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Christopher M. Shelton
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Via Fax

September 14, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Ex Parte Notice. In the Matter of Special Access for Price Cap Local Exchange Carriers et al; WC Docket Nos. 16-143, 15-247, 05-25 and RM-10593.

Dear Chairman Wheeler:

The Communications Workers of America (CWA) represents thousands of employees who build and service the networks over which incumbent carriers provide business data services. The outcome of the Commission's current rulemaking on Business Data Services (also called "special access") has huge implications for good jobs and investment, particularly in rural areas.

CWA is deeply concerned that the Commission is considering a regulatory framework for Business Data Services that could result in a 20 percent (or higher) flash-cut in rates.[1] One economist estimates this would result in an annual revenue loss $1.4 billion.[2] Drastic rate cuts in business data services would lead to reduced investment in broadband networks – especially in rural areas -- and downward pressure on jobs and living standards.

The FCC's Proposal Will Hurt Jobs, Workers' Living Standards, and Investment – Particularly in Rural America

A drastic cut in business data service rates will create disincentives for job-creating investment in high-speed data networks. This is particularly true in rural America, which is characterized by higher-cost, lower density places with fewer business customers. By cutting revenue and margins for both legacy and

[1] The Verizon/INCOMPAS Proposal recommends a rate cut of 14.4 percent in the first year and an additional 9.4 percent rate cut in year two. Letter from Kathleen Grillo, Senior Vice President, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25, RM 10593, Aug. 9, 2016.

[2] James E. Prieger, "Investment in Business Broadband in Rural Areas: The impacts of price regulation and the FCC's blind spot," Aug. 9, 2016.

future fiber-based IP services, fewer rural carriers will be able to justify the investment in new fiber and have fewer resources to maintain existing facilities. This proposal comes at a time when the FCC has made rural broadband deployment a national priority.

FCC Chairman Wheeler claims lower-cost business data services will jumpstart next-generation wireless networks by lowering the cost of wireless fiber backhaul. In fact, the proposal would have the opposite effect by reducing the incentive for incumbents and competitors alike to invest in fiber. With artificially constrained rates, incumbents will have less cash available and reduced earnings potential on investment in next-generation fiber networks. And for competitors why invest if you can buy capacity at an artificially constrained rate?

Google's recent decision to halt fiber deployment demonstrates that building high-speed broadband networks is a complicated business requiring significant capital investment and a skilled workforce.[3] FCC action in this proceeding that would push business data service prices so low that carriers would look to cut labor costs and capital outlays in fiber networks would subvert the very goals the FCC aims to achieve in this proceeding.

The FCC's proposals will have a negative impact on jobs and telecommunications workers' living standards.

Incumbent providers like AT&T, CenturyLink, Frontier, FairPoint, and Cincinnati Bell employ a skilled, career workforce with collectively-bargained good wages and benefits. In contrast, competitive providers and wireless carriers such as Verizon Wireless, Sprint, and T-Mobile pay lower wages and benefits and block their employees' efforts at collective organization. Workers at non-union telecommunications companies make, on average, $7,800 less per year than their union counterparts, and earn far inferior health, retirement, and other benefits.[4] T-Mobile ranks among the worst violators of labor law in the nation, with six times as many National Labor Relations Board charges as those filed against Wal-Mart.[5] Sprint announced plans to cut capital

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[3] Eli Blumenthal, "Google Fiber Hitting Stumbling Blocks: Reports, *USA Today,* Aug. 26, 2016 (available at http://www.usatoday.com/story/tech/2016/08/26/larry-page-asked-for-a-big-staff-cut-reports-the-information/89412388/)

[4] Census Bureau, Current Population Survey, 2014 (unpublished data).

[5] Noam Scheiber, "T-Mobile Policy Violated Labor Law, Judge Rules," *The New York Times,* March 19, 2015 (available at http://www.nytimes.com/2015/03/20/business/t-mobile-policy-violated-labor-law-judge-rules.html?_r=0); "Judge Finds T-Mobile Guilty of Maintaining Illegal

expenditures in half this year.[6] Both Sprint and T-Mobile are owned by foreign corporations.

Regulatory policy should not favor some companies over others, and should not destroy good, middle class jobs. But the FCC's proposals effectively require unionized incumbent carriers to subsidize the input costs of low-wage, non-union competitive providers and wireless carriers.

Competition must be based on innovation and service, not a race to the bottom on workers' wages and workplace rights. Given the highly competitive business data services market, FCC proposals that would artificially constrain incumbent carriers' ability to compete for business data services and dampen incentives for these companies to invest in new fiber infrastructure would serve to destroy good, middle-class jobs for CWA members and lower living standards throughout the competitive telecommunications industry.

The Business Data Services Market is Highly Competitive.
The FCC's detailed data on business data services demonstrates a robustly competitive market for both circuit-switched and fiber Ethernet data services to businesses. In particular, cable companies, with their ubiquitous networks, are competing vigorously with incumbent carriers in this market.

- According to an analysis of the FCC data by Compass Lexecon, **competitors have deployed facilities in virtually every census block with special access demand.** On average, buildings with demand for these services are located within 364 feet of competitive fiber, effectively disciplining prices. Businesses and wireless providers have multiple choices from a range of providers when they put out a bid for dedicated data services.[7]

Corporate Practices Against Workers Across the U.S.", March 19, 2015 (available at http://www.cwa-union.org/news/entry/judge_finds_t-mobile_us_guilty_of_illegal_corporate_policies#.VjjYLPmrQdU); "Stop the Systematic Abuse: T-Mobile Retaliated against these Workers for Exercising Their Rights," (available at http://cwafiles.org/tmobile/SystematicAbuse.pdf).

[6] John Celentano, "Sprint lashes wireless cap ex on network strategy revamp," *RCR Wireless*, May 24, 2016 (available at http://www.rcrwireless.com/20160524/opinion/reality-check-sprint-slashes-wireless-capex-network-strategy-revamp-tag10). In contrast, AT&T, CenturyLink, Frontier, FairPoint, and Cincinnati Bell collectively spent $25.9 billion over the past 12 months in capital expenditures. *See* CapitalIQ, Last Twelve Months capital expenditures (accessed on Sept. 8, 2016).
[7] Compass Lexecon, Competitive Analysis of the FCC's Special Access Data Collection, Jan. 26, 2016 (see

- **Cable companies are now a leading competitor for business data services, but the FCC's proposal ignores cable's "best efforts" data service.** Cable's business data service revenues have grown to an estimated $14 billion.[8] The cable companies have been the fastest growing segment of the dedicated business services segment for the past three years, outpacing incumbent carriers. According to Vertical Systems Group, "more than 60 percent of new [Ethernet] connections were delivered by CLECs and Cable MSOs during the first half of 2016."[9] The FCC's proposal correctly includes cable's dedicated service in its new regime, but fails to count cable's "best efforts" 100 Mbps commercial service as a competitive alternative. This makes no sense: cable's "best efforts" 100 Mbps service is many times faster than an incumbent carrier's 1.5 Mbps DS1 or 45 Mbps DS3 service.

- **Incumbent carriers do not have market power to set prices above competitive levels.** Regulatory intervention is appropriate when lack of competition allows carriers to set prices above competitive levels. But economic studies show that incumbents have no market power over Ethernet pricing and pricing in the DS3 market, and account for only a three percent price differential in the DS1 market.[10]

The FCC's Business Data Services Rules Must Incent Competition, Investment, and Good Jobs
The FCC's business data services rules must be data-driven, recognizing the reality of extensive competition in the marketplace. The competitive test must count *all* providers, including cable's best-efforts service offerings, should be administratively workable based on a reasonably-sized geographic unit such as

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http://apps.fcc.gov/ecfs/document/view;ECFSSESSION=vHyjWYQHkxlCl8bRyQ3T5FjZn1c2z3SWH2VSk5TCcsNNQHmJncvT!1951721665!-1988419839?id=60001416056) and Compass Lexecon, Third White Paper, Aug. 9, 2016 (see https://ecfsapi.fcc.gov/file/1080920067519/2016_08_09%20IRW%20Third%20White%20Paper%20(Public).pdf

[8] US Telecom, "The Competitive Business Broadband Marketplace," February 2016, p. 6 (available at https://www.ustelecom.org/sites/default/files/files/USTelecom-White-Paper-2.pdf)

[9] Vertical Systems Group, *Mid-Year 2016 U.S. Carrier Ethernet LEADERBOARD,* Aug. 18, 2016 (see http://www.verticalsystems.com/vsglb/mid-year-2016-u-s-carrier-ethernet-leaderboard/).

[10] Dr. Marc Rysman, Empirics of Business Data Services: White Paper, April 2016 (revised June 2016); Compass Lexecon Third White Paper, Aug. 9, 2016.

census tracts, and should not artificially push down prices based on erroneous productivity calculations. The rules must promote good jobs and investment in next-generation networks.

Sincerely,

Christopher M. Shelton
President

c: Commissioner Jessica Rosenworcel
Commissioner Mignon Clyburn
Commissioner Ajit Pai
Commissioner Michael O'Rielly