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CenturyLink, carriers will file motion to strike flawed data analysis from FCC business data services proposal

June 17, 2016

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WASHINGTON – CenturyLink, Inc. (NYSE: CTL) will file a motion to strike the "irretrievably flawed" data framework underlying the Federal Communications Commission's recent business data services proposal. AT&T Inc. (NYSE: T), Cincinnati Bell, Inc. (NYSE: CBB), Consolidated Communications, Inc. (NASDAQ: CNSL), FairPoint Communications, Inc. (NASDAQ: FRP) and Frontier Communications (NASDAQ: FTR) joined CenturyLink in filing the motion.

The motion comes in response to recent acknowledgements by four of the largest cable providers that they significantly undercounted the number of locations that are capable of providing business data services and thus deemed competitive. In fact, the cable companies' most recent FCC filings reflect 22 times more Ethernet-capable locations than the data on which the FCC based its May 2 further notice of proposed rulemaking (FNPRM).

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"We are extremely concerned that the FCC's latest business broadband proposal is now based on fatally flawed data that, unless corrected and updated, could have serious economic consequences for the business broadband market," said CenturyLink Senior Vice President for Public Policy and Government Relations John F. Jones. "We're asking the FCC to rescind the affected portions of its proposal and update its data before pronouncing judgment on what is or isn't competitive."

"The FCC's FNPRM proposes a big, positive step towards deregulating competitive areas. However, the commission's rulemaking decisions regarding pricing and additional regulation in non-competitive markets must be grounded on a sound factual basis. It has now become clear that the report prepared by Dr. Marc Rysman used in the FCC rulemaking, as well as nearly all other analyses submitted into the record, were based on an irretrievably flawed data set that severely understated cable providers' ability to provision true business data services," the companies' motion said.

According to the motion, the record shows that the major cable providers did not clearly or fully report that they were able to provide business data services using metro Ethernet in 22 times more census blocks than were reflected by the original data in 2013. The Rysman report and many other FCC analyses were based on that data.

"The Administrative Procedure Act, the Data Quality Act and bedrock principles of evidence require that these materials be stricken from the record. Indeed, given the commission's reliance on these analyses for its most recent findings and proposals, the FCC should rescind the portions of the May 2 FNPRM that are affected by the defective analysis and flawed data. This would allow the commission and relevant parties to conduct new analyses reflecting accurate data regarding the state of the marketplace. The commission should then develop and seek comment on new proposals as appropriate," the motion said.

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