to their specific needs and eliminate its tariffs as a pricing umbrella for other providers of enterprise broadband services. Forbearance thus will put downward pressure on prices for those services, as it has for the offerings of previously forborne carriers.[69]

Contrary to Joint CLECs' argument, competitors' occasional attempts to use CenturyLink's tariffed rates as a price umbrella does not demonstrate the absence of competition.[70] The pricing umbrella is a result of dominant carrier regulation of CenturyLink's services, not of dominance.[71] Excessive regulation can create pricing umbrellas in competitive markets. In the *ATU Waiver Order*, the Commission held that restricting the ability of a

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[66] *USTelecom Forbearance Order*, 28 FCC Rcd at 7637-38 ¶ 17.

[67] *Id.* at 7678-79 ¶ 115. *See also id.* at 7675-76 ¶ 107 (forbearance from ARMIS Report 43-01 filing requirement granted partly because "[i]mposing these costs on some competitors but not others may undermine competition.").

[68] *Id.* at 7678-79 ¶ 115.

[69] Petition at 55.

[70] Joint CLEC Opp. at 27-28.

[71] *See Multi-Ass'n Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, 4135 ¶ 26 (2004) (geographic rate deaveraging permitted for certain regulated carriers because "averaged rates might create a pricing umbrella for competitors that would deprive customers of the benefits of more vigorous competition.").

regulated carrier to offer discounts "*in a competitive market* could create a pricing umbrella for competitors, thereby depriving customers of the benefits of more vigorous competition and potentially undermining the efficiency goals of the Commission's rules *by preventing the incumbent LEC from competing effectively* even if it is the low cost service provider."[72] That is exactly what is happening in the competitive enterprise broadband market as a result of dominant carrier regulation of CenturyTel and Embarq offerings, and consumers are harmed as a result.

Forbearance also would promote the public interest in broadband investment and deployment.[73] A forbearance request involving broadband services must take account of Section 706 of the 1996 Act, which requires the Commission to "encourage the deployment . . . of advanced telecommunications capability . . . by utilizing" such measures as "regulatory forbearance."[74] The Commission found in the *AT&T Forbearance Order* that "[f]orbearance . . . will promote the public interest by furthering the deployment of advanced services."[75] Indeed, forbearance "is entirely consistent with section 706 . . . and Congress's express goals of 'promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for . . . consumers and encourage the rapid deployment of new telecommunications technologies.'"[76]

The Commission continued: "By regulating AT&T on the same terms as its nondominant competitors, we will encourage all potential investors in broadband network platforms, and not

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[72] *ATU Telecommunications Request for Waiver*, Order, 15 FCC Rcd 20655, 20661 ¶ 17 (2000) (emphasis added).

[73] Petition at 49-52.

[74] 47 U.S.C. § 1302(a).

[75] *AT&T Forbearance Order*, 22 FCC Rcd at 18731¶ 47.

[76] *Id.* (citation omitted).

just a particular group of investors, to be able to make market-based, rather than regulatory-driven, investment and deployment decisions."[77] The other *Enterprise Broadband Forbearance Orders* found the same broadband investment public interest benefits.[78] Here, too, forbearance from dominant carrier regulation of CenturyLink's enterprise broadband services "will encourage all potential investors in broadband network platforms, and not just a particular group of investors, to be able to make market-based . . . investment and deployment decisions," as directed by Section 706.[79]

Joint CLECs and COMPTEL claim that wireline capital expenditures and investment declined during times of diminished regulation, but they have failed to demonstrate any causal link between the two. Indeed, possible declines in wireline capital expenditures and investment in recent years is not surprising, given that ILECs' fixed access lines have declined by more than 50 percent since 2000.[80] In the case of Qwest Corporation, its total capital investment has been relatively flat since 2007, the year before its enterprise broadband services were detariffed. Yet

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[77] *Id.* at 18732 ¶ 49.

[78] *Qwest Forbearance Order*, 23 FCC Rcd at 12287-88 ¶¶ 50, 52; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19503-04 ¶¶ 46, 48; *see also ACS Dominance Forbearance Order*, 22 FCC Rcd at 16356 ¶ 118 & n.319.

[79] *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49.

[80] In fact, ILEC switched legacy residential lines decreased by *two-thirds* from 1999 to 2012 (Anna-Maria Kovacs, *Telecommunications competition: the infrastructure-investment race*, at 9-10 (Oct. 8, 2013) ("Kovacs Report"), attached to letter from Rick Boucher, Hon. Chairman, Internet Innovation Alliance, to Marlene H. Dortch, Secretary, FCC, GN Dkt. No. 12-353 *et al.* (Nov. 29, 2013)), and now serve barely over *one-quarter* of the U.S. population. Patrick Brogan, Vice President of Industry Analysis, USTelecom, *Growing Voice Competition Spotlights Urgency of IP Transition* at 1 (Research Brief Nov. 22, 2013) ("USTelecom Report") (ILEC switched landline voice service projected to serve 26 percent of U.S. households by the end of 2013, while 29 percent will use other wireline voice services), *available at* http://www.ustelecom.org/sites/default/files/documents/111813-voice-comp-research-brief.pdf; Letter from Jonathan Banks, Sr. VP, Law & Policy, USTelecom, to Marlene Dortch, Secretary, FCC, at 1, WC Dkt. No. 10-90 (Dec. 5, 2013) (same).

its investment per access line jumped more than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** during this period.[81] Likewise, COMPTEL notes that the recent *Technology Transitions Order*[82] recognized the "torrent" of new investment between 1996 and 2001, when the high-technology "meltdown" began, but it did not compare that activity with any other period.[83]

Given the competitive trends and declining ILEC market shares during the period at issue, Qwest's ramped up investment per access line suggests some confusion among opponents about cause and effect. Rather than diminished regulation leading to decreased or flatter ILEC investment, as opponents hypothesize, both are the result of the intense competition that has surged through the telecommunications industry in recent years. That competition has eaten away at the ILECs' customer base and market shares, which has led to flatter ILEC investment and, in reaction to the new market realities, to Commission decisions reflecting an understanding that "[w]hen there is effective competition there is less need for the government to substitute for it."[84]

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[81] *See* Declaration of Mark A. Gast ¶ 3 (Feb. 27, 2014), appended as Attachment C.

[82] *Technology Transitions Order*, 2014 WL 407096 at ¶ 12.

[83] *See also* Comments of the United States Telecom Association at 4-5, GN Docket No. 10-127, *Framework for Broadband Internet Services* (July 15, 2010) ("By some estimates, cumulative capital expenditures by broadband providers from 2000-2008 were over half a trillion dollars. The pro-competition environment and the deregulatory regime in place for the last decade has encouraged such network investment. Private capital investment grew consistently from 2003 through 2008. In 2008 alone, broadband providers invested $64.2 billion to deploy and upgrade their networks . . . .") (citations omitted)); *id.* at 12 ("U.S. firms invested $455 billion in [information, communications and technology] in 2008, representing 22% of total investment across the entire economy.").

[84] FCC Chairman Tom Wheeler, *Net Effects: The Past, Present, and Future Impacts of Our Networks* at 28 (Nov. 26, 2013), *available at* http://transition.fcc.gov/net-effects-2013/NET_EFFECTS_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf.

The Joint CLECs argue that the *Pricing Flexibility Suspension Order*[85] states that regulatory relief for legacy services in prior orders failed to induce competitive entry sufficient to constrain ILECs from exercising market power.[86] As the Petition demonstrates, however, there is already enough competition to constrain CenturyLink in the enterprise broadband market, and so much of that market has been unleashed from dominant carrier regulation that the remaining regulation can only have the effect of limiting broadband investment to "just a particular group of investors," rather than "encourag[ing] all potential investors in broadband network platforms," as would occur under forbearance.[87]

Because CenturyLink's current situation is the most extreme example of "asymmetrical regulation" among all of the enterprise broadband forbearance requests filed to date,[88] the Petition likely offers the most public interest benefits of any up to now. Indeed, continuing to maintain the current asymmetric regime would violate all relevant public interest considerations. As opponents have explained (though not in this proceeding), "differential treatment of

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[85] *Special Access for Price Cap Local Exchange Carriers*, 27 FCC Rcd 10557 (2012) ("*Pricing Flexibility Suspension Order*") (subsequent history omitted).

[86] Joint CLEC Opp. at 29.

[87] *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49. COMPTEL, at 17, points out that *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17911 ¶ 14 (2010) ("*Open Internet Order*"), *vacated in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), found that regulations that protect the ability of edge providers to reach end-users spur innovation and the likely rate of infrastructure improvements and analogizes that finding to a conclusion that protecting competitors' access to consumers promotes investment. Here, however, competitors are not as dependent on ILEC access to large enterprise customers as the edge providers referenced in the cited portion of the *Open Internet Order* are for access to mass market consumers of their online services. 25 FCC Rcd at 17911 ¶ 14 n.23 (edge provider innovations "helped create demand for residential broadband services"). Any concerns regarding access to special access services should be raised in the *Special Access* docket.

[88] *AT&T Forbearance Order*, 22 FCC Rcd at 18731 ¶ 46.

similarly-situated carriers distorts competition and harms consumers."[89] Forbearance would enable CenturyLink to compete on the same terms as the larger ILECs and all of its competitors, to the benefit of consumers.

B. Opponents' Remaining Factual Claims Should be Rejected

In dodging the Petition's basic argument that regulatory parity demands a grant of forbearance, opponents raise multiple arguments that the Commission should disregard.

1. There is no Need to Analyze Geographic or Product Submarkets

As the *Enterprise Broadband Forbearance Orders* hold, no product or geographic market breakdown is necessary for a proper analysis of enterprise broadband service competition.[90] The Petition demonstrated that an intensely competitive nationwide enterprise broadband market exists, with over 30 significant providers. Differences in capacity levels of different broadband offerings do not require a separate product market analysis for each capacity level, as Joint CLECs claim. The Commission has aggregated high capacity services for competitive analysis on a number of occasions. For example, in the *SBC/AT&T Order*, the Commission declined to analyze separate product markets for different capacities of special access services. It found that there were "comparable competitive alternatives for varying capacities of special access [services]," and that competing carriers' "facilities can be 'channelized' to provide service at all

[89] Opponents' Parity Petition at 23.

[90] *See AT&T Forbearance Order*, 22 FCC Rcd at 18716-20 ¶¶ 20-24; *Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19489-93 ¶¶ 19-23; *Qwest Forbearance Order*, 23 FCC Rcd at 12272-77 ¶¶ 23-27.

capacity levels."[91] In other words, enterprise broadband services are highly substitutable.[92]

There is no need to confine the analysis to markets in CenturyTel's and Embarq's legacy service territories, as Joint CLECs and COMPTEL argue, because enterprise broadband customers seek services for their national, multi-location operations on uniform rates, terms and conditions, as explained in the Petition.[93] Also, even though wireless mobile switching centers ("MSCs") are typically located outside of the CenturyTel and Embarq legacy areas, which are largely rural, CenturyLink nevertheless competes for the provision of broadband facilities to MSCs by building or leasing them from another provider. Thus, the enterprise broadband services market is national in scope, and a partly rural carrier such as CenturyLink has no significant advantage in that market.

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[91] *SBC Commc'ns Inc. and AT&T Corp. Applications for Approval for Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18306 ¶ 27 n.90 (2005) ("*SBC/AT&T Order*"). *Accord Verizon Commc'ns Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18449 ¶ 27 n.89 (2005).

[92] It is also unnecessary to separately examine competition for *wholesale* enterprise broadband services or to limit the analysis to facilities-based competition, as the Joint CLECs suggest. Joint CLEC Opp. at 20-21. Both ILEC and non-ILEC providers routinely offer these services on a retail *and* wholesale basis. *See, e.g.*, tw telecom website, http://www.twtelecom.com/telecom-solutions/wholesale-ethernet-old/ (last visited Feb. 27, 2014) ("At tw telecom, you'll find our award-winning Carrier Ethernet services, with reliable, scalable and competitively priced infrastructure that expands your reach—all backed by our top-notch service and support."); Level 3 Communications, Inc. Annual Report (SEC Form 10-K), at 4-8 (Feb. 26, 2013), *available at* http://level3.q4cdn.com/bb7ce2d2-7e59-4e8e-bde0-7a0b6b3e0d17.pdf (noting that Level 3 is a provider of Ethernet and other services to a wide range of wholesale and enterprise customers); Press Release, EarthLink, *EarthLink Carrier T-1 and Ethernet Services Now Available in Southeast* (Nov. 7, 2013), *available at* http://www.earthlink.net/about/press/pressrelease_printpage.faces?id=1009 ("EarthLink Carrier™, the wholesale and carrier division of EarthLink, Inc. . . . today announced that the company has now completed the first phase of the comprehensive rollout of its entire wholesale product suite [including Ethernet] throughout the Southeast.").

[93] Petition at 23-26.

The Joint CLECs thus are incorrect in asserting that the competitive service offered by an opponent, Integra, in legacy Qwest markets is irrelevant,[94] not only because enterprise broadband competition is national in scope, but also because Integra's presence confirms that Qwest's forbearance has not impeded CLEC competition in its legacy territory. Forbearance for CenturyLink's remaining enterprise broadband services will not harm competition either. In any event, the attached Declaration of Kevin Downs shows that there is a substantial enterprise broadband competitive presence in the legacy CenturyTel and Embarq service areas.[95]

2. Competitors Are Increasingly Using Copper Loops Successfully to Provide Enterprise Broadband Services

As demonstrated in the Petition and Attachment 11, competitors increasingly are using, "heavily regulated"[96] TDM special access circuits to provide competitive Ethernet services.[97] The use of copper loops gives CLECs a cost structure lower than fiber-based ILEC broadband services enjoy, allowing them to quickly gain market share from ILECs.[98] The Downs Declaration demonstrates that the competition in CenturyTel's and Embarq's service areas includes significant Ethernet over copper service offerings.[99]

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[94] Joint CLEC Opp. at 19.

[95] *See* Downs Declaration ¶¶ 3-5, appended as Attachment A.

[96] *Ad Hoc Appeal*, 572 F.3d at 911.

[97] Petition at 29-30, Attachment 11 at 1-4.

[98] *See* Petition at 29-30. Contrary to Joint CLECs' suggestion, at 25, CenturyLink's retirement of copper loops has had virtually no impact on the availability of such loops in its service area. Since 2011, copper retirements have affected only one-tenth of one percent of CenturyTel and Embarq serving area interfaces. *See* Downs Declaration ¶ 4.

[99] *See* Downs Declaration ¶ 3.

It should also be noted that CenturyLink does not seek forbearance for its DS0 loop unbundling obligation.[100] Relief here would have no impact on CLECs' current ability to lease DS1s, DS3s and DS0s to provide their enterprise broadband services. Nor would the requested forbearance affect the rates, terms and conditions for those services. Likewise, CLECs will continue to be able to obtain enterprise broadband services on a wholesale basis from CenturyLink on the same rates, terms and conditions as today. And, just as for other enterprise broadband customers, the requested forbearance will allow CLEC purchasers of those services to receive customized rates, terms and conditions. As the Commission held in the *AT&T Forbearance Order*, Joint CLECs' and COMPTEL's various arguments regarding special access rates and questions regarding the future availability of special access services after the IP transition "are more appropriately addressed on an industry-wide basis in pending rulemaking proceedings" "on special access performance metrics and special access pricing,"[101] as well as the *IP Transition* and *Technology Transitions Task Force* dockets. Grant of the Petition would have no prejudicial effect on those proceedings.

Joint CLECs cite the 13 year old *GTE/Bell Atlantic Order*[102] for the general proposition that ILECs have the incentive and ability, stemming from their control over key inputs, to discriminate against competitors in retail markets and argue, on the basis of ex parte statements going back to 2006 and publications going back to 2008, that TDM special access circuits are not

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[100] *See AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 28 (noting that the Commission denied forbearance for TDM-based, DS1 or DS3 special access services).

[101] *Id.* at 18722 ¶ 27 (internal quotes and citations omitted).

[102] *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000).

"viable inputs" for the provision of higher capacity broadband service.[103] They offer no examples, however, of such ILEC discrimination affecting enterprise broadband services or inadequacy of copper loops for their own broadband services. The *Pricing Flexibility Suspension Order*,[104] the *AT&T Forbearance Order*,[105] the other *Enterprise Broadband Forbearance Orders*[106] and the *Ad Hoc Appeal* (citing CLEC public statements),[107] also found that copper loops are perfectly suitable for competitive enterprise broadband services. Joint CLECs' citation of ex parte filings and publications from years ago cannot overcome this settled issue and their failure to identify any contrary examples.

Opponents' arguments on this point are also belied by their public statements, such as Integra's November 2012 announcement of its offering of "60 [Mbps] Ethernet over Copper (EoC) symmetrical access throughout its network footprint," permitting use of "[s]ervices such as IP/MPLS VPN Solutions, Ethernet Services, [and] high bandwidth internet . . . while ensuring Class of Service and Quality of Service, even at peak traffic loads."[108] As opponent Level 3 and other CLECs pointed out last year, "the unbundling regime gives [EoC] competitors the ability to

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[103] Joint CLEC Opp. at 24-25.

[104] *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10610 ¶ 94.

[105] *AT&T Forbearance Order*, 22 FCC Rcd at 18721-22 ¶ 26.

[106] *See, e.g., Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19494-95 ¶ 25.

[107] *Ad Hoc Appeal*, 572 F.3d at 910.

[108] Petition, Attachment 11 at 1.

enter less concentrated markets and prove the business case that eventually may lead to deploying their own last mile facilities."[109]

3. CenturyLink Has no "First Mover" Advantage

Joint CLECs and COMPTEL are incorrect in asserting that CenturyLink has a "first mover" advantage in deploying broadband services. Joint CLECs never rebut CenturyLink's showing that its costs of deploying new fiber to a location are similar to any competitor's costs, irrespective of whether CenturyLink already provides TDM services to the location.[110] CLEC use of copper to provide Ethernet is an especially effective competitive "equalizer" in this regard.[111] tw telecom's greater share of the Ethernet market confirms the absence of a significant first mover advantage for CenturyLink.[112]

COMPTEL argues that CenturyLink has lower broadband deployment costs and greater revenue opportunities than a CLEC, but just as COMPTEL argues in the case of CenturyLink, for "every new commercial building that [a CLEC] builds fiber to, [the CLEC] will pass dozens (perhaps hundreds or thousands) of pre-existing customers that it can include in its financial calculation."[113] And CLECs enjoy regulated access to most of the "core facilities" that COMPTEL claims CenturyLink can "reuse[]" when deploying fiber: trenches, poles, rights of

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[109] Letter from Joshua M. Brobeck, *et al.*, Counsel to Mpower Communications Corp., *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-188, *et al.*, at 5-6 (Jan. 25, 2013) (cited in Petition, Attachment 11 at 3).

[110] *See* Petition at 34-36.

[111] *Id.* at 30, 35 n.132 (noting CLECs' lower cost structure resulting from use of copper loops in competition with CenturyLink installation of fiber to location where it already has copper facilities).

[112] *See id.* at 32.

[113] COMPTEL Opp. at 18.

way, conduit and copper loops.[114] As noted in the Petition, many building owners require new building access agreements when CenturyLink deploys fiber.[115]

Contrary to Joint CLECs' and COMPTEL's claims, CenturyLink does not have a significant competitive advantage from its existing customer base and "ubiquitous" footprint -- what COMPTEL refers to as the ILEC "multi-location customer and footprint-barrier."[116] The *Enterprise Broadband Forbearance Orders* found that the large revenues these services generate make it worthwhile for competitors to deploy their own facilities.[117] COMPTEL thus has it backwards in arguing that the need for nationwide multi-location service packages in the enterprise broadband market creates a barrier to competitive entry.[118]

Opponents' public statements are also at odds with their filings here. A Cbeyond executive, for example, stated in 2012 that his company's presence in a building provides "the opportunity . . . to serve an additional seven, eight, nine, 10 or more customers in those same buildings, with little or no additional expense," opening a potential for "huge revenue[s]."[119]

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[114] *Id.* at 19.

[115] Petition at 36.

[116] COMPTEL Opp. at 11. *See also* Joint CLEC Opp. at 21-24 (discussing alleged barriers to entry).

[117] *See, e.g., AT&T Forbearance Order*, 22 FCC Rcd at 18720 ¶ 24.

[118] Joint CLECs, at 23, argue that CenturyLink can use its fiber deployment to a large enterprise broadband customer to cross-subsidize an upgrade of its residential wireline service to broadband. Competitive carriers do the same, and this has nothing to do with the classic anticompetitive cross-subsidization of a competitive service with a regulated service, since both the subsidizing and subsidized services are the same.

[119] Petition, Attachment 11 at 9.

Moreover, opponent tw telecom admitted last year that the cost of deploying new fiber "continues to fall."[120]

The Joint CLECs and COMPTEL cite the decade-old *Triennial Review Order* as support for their contentions that the ILECs' large customer base, ubiquitous footprints and other advantages create barriers to entry.[121] The paragraph cited by COMPTEL, however, relates to mass market TDM services,[122] not the high-end enterprise services involved here, and the paragraph cited by Joint CLECs also addresses mass market service, albeit involving "fiber to the home" ("FTTH") deployment. In contrast to the *Triennial Review Order's* treatment of the mass market services cited by opponents, the order was clear that the revenues earned by broadband services provided to large customers make it quite profitable for competitors to deploy their own facilities and rejected any related claim of impairment.[123] Similarly, COMPTEL cites the *Phoenix Forbearance Order* for the proposition that CLECs cannot duplicate the ILECs' networks, raising a barrier to entry even in the most competitive markets,[124] but the Commission was referring only to legacy services in that case, not the even more competitive and dynamic enterprise broadband market.

Even in the case of ILEC mass market FTTH deployment to locations already served with copper facilities, the *Triennial Review Order* states, in the paragraph cited by Joint CLECs:

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[120] *Id.*, Attachment 11 at 6-7.

[121] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*"), *aff'd in relevant part and vacated in other respects*, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

[122] *Id.* at 17122-23 ¶ 237, cited in COMPTEL Opp. at 19.

[123] *Id.* at 17063 ¶ 129, 17104-05 ¶ 202, 17168-70 ¶¶ 315-18.

[124] COMPTEL Opp. at 9 n.26.

> [I]mpairment [without access to FTTH facilities] would not exist for two reasons. First, as with greenfield deployments, competitive and incumbent LECs largely face the same obstacles in deploying overbuild FTTH loops, although incumbent LECs still enjoy an established customer base. Both competitive LECs and incumbent LECs must obtain materials, hire the necessary labor force, and construct the fiber transmission facilities. Second, we note that the revenue opportunities associated with deploying any type of FTTH loop are far greater than for services provided over copper loops. . . . Thus, the potential rewards for deploying overbuild FTTH loops are distinctly greater than those associated with deploying copper loops and thus present a different balance when weighed against the barriers to entry.[125]

In the case of broadband services to enterprise customers, the "balance" shifts even more against any significant barrier to competitive entry, as shown by the treatment of such services in the *Triennial Review Order*.[126]

Contrary to opponents' characterizations, CenturyLink's fiber broadband network is hardly "ubiquitous" throughout its entire legacy wireline service territory, particularly the more rural portions of CenturyTel's and Embarq's legacy service areas.[127] Given the absence of significant entry barriers, as discussed above, there is no so-called "multi-location customer and footprint-barrier" that needs to be remedied by reforming last-mile access policies as a predicate for any review of this Petition, as COMPTEL argues.[128] Joint CLECs and COMPTEL thus are

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[125] *Triennial Review Order*, 18 FCC Rcd at 17144 ¶ 276.

[126] *Id.* at 17063 ¶ 129, 17104-05 ¶ 202, 17168-70 ¶¶ 315-18.

[127] COMPTEL also exaggerates the ILECs' legacy wireline ubiquity generally. *See* COMPTEL Opp. at 8-9 & n.24. As noted earlier, ILEC switched legacy residential lines decreased by *two-thirds* from 1999 to 2012 (Kovacs Report at 9-10), and now serve barely over *one-quarter* of the U.S. population. USTelecom Report at 1.

[128] COMPTEL Opp. at 11-13. Given CenturyLink's lack of broadband ubiquity and the absence of significant entry barriers, it is equally ludicrous for Joint CLECs, at 13, to argue that CenturyLink should be assumed to be offering enterprise broadband service to all locations reached by its wireline network.

incorrect in claiming that the ILECs' more "ubiquitous" networks put more potential customers within a lower cost build-out distance than CLECs can reach.[129] COMPTEL cites a Level 3 executive statement that sometimes the company does not have a sufficient customer base in a location to justify build-out,[130] but the same executive also boasted of Level 3's ability to "add" the "100,000 buildings within 500 feet of [its] network" "at a very low cost."[131] "When we get a customer, if we can turn up that building quickly enough, we'll turn up the building on fiber and never use an off-net service."[132]

Opponents' non-specific, unsupported characterizations of the enterprise broadband marketplace and their role in that market cannot stand up to the detailed, massive record submitted by CenturyLink. That record proves that dominant carrier regulation of CenturyLink's enterprise broadband services is no longer appropriate and has become more of an annoyance than a protection to the large, sophisticated customers of those services.

IV. CONCLUSION

The requested forbearance should be granted in order to eliminate the market distortions generated by asymmetrical regulation and thereby unleash the full consumer benefits of unrestrained competition in enterprise broadband services. Forbearance also would promote regulatory parity with the other nondominant providers of enterprise broadband services, including other ILECs. It cannot serve consumers or the public interest for one provider to be arbitrarily selected for continued regulatory burdens lifted from all of the larger similarly situated

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[129] Joint CLEC Opp. at 22; COMPTEL Opp. at 10.

[130] COMPTEL Opp. at 10.

[131] Petition, Attachment 11 at 8.

[132] *Id.*, Attachment 11 at 8-9.

carriers, nor is such an outcome permitted under the APA. Forbearance thus would bring about regulatory parity and enable CenturyLink to make the types of offers that its customers desire.

Respectfully submitted,

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February 28, 2014

REDACTED – FOR PUBLIC INSPECTION

Attachment A

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION

Attachment A

DECLARATION OF KEVIN DOWNS

1. My name is Kevin Downs. My business address is 931 14th Street, Denver, CO 80202. I am employed as a Director of Business Marketing at CenturyLink. In that capacity, I have analytics and strategic pricing oversight for the business segments of CenturyLink. I have been employed by CenturyLink and its predecessor companies for 13 years, holding positions in various pricing, finance and operations roles.
2. In my declaration accompanying CenturyLink's Petition for Forbearance, I discussed the ways in which CLECs are using copper loops purchased as unbundled network elements (UNEs) to provide Ethernet and other enterprise broadband services. I also noted the competition that CenturyLink faces from other providers of these services. In this declaration, I provide additional detail on these issues in response to Joint CLECs' opposition to CenturyLink's petition.
3. *Ethernet-Over-Copper Competitors*. In their opposition, Joint CLECs appear to question whether CLECs' use of Ethernet-over-copper to win small, medium and large business customers extends to markets served by legacy CenturyTel and Embarq. It unquestionably does. Windstream, for example, offers Ethernet-over-copper service in numerous CenturyTel and Embarq markets of various sizes, including Columbia, Missouri; Dothan, Alabama; Fort Myers and Orlando, Florida; Kingsport, Tennessee; La Crosse, Wisconsin; Raleigh, North Carolina; and Yakima, Washington. Other Ethernet-

over-copper competitors providing service in one or more CenturyTel/Embarq markets include Alpheus, Integra, Level 3, MegaPath and XO.

4. As I explained in my initial declaration, CLECs provide these services by bonding copper UNE loops purchased from CenturyLink and other ILECs. By doing so, these providers can offer broadband speeds rivaling those of fiber-based services, without the construction costs required for new fiber optic installation. Given CenturyLink's substantial loss of access lines over the past several years, spare copper loops generally are plentiful throughout its serving area. And CenturyLink's very limited copper retirement has had almost no impact on copper loop availability. Since 2011, copper retirements have affected only one-tenth of one percent of CenturyTel and Embarq's serving area interfaces.

5. *Cable and CLEC Competitors*. CenturyLink also faces intense competition in CenturyTel and Embarq serving areas from formidable cable providers such as Bright House, Charter, Comcast, Cox or Time Warner Cable. CLECs compete in many of these areas as well. tw telecom, for example, operates in CenturyTel and Embarq serving areas, including Fayetteville, North Carolina; Newark, New Jersey; Orlando, Florida; and Raleigh, North Carolina.

/s/ Kevin Downs
Kevin Downs

February 27, 2013

REDACTED – FOR PUBLIC INSPECTION

Attachment B

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Attachment B

DECLARATION OF JULIE BROWN

I. Introduction

1. My name is Julie Brown. My business address is 930 15th Street, Denver, Colorado, 80202. I am employed as a Director of Wholesale Pricing, Marketing and Training in CenturyLink's Wholesale Markets Group. In that capacity, I am responsible for all strategic and transactional pricing for data and cloud products within the Wholesale Markets group. Additionally, I am responsible for all Marketing and Product Training for the Wholesale Markets group. I have been employed by CenturyLink and its predecessor companies for 12 years, holding positions in Wholesale Product and Pricing and Offer Management.
2. In my declaration submitted with CenturyLink's Petition for Forbearance, I provided, among other things, information regarding requests for proposals (RFPs) that CenturyLink lost to more lightly regulated competitors. In this declaration, I provide further detail on this subject, in response to the opposition filed by the Joint CLECs.[1]
3. As noted in my initial declaration, CenturyLink lost in the past three years at least **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** RFPs issued by wireless providers, covering approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END**

[1] *See* Opposition of tw telecom, *et al.*, to CenturyLink's Forbearance Petition at 27, WC Dkt. No. 14-9 (Feb. 14, 2014) ("CenturyLink provides no documentation or any other basis for verifying or reviewing [its] claim" regarding the amount of potential revenue it has "supposedly" lost as a result of losing wireless providers' RFPs.).

CONFIDENTIAL] cell sites in areas served by legacy Embarq and CenturyTel, and costing approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in potential revenue for CenturyLink. Each of these losses was to a competitor authorized to negotiate customized service arrangements, with the uniform rates, terms and conditions demanded by wireless providers.[2]

4. The following chart provides further detail on these losses:

[BEGIN HIGHLY CONFIDENTIAL]

Customer	Market	Date Proposal Due to Customer	Cell Sites	Lost Revenue
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[2] CenturyLink Petition for Forbearance, WC Dkt. No. 14-9 (Dec. 13, 2013), Attach. 7, Declaration of Julie Brown ¶ 22.