

**REDACTED – FOR PUBLIC INSPECTION**

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

In the Matter of )  
)  
CenturyLink’s Petition for Forbearance Pursuant ) WC Docket No. 14-9  
to 47 U.S.C. § 160(c) from Dominant Carrier and )  
*Computer Inquiry* Tariffing Requirements on )  
Enterprise Broadband Services )

**CENTURYLINK’S REPLY COMMENTS IN SUPPORT OF ITS  
PETITION FOR FORBEARANCE**

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ATTACHMENTS

Attachment A: Declaration of Kevin Downs (2014)

Attachment B: Declaration of Julie Brown (2014) (includes confidential and highly confidential information)

Attachment C: Declaration of Mark A. Gast (2014) (includes confidential information)

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### **EXECUTIVE SUMMARY**

Reading the oppositions to CenturyLink's Petition for Forbearance, one gets the sense that the opponents are just going through the motions. Other than the New Jersey Rate Counsel's late-filed submission, the oppositions were filed only by CenturyLink's competitors, all of whom stand to gain by keeping CenturyLink out of the enterprise broadband market. Moreover, and most critically, none of them even attempted to address the key issue in this proceeding -- the legal requirement that regulators treat similarly situated parties similarly. Instead, the opponents dismiss the Commission orders establishing the competitive analytical standard to be followed in a case like this as "result-oriented" and "lack[ing] any rigorous, consistent market analysis." Opponents would have the Commission rely instead on orders that, by their own terms, are inapplicable to the enterprise broadband market.

Opponents take a similar approach to the facts, questioning CenturyLink's massive, detailed factual record but providing nothing in response except recycled, unsupported assertions from a few years ago and misleading citations to decade-old orders. Not surprisingly, opponents' filings do not begin to address the legal and factual issues raised by the Petition and fail to identify even one incident in which a prior enterprise broadband forbearance grant has harmed competition or consumers. Based on this lopsided record, the only conclusions possible in any fact-based, data-driven process are that retaining dominant carrier regulation for the small fraction of the enterprise broadband service market still subject to such requirements cannot possibly be necessary to ensure just and reasonable prices or to protect consumers and that

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forbearance would meet multiple public interest goals and facilitate competition. The Commission should not only grant this Petition, it should do so promptly.

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**I. INTRODUCTION**

The oppositions to CenturyLink’s Petition for Forbearance<sup>1</sup> filed by its competitors -- COMPTTEL,<sup>2</sup> Sprint Corp.<sup>3</sup> and a coalition of competitive local exchange carriers (“Joint CLECs”)<sup>4</sup> -- seem hardly worth taking the time to read. They duck the key legal issues in the proceeding, tell the Commission its precedents are wrong, and ignore the factual record. They seem to be responding to a different Petition and recycle arguments written years ago. The simple point they fail to grasp is this: the Commission must treat similarly situated parties similarly. This basic principle is one on which any regulatory regime must be based. CenturyLink’s Petition demonstrates that it is subject to strict (and no longer relevant) regulatory

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<sup>1</sup> CenturyLink Petition for Forbearance, WC Dkt. No. 14-9 (Dec. 13, 2013) (“Petition”).

<sup>2</sup> Opposition of COMPTTEL, WC Dkt. No. 14-9 (Feb. 14, 2014) (“COMPTTEL Opp.”).

<sup>3</sup> Opposition of Sprint Corp., WC Dkt. No. 14-9 (Feb. 13, 2014) (“Sprint Opp.”).

<sup>4</sup> Opposition of tw telecom, *et al.*, to CenturyLink’s Forbearance Petition, WC Dkt. No. 14-9 (Feb. 14, 2014) (“Joint CLEC Opp.”).

mandates that do not apply to its similarly situated competitors and larger incumbents. The oppositions do not even attempt to suggest otherwise.<sup>5</sup>

Unable to argue against the merits of the Petition and lacking any factual support, the opponents instead rely on an analysis that is inapplicable to the nationwide, dynamically competitive enterprise broadband service market at issue, in an effort to retain dominant carrier regulation and the *Computer Inquiry* tariffing requirement for CenturyLink’s packet-switched and optical transmission broadband services (together, “enterprise broadband services”). The multiple inadequacies of these unsupported oppositions confirm that the Petition should be granted without further delay.

**A. Opponents Refuse to Acknowledge the Governing Legal Issues**

CenturyLink’s Petition demonstrated that fundamental fairness, governing principles of the Administrative Procedure Act (“APA”), and the Commission policy of regulatory parity require similarly situated parties to be treated similarly.<sup>6</sup> Opponents do not challenge these principles directly, and the Joint CLECs and COMPTTEL do not even dare to mention the term “regulatory parity” in their oppositions to the forbearance petition.

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<sup>5</sup> On the eve of the filing deadline for these Reply Comments, CenturyLink noticed that another opposition had been filed in the docket 12 days late by New Jersey Division of Rate Counsel (“Rate Counsel”) without any prior notice to or service on CenturyLink or any motion for extension. The untimely Reply and Opposition of the New Jersey Division of Rate Counsel, WC Dkt. No. 14-9 (Feb. 26, 2014) (“Rate Counsel Opp.”), appears to “reiterate[.]” Rate Counsel’s generic “arguments made in opposition to . . . numerous prior forbearance petitions” (Rate Counsel Opp. at 2 & n.4) and should be disregarded. Even a cursory review of the filing reveals a complete lack of familiarity with the record. For example, Rate Counsel asserts that “CenturyLink . . . remains one of the dominant providers in the competitive Ethernet market.” Rate Counsel Opp. at 7-8. Rate Counsel is certainly correct about the “competitive” nature of that market, in which CenturyLink is managing to hang on to barely a ten percent market share nationwide, behind opponent tw telecom, as discussed *infra*.

<sup>6</sup> Petition at 10-14.

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Only Joint CLECs attempt to engage the APA issue, albeit unsuccessfully. Their entire argument on this point is that the Commission may change its approach as long as it explains the change. That response is not adequate in these circumstances because Joint CLECs have not provided any coherent rationale for applying a stricter standard to one small incumbent player than is currently being applied to most of the industry, including much larger incumbents. Such an ongoing double standard could not possibly serve the competitive goals of Section 10 of the Communications Act<sup>7</sup> or the regulatory parity policy.

As to the competitive standard to be applied to a forbearance request regarding the enterprise broadband market, Joint CLECs' primary legal argument appears to be a collateral attack against the *Enterprise Broadband Forbearance Orders*,<sup>8</sup> which were affirmed on appeal,<sup>9</sup>

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<sup>7</sup> 47 U.S.C. § 160.

<sup>8</sup> *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*”), *aff’d sub nom. Ad Hoc Telecommc’ns. Users Comm. v. FCC*, 572 F.3d 903 (D.C. Cir. 2009) (“*Ad Hoc Appeal*”); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, 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-Citizens 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*”) (together, the *Enterprise Broadband Forbearance Orders*).

<sup>9</sup> *See Ad Hoc Appeal*, 572 F.3d 903.

as “result-oriented” and “wrongly decided.”<sup>10</sup> They insist that the analysis used in the *Phoenix Forbearance Order*<sup>11</sup> somehow applies to broadband services, despite that order’s suggestion otherwise. COMPTTEL also attempts to relitigate the governing enterprise broadband case law, which it characterizes as “lack[ing] any rigorous, consistent market analysis.”<sup>12</sup> CenturyLink advocates a different approach, and one more in keeping with the rule of law: CenturyLink accepts *all* of the Commission’s final decisions as binding law, and demonstrates how its requested forbearance relief is consistent with all of them.<sup>13</sup>

**B. Opponents Have Again Failed to Identify Even One Incident of Harmful Conduct or Diminished Competition Resulting From Prior Enterprise Broadband Forbearance Grants**

The other major incumbent LECs (“ILECs”) providing enterprise broadband services have enjoyed forbearance from the regulations at issue here since 2007. Leaving aside opponents’ flight from the governing legal and regulatory principles, the years since the *Enterprise Broadband Forbearance Orders* have provided compelling real-world evidence of the impact of nondominant regulation of the vast majority of ILEC-provided enterprise broadband services. In particular, this intervening period has given opponents ample time to identify and document any supposed harm resulting from the past seven years of forbearance.

Yet, they have failed to describe a single such incident. In the face of CenturyLink’s massive factual record, including detailed third party reports, showing that customer choices

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<sup>10</sup> Joint CLEC Opp. at 2, 4.

<sup>11</sup> *Petition of Qwest Corp. 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, 8642-43 ¶ 37, 8644-45 ¶ 39 (2010) (“*Phoenix Forbearance Order*”), *aff’d sub nom. Qwest Corp. v. FCC*, 689 F.3d 1214 (10<sup>th</sup> Cir. 2012).

<sup>12</sup> COMPTTEL Opp. at 7.

<sup>13</sup> *See* Petition at 17-20.

have increased and prices have fallen, the opponents have produced essentially no evidence of harm from the *Enterprise Broadband Forbearance Orders*. This absence, alone, confirms that the requested relief more than meets all of the Section 10 criteria for forbearance.

Joint CLECs once again recycle unsupported allegations of harm from prior proceedings, all of which have been thoroughly discredited. They profess to disbelieve the reports of falling prices and increased competition (including competition provided by themselves) but do not offer any contrary evidence, other than a study conducted by COMPTTEL that fails to address the enterprise broadband rates actually charged by forborne ILECs.<sup>14</sup>

**C. Rather Than Address the Merits of This Petition, Opponents Raise Issues That Are Being Addressed in Other Proceedings**

Faced with unfavorable legal standards and the absence of any evidence of harm from prior enterprise broadband forbearance grants, opponents attempt to conflate the enterprise broadband market with other legacy, narrowband markets. The Joint CLECs try to divert the Commission's attention from the fundamental fairness issues raised by the Petition, as well as the intensely competitive, dynamic enterprise broadband services at issue, by raising issues pending in the *Special Access* proceeding<sup>15</sup> at every opportunity. This approach leads them to argue that, because TDM circuits are used as wholesale inputs to provide competitive broadband services, the Commission must analyze the competitive status of the TDM special access market before granting forbearance for optical and packetized enterprise broadband services.

COMPTTEL and Sprint, for their part, go further by insisting that this narrowly focused proceeding be put aside so that the Commission can devote its attention to other matters,

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<sup>14</sup> See, e.g., COMPTTEL Opp. at 15; Sprint Opp. at 3.

<sup>15</sup> See *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (subsequent history omitted).

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including an industry-wide overhaul of the entire wholesale access market, including the pricing of TDM special access services, the continued availability of TDM special access services or equivalent loops after the IP transition, and the prior enterprise broadband forbearance grants at issue in the pending Reverse Forbearance Petition.<sup>16</sup>

The Commission should not be swayed by these diversions. The Petition asks for the Commission to treat CenturyLink the same as similarly situated carriers have been treated for years, and CenturyLink has satisfied the statutory criteria for forbearance. The Commission should grant the Petition and direct the opponents to raise all of their special access and IP transition issues in the *Special Access, IP Transition*<sup>17</sup> and *Technology Transitions*<sup>18</sup> proceedings, and their issues with the prior enterprise broadband forbearance grants do not belong here. Granting CenturyLink’s Petition would not prejudice the outcome of any of those dockets.

Moreover, Section 10(c) requires the Commission to act on forbearance petitions on their own merits. It states that the Commission “shall forbear from” applying a statutory or regulatory provision if the Section 10(a) criteria are met.<sup>19</sup> As the D.C. Circuit held, “the availability of” “an alternative route for seeking” similar relief “does not diminish the Commission’s responsibility to fully consider petitions under § 10,” and “*the Commission is without authority*

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<sup>16</sup> See Petition of Ad Hoc Telecommunications Users Committee, *et al.*, to Reverse Forbearance from Dominant Carrier Regulation of Incumbent LECs’ Non-TDM-based Special Access Services, WC Dkt. No. 05-25, RM-10593 (filed Nov. 2, 2012) (“Reverse Forbearance Petition”), cited in COMPTel Opp. at 3 n.5. See also Sprint Opp. at 4.

<sup>17</sup> See *Pleading Cycle Established on AT&T and NTCA Petitions*, Public Notice, 27 FCC Rcd 15766 (2012).

<sup>18</sup> *Technology Transitions*, Order, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-5 (Jan. 31, 2014) (“*Technology Transitions Order*”).

<sup>19</sup> 47 U.S.C. § 160(a).

to deny [a] petition for forbearance because of” such “*alternative*” remedy.<sup>20</sup> Thus, opponents’ suggestions of alternative proceedings in which to address these issues should be rejected.

**II. OPPONENTS ALL BUT IGNORE THE OVERARCHING ADMINISTRATIVE LAW PRINCIPLES GOVERNING THIS PROCEEDING**

**A. Similarly Situated Parties Must be Treated in a Similar Manner Under APA Standards and the Commission’s Regulatory Parity Policy**

CenturyLink has demonstrated that unanimous precedent requires that an agency treat “like cases” similarly and not “appl[y] different decisional criteria to similarly situated carriers,” as *Airmark* holds.<sup>21</sup> The Commission’s regulatory parity policy reinforces the APA principle of similar treatment for similarly situated parties, particularly in the forbearance context, in order to “avoid persistent regulatory disparities between similarly-situated competitors.”<sup>22</sup> Opponents do not try to rebut the governing case law, or even attempt to address the importance of “regulatory parity,” in their oppositions to the Petition.

The opponents were not always so reticent about that concept. In 2011, opponents tw telecom, EarthLink and Sprint Nextel (now Sprint), among other parties, asked the Commission to reverse Verizon’s “deemed” forbearance grant from general Title II regulation<sup>23</sup> “to the extent necessary to apply to Verizon *the same regulations applicable to* AT&T, Embarq, Frontier, legacy Qwest and its other competitors in the provision of non-TDM-based packetized and

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<sup>20</sup> *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (emphasis added).

<sup>21</sup> *Airmark Corp. v. FAA*, 758 F.2d 685, 691-92 (D.C. Cir. 1985).

<sup>22</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 50.

<sup>23</sup> News Release, FCC, *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, WC Dkt. No. 04-440 (Mar. 20, 2006).

optical transmission services.”<sup>24</sup> This approach was necessary, they argued, because “*differential treatment of similarly-situated carriers distorts competition and harms consumers.*”<sup>25</sup> As additional support, opponents cited the *AT&T Forbearance Order*’s recognition of “the need to ensure regulatory parity” and “to avoid persistent regulatory disparities between similarly-situated competitors.”<sup>26</sup>

The position taken in the Opponents’ Parity Petition in 2011 is directly analogous to CenturyLink’s position here, except that it, and not Verizon, is the regulatory anomaly. Opponents do not explain how the Commission, consistent with APA standards and its regulatory parity policy, could deny forbearance where that action would leave CenturyLink’s enterprise broadband services partly subject to a regime that has been lifted from roughly 90 percent of the industry, including its direct competitors.

Opponents’ newfound fear of the principle of regulatory parity is understandable. It is part and parcel of the competitive public interest goals of Section 10. The Commission held in the *AT&T Forbearance Order* that “a deregulatory approach for [enterprise] broadband services . . . will serve the public interest by eliminating the market distortions that *asymmetrical regulation* of these services causes.”<sup>27</sup> The Commission went on to detail the ways that dominant carrier regulation “keeps AT&T from responding efficiently.”<sup>28</sup> The Commission also found that “[f]orbearing from application of dominant carrier regulation will increase

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<sup>24</sup> Petition of tw telecom inc. *et al.* at 4, WC Dkt. No. 11-188 (Oct. 4, 2011) (emphasis added) (“Opponents’ Parity Petition”).

<sup>25</sup> *Id.* at 23 (emphasis added).

<sup>26</sup> *Id.* at 14 (quoting *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 50).

<sup>27</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46 (emphasis added).

<sup>28</sup> *Id.* at 18731 ¶ 46.

competition by freeing AT&T from unnecessary regulation *and will serve the public interest by promoting regulatory parity* among providers of these services.”<sup>29</sup>

Opponents have failed to explain why the Commission should abandon its regulatory parity policy in this case, which, as the Petition shows, is the strongest case yet for the application of that policy. The Petition demonstrated at length and consistent with the statutory forbearance criteria the gross asymmetry that would result from keeping the smallest major player uniquely under dominant carrier regulation.<sup>30</sup> The opponents’ only response to the APA/parity set of issues is Joint CLECs’ argument that the Commission may change its approach, as long as it explains the change, citing the affirmance of the *Phoenix Forbearance Order* and other cases.<sup>31</sup>

In those cases, however, the Commission was in a position to apply prospectively a revised standard or approach relatively broadly, rather than just to the first party subject to the new rule. Here, due to the nearly industry-wide scope of prior forbearance grants, any revised standard could be applied prospectively only to a small fraction of the enterprise broadband industry, while the forborne status of the rest of the industry would continue indefinitely. The only other outcome that would apply a new approach more broadly would be for the Commission to attempt to re-impose dominant carrier regulation on all ILECs, which would be both unlawful and ill-founded. Absent this misguided approach, maintaining such a double

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<sup>29</sup> *Id.* at 18732 ¶ 49 (emphasis added).

<sup>30</sup> Petition at 10-14. The only party to comment on the parity issue, Sprint, merely says that applying regulatory parity “would only exacerbate a bad situation.” Sprint Opp. at 3. Sprint bases that comment on the supposed harms of prior forbearance grants, which, as discussed below, are nonexistent.

<sup>31</sup> Joint CLEC Opp. at 6-7.

standard could only conflict with, rather than carry out, the competitive goals of Section 10 and the regulatory parity policy.

In particular, the Joint CLECs have not explained how maintaining dominant carrier regulation on part of a carrier with a roughly 10 percent share of the enterprise broadband market is somehow necessary to protect consumers or to maintain just and reasonable enterprise broadband rates, given that approximately 90 percent of the enterprise broadband market is already treated as non-dominant. In fact, the CenturyLink services still subject to dominant carrier regulation account for less than a third of its roughly ten percent share of the nationwide enterprise broadband market, or *less than three percent* of the nationwide market. Regulating such a small sliver of such a dynamic, nationwide market has the unjustified, asymmetric effect of frustrating customers that CenturyLink is denied the opportunity to serve at rates it would prefer to charge and they would prefer to pay. Given the absence of dominant carrier regulation from most of the enterprise broadband industry, forbearance for CenturyLink is the only way to “eliminate[e] the market distortions that asymmetrical regulation of these services causes.”<sup>32</sup>

The APA, the Commission’s regulatory parity policy and the standards of Section 10 thus all align to mandate forbearance in these circumstances. Conversely, it would not serve any competitive, consumer or other public interest goal under Section 10 to continue treating CenturyLink differently from the larger ILECs and its other competitors. As some of the opponents have stated, “differential treatment of similarly-situated carriers distorts competition and harms consumers.”<sup>33</sup>

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<sup>32</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46.

<sup>33</sup> Opponents’ Parity Petition at 23.

**B. Opponents Implicitly Concede That the *Enterprise Broadband Forbearance Orders* Govern Here**

Joint CLECs’ and COMPTEL’s approach to the *Enterprise Broadband Forbearance Orders* is to dismiss them as “result-oriented” and “wrongly decided,”<sup>34</sup> or “lack[ing] any rigorous, consistent market analysis.”<sup>35</sup> That response not only casts aspersions on the decision-making of the Commission and of reviewing courts, but also underscores the binding applicability of the *Enterprise Broadband Forbearance Orders* to this proceeding.<sup>36</sup> By forgoing any attempt to distinguish those cases, opponents’ collateral attack against them implicitly concedes that if they were correctly decided, forbearance must be granted here. Contrary to opponents’ view, the *Phoenix Forbearance Order* acknowledges that it does not establish the proper standard in reviewing a broadband forbearance request.<sup>37</sup>

The Petition does not seek forbearance with regard to any TDM services. Opponents nevertheless insist that the market analysis used for legacy services in the *Phoenix Forbearance Order* should be used for enterprise broadband services because TDM special access circuits are used as wholesale inputs to provide competitive broadband services. Competitors’ use of TDM

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<sup>34</sup> Joint CLEC Opp. at 2, 4.

<sup>35</sup> COMPTEL Opp. at 7.

<sup>36</sup> Joint CLECs, at 7, also reargue their discredited claim that the *Enterprise Broadband Forbearance Orders* analyzed the wrong market by focusing on all broadband services nationwide instead of narrower geographic markets. That argument was expressly rejected in the *Ad Hoc Appeal* of those orders, where the court pointed out that, “[g]iven the rapidly changing state of the overall broadband market and § 706’s direction that the FCC may look to and attempt to shape possible future developments in regulating broadband,” Section 10 “does not compel a ‘particular . . . level of geographic rigor’ when the agency forbears from imposing certain requirements on broadband providers.” *Ad Hoc Appeal*, 572 F.3d at 908 (quoting *EarthLink, Inc. v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006)).

<sup>37</sup> See *Phoenix Forbearance Order*, 25 FCC Rcd at 8644 ¶ 39 (“a different analysis may apply when the Commission addresses advanced services, like broadband services, instead of a petition addressing legacy facilities.”).

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circuits to provide their broadband services, however, does not require a full-scale competitive analysis of the special access market in this proceeding, as Joint CLECs seem to think, or an even broader overhaul of the wholesale access market, as COMPTTEL advocates.<sup>38</sup> Neither the *Phoenix Forbearance Order* nor any other case suggests that approach in resolving a forbearance request with regard to enterprise broadband services.<sup>39</sup>

Contrary to COMPTTEL’s argument, the fact that ILECs are not required to offer unbundled fiber loops or their equivalent to competitors in greenfield scenarios thus is irrelevant to the availability of useful, reasonably priced inputs to competitive enterprise broadband

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<sup>38</sup> Joint CLEC Opp. at 14-15; COMPTTEL Opp. at 11-13.

<sup>39</sup> Joint CLECs suggest, at 15, that the analysis used in the *Phoenix Forbearance Order* is applicable here because the Commission found in that case (25 FCC Rcd at 8644 ¶ 39), that denial of forbearance would advance the broadband deployment goals of Section 706 of the Telecommunications Act of 1996. 47 U.S.C. § 1302(a). There, however, the Commission was analyzing competition in legacy special access services, not broadband services. The only impact on the broadband market discussed in that order was the possibility that denial of forbearance from the Sections 251 and 271 unbundling requirements on legacy services might have a secondary impact of spurring Qwest to upgrade its copper loops to fiber. *Phoenix Forbearance Order*, 25 FCC Rcd at 8644 ¶ 39. That concern is irrelevant here and provides no guidance as to how to assess a broadband forbearance request.

The Commission can similarly dismiss the Joint CLECs’ claim, based on *Special Access for Price Cap Local Exchange Carriers*, Report and Order, 27 FCC Rcd 10557 (2012) (“*Pricing Flexibility Suspension Order*”) (subsequent history omitted), that a *Phoenix Forbearance Order*-type analysis would foster broadband deployment, given that special access circuits are an important input for competitive broadband service. Joint CLEC Opp. at 14. Similar to the *Phoenix Forbearance Order*, the *Pricing Flexibility Suspension Order* addressed the impact of forbearance on broadband only as a secondary effect of wholesale special access competition and rates, which is not the subject of this Petition, and explained that a different analysis is appropriate for the broadband market itself, as opposed to inputs to broadband. 27 FCC Rcd at 10609-10 ¶¶ 93-95, 10610 ¶ 93 n.292.

offerings.<sup>40</sup> Any issues regarding the special access market should be raised in the *Special Access* proceeding, as the Commission held in the *AT&T Forbearance Order*.<sup>41</sup>

**III. THE PETITION PROVIDES MORE THAN SUFFICIENT SUPPORT FOR A GRANT OF FORBEARANCE**

**A. CenturyLink’s Showing Has More Than Satisfied the Section 10 Criteria**

Even without the immense, detailed factual record submitted with the Petition, the Commission could only conclude that fundamental fairness, as well as the intense national competition for enterprise broadband services, characterized by price declines, multiple intermodal competitors and low entry barriers, confirm that the requested forbearance easily meets each of the three Section 10 criteria. Forbearance is especially appropriate in light of the vast portion of the industry -- roughly 90 percent -- that has been relieved of (or was never subject to) dominant carrier regulation. Not only do administrative law principles require similar treatment, but any other outcome is impossible to reconcile with the market-based principles of Section 10.

In light of increasing competition and the absence of reported harm since the *Enterprise Broadband Forbearance Orders*, dominant carrier regulation is clearly no longer necessary, if it ever was, to ensure that CenturyTel’s and Embarq’s enterprise broadband rates remain just and reasonable or to protect the large enterprise customers that purchase these services. Moreover, forbearance will further the public interest by facilitating broadband deployment, enhancing competition and ensuring regulatory parity.

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<sup>40</sup> COMPTEL Opp. at 5 & n.15.

<sup>41</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18722-23 ¶ 27.

**1. Dominant Carrier Regulation of CenturyLink’s Enterprise Broadband Services is not Necessary to Ensure That Rates and Practices Are Just and Reasonable and Not Unreasonably Discriminatory**

The enterprise broadband market is even more dynamically competitive today than it was when the *Enterprise Broadband Forbearance Orders* were released several years ago. There are over 30 national and regional competitors offering services to large multi-location customers with considerable bargaining power, rendering dominant carrier regulation even more unfit for the legacy CenturyTel and Embarq services still subject to those rules. CenturyLink accounts for only ten percent or less of the overall market and has always been less “dominant” than either of the previously forborne market leaders, Verizon and AT&T.

With 90 percent of the intensely competitive enterprise broadband industry free to set rates and terms at will, continuing to impose dominant carrier regulation on less than three percent of the market could not possibly be necessary to ensure just, reasonable and nondiscriminatory prices and practices, or, indeed, could have any effect at all on such rates and practices, except to hinder CenturyLink’s ability to compete with opponents. There is no evidence that forbearance from dominant carrier regulation, whether of CenturyLink’s legacy Qwest operations or other ILECs’ enterprise broadband services, has led to unreasonable rates. In fact, the rates for CenturyLink services covered by the *Enterprise Broadband Forbearance Orders* have declined by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] since they were detariffed in 2007 and 2008.<sup>42</sup>

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<sup>42</sup> See Petition at 48.

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CenturyLink cited and attached two independent reports to its Petition confirming that Ethernet prices continue to decline.<sup>43</sup> Opponents have not challenged either of those sources but generally make unsupported allegations of excessive rates.<sup>44</sup> Such vague statements cannot overcome the record support for a finding that dominant carrier regulation of CenturyLink’s enterprise broadband services is not necessary to ensure just and reasonable prices and practices.

Opponents profess to be concerned about the potentially excessive rates that CenturyLink might charge, once released from dominant carrier regulation, but, in fact, they benefit, as competitors, from CenturyLink’s current inability to reduce rates to meet competition under that regime. Even after several years of experience, they still cannot produce any tangible evidence of competitive harms resulting from prior forbearance grants.<sup>45</sup> They have offered nothing to

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<sup>43</sup> Petition at 15. It is preposterous to argue, as the Joint CLECs do, that falling prices might result from profit maximizing behavior of a monopolist experiencing marginal cost reductions, rather than competition. No one seriously argues that each ILEC is an enterprise broadband monopolist in its service area. One of the reports cited in the Petition notes Ethernet price declines of 10 percent or more per year, concluding that “as a result, Ethernet revenue is growing slower than traffic” (Insight Research Corp., *U.S. Carriers and Ethernet Services: 2013-2018*, at 5 (Aug. 2013), appended as Attachment 4 to Petition), a textbook characteristic of an intensely competitive market, rather than monopoly pricing.

<sup>44</sup> Sprint Opp. at 3. COMPTTEL, at 15, refers to a prior study purporting to show that AT&T’s and Qwest’s enterprise broadband rates are too high, relative to certain NECA rates, but that study uses AT&T’s and Qwest’s standard “rack” rates, which, as a practical matter, enterprise customers, including opponents and other competitors using CenturyLink’s broadband services, never pay under the typical discounted arrangements they negotiate. See Reply Comments of AT&T Inc. at 6, WC Docket No. 05-25 (May 31, 2013) (noting that COMPTTEL’s analysis of AT&T’s rates is “thoroughly undermined” by COMPTTEL’s use of AT&T’s “rack rates” rather than the discounted rates for service that customers actually pay).

<sup>45</sup> Opponents also offer no explanation as to how their prophecies of doom can be reconciled with their own statements about their “big, beautiful, and powerful fiber network[s]” and 18.4 % year-over-year growth in Ethernet and VPN products from the third Q of 2012 to the third Q of 2013 (tw telecom), and a network “spanning 29,941 fiber route miles . . . providing ubiquitous nationwide data and voice IP service coverage across more than 90 percent of the country” (EarthLink). Petition, Attachment 11 at 6-7, 9.

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rebut CenturyLink’s evidence that Ethernet prices continue to fall, that CLEC, wireless and cable competition continues to expand, at the expense of CenturyLink and other ILEC enterprise broadband providers, and that competitors increasingly continue to make use of “heavily regulated” copper loops<sup>46</sup> to provide broadband services.<sup>47</sup>

Where the rationale for a prior forbearance grant has become stronger over time, the Commission has recognized that other similarly situated parties should be granted similar relief. In the recent *USTelecom Forbearance Order*, the Commission granted forbearance relief from the equal access “scripting” rule to all ILECs still subject to the rule partly because certain competitive “trends” since forbearance from application of this rule to the BOCs in 2007 “appear to have continued in the intervening years,” and there is therefore minimal public interest in requiring ILECs to continue complying with the rule.<sup>48</sup> Similarly, the enterprise broadband competitive “trends” detailed in the *Enterprise Broadband Forbearance Orders* “have continued in the intervening years”<sup>49</sup> and compel forbearance for a carrier that was always far less “dominant” than forborne AT&T or Verizon.

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<sup>46</sup> *Ad Hoc Appeal*, 572 F.3d at 911.

<sup>47</sup> Joint CLECs, at 20, point to CenturyLink’s supposed reference to “unnamed” cable providers as sources of enterprise broadband competition, as if the Petition had not provided more than adequate evidence of competition from cable providers. CenturyLink directs their attention to pages 9 through 14 of Attachment 11 to the Petition for a discussion of the main cable providers of enterprise broadband services. *See also* Declaration of Kevin Downs ¶ 5 (Feb. 27, 2014), appended as Attachment A.

<sup>48</sup> *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7636-37 ¶ 14 (2013) (“*USTelecom Forbearance Order*”).

<sup>49</sup> *Id.*

**2. Dominant Carrier Regulation of CenturyLink’s Enterprise Broadband Services is not Necessary to Protect the Large Enterprise Customers of Such Services**

Similarly, it is inconceivable that maintaining dominant carrier regulation over a portion of the 10 percent of the industry that is still subject to such requirements could possibly be necessary to protect the large, nationwide enterprise customers that purchase these services. Not one customer, including opponents here, has identified any abuses stemming from prior forbearance orders.<sup>50</sup> Not only is continuing regulation not necessary to protect consumers, but also forbearance *is* necessary to protect consumers from the frustrating effects of regulation and thus enable them to receive more competitive and administratively manageable offers from CenturyLink.

As demonstrated in the Petition, these regulations actually hinder, instead of protect, enterprise broadband consumers’ interests, because they make it more difficult for enterprise service customers, and, ultimately, end user consumers, to secure the individualized service

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<sup>50</sup> Joint CLECs’ and Sprint’s references to “exclusionary” terms in CenturyLink’s DS1 and/or DS3 special access arrangements (*see, e.g.*, Joint CLEC Opp. at 23), are not to the contrary. The *ex parte* filing quoted by Joint CLECs refers to volume and term commitments in contracts with wholesale and enterprise customers that are so generous that they prevent customers from leaving current providers for competitive offers. That is what is supposed to happen in intensely competitive markets involving large, sophisticated customers. Such customers, with access to “expert advice,” *AT&T Forbearance Order*, 22 FCC Rcd at 18720 ¶ 24, are able to weigh term and volume discounts against possible future competitive offers and determine which arrangement best meets their long term needs. The Commission and courts have blessed volume and term discounts for decades, given that low prices above predatory levels, and the resulting increased output, can only benefit consumers. *See Cascade Health Solutions v. PeaceHealth*, 502 F.3d 895, 906 (9<sup>th</sup> Cir. 2007) (“[W]e should not be too quick to condemn price-reducing bundled discounts as anticompetitive, lest we end up with a rule that discourages legitimate price competition.”), *vacated on other grounds*, 515 F.3d 883 (9<sup>th</sup> Cir. 2008); *Private Line Rate Structure and Volume Discount Practices*, 97 FCC2d 923, 947-48 ¶¶ 39-40 (1984) (approving volume discounts for private line services). In any event, any concerns with special access arrangements should be raised in the *Special Access* proceeding, not here.

offerings they seek.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup> 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.”<sup>54</sup> 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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<sup>51</sup> *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.

<sup>52</sup> Petition at 42.

<sup>53</sup> *Id.* at 43. COMPTTEL 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.

<sup>54</sup> 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.<sup>55</sup> Moreover, in granting forbearance, the Commission has recognized the “*customer*[] . . . benefit of a single regime for . . . [enterprise] broadband offerings.”<sup>56</sup>

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.<sup>57</sup> 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.”<sup>58</sup> It is “competition,” not dominant carrier regulation, that “protect[s] consumers” of enterprise broadband services.<sup>59</sup>

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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<sup>55</sup> Petition at 56-57.

<sup>56</sup> *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.

<sup>57</sup> *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.

<sup>58</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29, 18725 ¶ 33 (emphasis added).

<sup>59</sup> *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.<sup>60</sup> 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.<sup>61</sup>

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.<sup>62</sup> 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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<sup>60</sup> Petition at 47.

<sup>61</sup> See Declaration of Julie Brown (Feb. 27, 2014), appended as Attachment B.

<sup>62</sup> *Id.* at ¶¶ 3-4.

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enforcing the provision or regulation will promote competitive market conditions.”<sup>63</sup> 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.”<sup>64</sup> 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.”<sup>65</sup>

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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<sup>63</sup> 47 U.S.C. § 160(b).

<sup>64</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46, 18732 ¶ 49.

<sup>65</sup> *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,”<sup>66</sup> 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.”<sup>67</sup> Similarly, customers will benefit from a “level playing field”<sup>68</sup> 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 forbore carriers.<sup>69</sup>

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.<sup>70</sup> The pricing umbrella is a result of dominant carrier regulation of CenturyLink’s services, not of dominance.<sup>71</sup> 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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<sup>66</sup> *USTelecom Forbearance Order*, 28 FCC Rcd at 7637-38 ¶ 17.

<sup>67</sup> *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.”).

<sup>68</sup> *Id.* at 7678-79 ¶ 115.

<sup>69</sup> Petition at 55.

<sup>70</sup> Joint CLEC Opp. at 27-28.

<sup>71</sup> *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.”).

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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.”<sup>72</sup> 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.<sup>73</sup> 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.”<sup>74</sup> The Commission found in the *AT&T Forbearance Order* that “[f]orbearance . . . will promote the public interest by furthering the deployment of advanced services.”<sup>75</sup> 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.’”<sup>76</sup>

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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<sup>72</sup> *ATU Telecommunications Request for Waiver*, Order, 15 FCC Rcd 20655, 20661 ¶ 17 (2000) (emphasis added).

<sup>73</sup> Petition at 49-52.

<sup>74</sup> 47 U.S.C. § 1302(a).

<sup>75</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18731 ¶ 47.

<sup>76</sup> *Id.* (citation omitted).

just a particular group of investors, to be able to make market-based, rather than regulatory-driven, investment and deployment decisions.”<sup>77</sup> The other *Enterprise Broadband Forbearance Orders* found the same broadband investment public interest benefits.<sup>78</sup> 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.<sup>79</sup>

Joint CLECs and COMPTTEL 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.<sup>80</sup> 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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<sup>77</sup> *Id.* at 18732 ¶ 49.

<sup>78</sup> *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.

<sup>79</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49.

<sup>80</sup> 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.<sup>81</sup> Likewise, COMPTTEL notes that the recent *Technology Transitions Order*<sup>82</sup> 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.<sup>83</sup>

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.”<sup>84</sup>

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<sup>81</sup> See Declaration of Mark A. Gast ¶ 3 (Feb. 27, 2014), appended as Attachment C.

<sup>82</sup> *Technology Transitions Order*, 2014 WL 407096 at ¶ 12.

<sup>83</sup> 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.”).

<sup>84</sup> 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](http://transition.fcc.gov/net-effects-2013/NET_EFFECTS_The-Past-Present-and-Future-Impact-of-Our-Networks.pdf).

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The Joint CLECs argue that the *Pricing Flexibility Suspension Order*<sup>85</sup> states that regulatory relief for legacy services in prior orders failed to induce competitive entry sufficient to constrain ILECs from exercising market power.<sup>86</sup> 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.<sup>87</sup>

Because CenturyLink’s current situation is the most extreme example of “asymmetrical regulation” among all of the enterprise broadband forbearance requests filed to date,<sup>88</sup> 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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<sup>85</sup> *Special Access for Price Cap Local Exchange Carriers*, 27 FCC Rcd 10557 (2012) (“*Pricing Flexibility Suspension Order*”) (subsequent history omitted).

<sup>86</sup> Joint CLEC Opp. at 29.

<sup>87</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49. COMPTTEL, 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.

<sup>88</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18731 ¶ 46.

similarly-situated carriers distorts competition and harms consumers.”<sup>89</sup> 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.<sup>90</sup> 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

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<sup>89</sup> Opponents’ Parity Petition at 23.

<sup>90</sup> 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.

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capacity levels.”<sup>91</sup> In other words, enterprise broadband services are highly substitutable.<sup>92</sup>

There is no need to confine the analysis to markets in CenturyTel’s and Embarq’s legacy service territories, as Joint CLECs and COMPTTEL argue, because enterprise broadband customers seek services for their national, multi-location operations on uniform rates, terms and conditions, as explained in the Petition.<sup>93</sup> 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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<sup>91</sup> *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).

<sup>92</sup> 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](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.”).

<sup>93</sup> 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,<sup>94</sup> 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.<sup>95</sup>

**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”<sup>96</sup> TDM special access circuits to provide competitive Ethernet services.<sup>97</sup> 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.<sup>98</sup> The Downs Declaration demonstrates that the competition in CenturyTel’s and Embarq’s service areas includes significant Ethernet over copper service offerings.<sup>99</sup>

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<sup>94</sup> Joint CLEC Opp. at 19.

<sup>95</sup> See Downs Declaration ¶¶ 3-5, appended as Attachment A.

<sup>96</sup> *Ad Hoc Appeal*, 572 F.3d at 911.

<sup>97</sup> Petition at 29-30, Attachment 11 at 1-4.

<sup>98</sup> 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.

<sup>99</sup> See Downs Declaration ¶ 3.

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It should also be noted that CenturyLink does not seek forbearance for its DS0 loop unbundling obligation.<sup>100</sup> 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 COMPTTEL'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,"<sup>101</sup> 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*<sup>102</sup> 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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<sup>100</sup> 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).

<sup>101</sup> *Id.* at 18722 ¶ 27 (internal quotes and citations omitted).

<sup>102</sup> *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).

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“viable inputs” for the provision of higher capacity broadband service.<sup>103</sup> 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*,<sup>104</sup> the *AT&T Forbearance Order*,<sup>105</sup> the other *Enterprise Broadband Forbearance Orders*<sup>106</sup> and the *Ad Hoc Appeal* (citing CLEC public statements),<sup>107</sup> 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.”<sup>108</sup> As opponent Level 3 and other CLECs pointed out last year, “the unbundling regime gives [EoC] competitors the ability to

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<sup>103</sup> Joint CLEC Opp. at 24-25.

<sup>104</sup> *Pricing Flexibility Suspension Order*, 27 FCC Rcd at 10610 ¶ 94.

<sup>105</sup> *AT&T Forbearance Order*, 22 FCC Rcd at 18721-22 ¶ 26.

<sup>106</sup> *See, e.g., Embarq-Frontier-Citizens Forbearance Order*, 22 FCC Rcd at 19494-95 ¶ 25.

<sup>107</sup> *Ad Hoc Appeal*, 572 F.3d at 910.

<sup>108</sup> 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.”<sup>109</sup>

### **3. CenturyLink Has no “First Mover” Advantage**

Joint CLECs and COMPTTEL 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.<sup>110</sup> CLEC use of copper to provide Ethernet is an especially effective competitive “equalizer” in this regard.<sup>111</sup> tw telecom’s greater share of the Ethernet market confirms the absence of a significant first mover advantage for CenturyLink.<sup>112</sup>

COMPTTEL argues that CenturyLink has lower broadband deployment costs and greater revenue opportunities than a CLEC, but just as COMPTTEL 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.”<sup>113</sup> And CLECs enjoy regulated access to most of the “core facilities” that COMPTTEL claims CenturyLink can “reuse[]” when deploying fiber: trenches, poles, rights of

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<sup>109</sup> 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).

<sup>110</sup> *See* Petition at 34-36.

<sup>111</sup> *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).

<sup>112</sup> *See id.* at 32.

<sup>113</sup> COMPTTEL Opp. at 18.

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

Contrary to Joint CLECs' and COMPTTEL's claims, CenturyLink does not have a significant competitive advantage from its existing customer base and "ubiquitous" footprint -- what COMPTTEL refers to as the ILEC "multi-location customer and footprint-barrier."<sup>116</sup> The *Enterprise Broadband Forbearance Orders* found that the large revenues these services generate make it worthwhile for competitors to deploy their own facilities.<sup>117</sup> COMPTTEL 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.<sup>118</sup>

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]."<sup>119</sup>

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<sup>114</sup> *Id.* at 19.

<sup>115</sup> Petition at 36.

<sup>116</sup> COMPTTEL Opp. at 11. *See also* Joint CLEC Opp. at 21-24 (discussing alleged barriers to entry).

<sup>117</sup> *See, e.g., AT&T Forbearance Order*, 22 FCC Rcd at 18720 ¶ 24.

<sup>118</sup> 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.

<sup>119</sup> Petition, Attachment 11 at 9.

Moreover, opponent tw telecom admitted last year that the cost of deploying new fiber “continues to fall.”<sup>120</sup>

The Joint CLECs and COMPTTEL 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.<sup>121</sup> The paragraph cited by COMPTTEL, however, relates to mass market TDM services,<sup>122</sup> 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.<sup>123</sup> Similarly, COMPTTEL 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,<sup>124</sup> 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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<sup>120</sup> *Id.*, Attachment 11 at 6-7.

<sup>121</sup> *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).

<sup>122</sup> *Id.* at 17122-23 ¶ 237, cited in COMPTTEL Opp. at 19.

<sup>123</sup> *Id.* at 17063 ¶ 129, 17104-05 ¶ 202, 17168-70 ¶¶ 315-18.

<sup>124</sup> COMPTTEL Opp. at 9 n.26.

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[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.<sup>125</sup>

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*.<sup>126</sup>

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.<sup>127</sup> 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 COMPTTEL argues.<sup>128</sup> Joint CLECs and COMPTTEL thus are

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<sup>125</sup> *Triennial Review Order*, 18 FCC Rcd at 17144 ¶ 276.

<sup>126</sup> *Id.* at 17063 ¶ 129, 17104-05 ¶ 202, 17168-70 ¶¶ 315-18.

<sup>127</sup> COMPTTEL also exaggerates the ILECs’ legacy wireline ubiquity generally. *See* COMPTTEL 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.

<sup>128</sup> COMPTTEL 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.<sup>129</sup> COMPTTEL cites a Level 3 executive statement that sometimes the company does not have a sufficient customer base in a location to justify build-out,<sup>130</sup> 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.”<sup>131</sup> “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.”<sup>132</sup>

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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<sup>129</sup> Joint CLEC Opp. at 22; COMPTTEL Opp. at 10.

<sup>130</sup> COMPTTEL Opp. at 10.

<sup>131</sup> Petition, Attachment 11 at 8.

<sup>132</sup> *Id.*, Attachment 11 at 8-9.

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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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Its Attorneys

February 28, 2014

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**Attachment A**

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**REDACTED – FOR PUBLIC INSPECTION**

**Attachment A**

**DECLARATION OF KEVIN DOWNS**

1. My name is Kevin Downs. My business address is 931 14<sup>th</sup> 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-

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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

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**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 15<sup>th</sup> 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.<sup>1</sup>
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**

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<sup>1</sup> 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.).





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**CONFIDENTIAL]** and an expected term of **[BEGIN HIGHLY CONFIDENTIAL]**  
**■ [END HIGHLY CONFIDENTIAL]** months, lost revenues from that RFP would  
equal approximately **[BEGIN HIGHLY CONFIDENTIAL]** **■ [END**  
**HIGHLY CONFIDENTIAL]**

/s/ Julie Brown  
Julie Brown

February 27, 2013

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**Attachment C**

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**Attachment C**

**DECLARATION OF MARK GAST**

1. My name is Mark A. Gast. My business address is 5454 West 110<sup>th</sup> Street, Overland Park, KS 66211. I am employed as Director of Regulatory Operations at CenturyLink. In that capacity, I act as a financial witness and manage and oversee regulatory financial analyses in support of federal and state regulatory proceedings for CenturyLink’s Public Policy organization. I have been employed by CenturyLink and its predecessor companies for 26 years, holding positions in Tax, Budgeting, Accounting, Regulatory Finance, and Regulatory Affairs. I have earned a Master’s in Business Administration, a Master’s of Science in Accounting, and have been a Certified Public Accountant since 1977 and a Certified Management Accountant since 1991.
2. The purpose of my declaration is to address Joint CLECs’ claim that reductions in regulation, such as the forbearance granted in the *Enterprise Broadband Forbearance Orders*, have resulted in less investment by ILECs.<sup>1</sup>
3. Given ILECs’ declining numbers of access lines in service, the Joint CLECs’ simple comparisons of total capital investment from year-to-year present a flawed and misleading picture. This is illustrated by a comparison of Qwest Corporation’s (“QC’s”) capital investment between 2007, the year before its enterprise broadband services were detariffed, and 2013. Although QC’s annual capital expenditures were relatively flat

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<sup>1</sup> See Opposition of tw telecom, *et al.*, to CenturyLink’s Forbearance Petition at 27, WC Dkt. No. 14-9 (Feb. 14, 2014) (“Joint CLEC Opp.”).

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during this period – ranging from [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL]<sup>2</sup> – its access lines declined by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].<sup>3</sup> As a result, its investment per access line actually increased by more than [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] during this period, from [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] per line.

4. The joint CLECs’ claim that “no empirical evidence [exists] to support the theory that deregulation by the FCC yields increased investment by incumbent LECs or competitive LECs”<sup>4</sup> is wrong as demonstrated by a review of QC’s investment per access line. Although its absolute total capital expenditures may be flat or declining, a more accurate picture of QC’s true economics demonstrates that its actual spending per access line has increased significantly since forbearance relief was granted in 2008.

/s/ Mark A. Gast  
Mark A. Gast

February 27, 2013

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<sup>2</sup> QC’s capital investment was [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2007; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2008; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2009; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2010; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2011; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2012; and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2013.

<sup>3</sup> QC’s access lines were [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2007; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2008; [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2009; 9.2 million in 2010; 8.5 million in 2011; 8.1 million in 2012; and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2013.

<sup>4</sup> Joint CLEC Opp. at 28.

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**CERTIFICATE OF SERVICE**

I, Marc D. Knox, hereby certify that on February 28, 2014, a copy of the attached redacted version of CENTURYLINK'S REPLY COMMENTS IN SUPPORT OF ITS PETITION FOR FORBEARANCE was served via U.S. mail, first class, postage prepaid on:

Karen Reidy  
COMPTTEL  
1200 G Street, NW  
Suite 350  
Washington, D.C. 20005

and

Charles W. McKee  
Vice President, Government Affairs  
Federal and State Regulatory  
Norina T. Moy  
Director, government Affairs  
Sprint Corp.  
900 Seventh Street, NW  
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/s/ Marc D. Knox  
Marc D. Knox