Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Ameritech Operating Companies	)	Transmittal No. 1861 & 1862
Tariff F.C.C. No. 2	)	
	)	
BellSouth Telecommunications, LLC	)	Transmittal No. 131
Tariff F.C.C. No. 1	)	
	)	
Nevada Bell Telephone Company	)	Transmittal No. 302
Tariff F.C.C. No.1	)	
	)	
Pacific Bell Telephone Company	)	Transmittal No. 554
Tariff F.C.C. No. 1	)	
	)	
Southwestern Bell Telephone Company	)	Transmittal No. 3445
Tariff F.C.C. No. 73	)	

OPPOSITION OF AT&T SERVICES INC. TO PETITION TO REJECT OR SUSPEND AND INVESTIGATE

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September 11, 2017

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Southwestern Bell Telephone Company Tariff F.C.C. No. 73	))	Transmittal No. 3445

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Pursuant to Section 204(a)(1) of the Communications Act, 47 U.S.C. § 204(a)(1), and Section 1.773 of the Commission's Rules, AT&T Services Inc., on behalf of the subsidiaries and affiliates of AT&T Inc. (hereinafter collectively referred to as AT&T), respectfully requests that the Commission deny Windstream's Petition to suspend or reject the above captioned tariffs.

INTRODUCTION AND SUMMARY

As the Commission has recognized, the industry is moving into the latter stages of an historic transition to all-Internet Protocol (IP) networks. As the Commission's recent *BDS Order* underscores, facilitating that transition is a major goal of the Commission.[1] If that transition is to

[1] *See* Report and Order, *Business Data Services In An Internet Protocol Environment*, 32 FCC Rcd. 3459 (2017) ("*BDS Order*"). *See also* Declaratory Ruling, Second Report and Order, and Order on Reconsideration, *Technology Transitions*, 31 FCC Rcd. 8283, ¶ 1 (2016) ("*2016*

be completed in a timely manner, however, all stakeholders must act to identify and remove obstacles to that transition. One of the most important obstacles is the need to migrate customers from legacy TDM to new IP-based services. Industry experience teaches that large-scale customer migrations take considerable time. A successful transition therefore requires that all parties plan ahead. For that reason, AT&T can no longer justify offering term plans in excess of three years for legacy TDM services, which would commit AT&T to maintaining legacy TDM networks into the mid-2020s.

AT&T has therefore filed revisions to its tariffs that grandfather these longer-term plans, while providing for a smooth transition to avoid disruptions for customers. Customers who are currently purchasing a service under these plans will continue to pay for that service under the contracted rates, terms and conditions in effect at the time of purchase until the term commitments for that circuit expires. When a customer orders a new service, the customer must choose from among AT&T's remaining shorter-term plans.

Only one party, Windstream, has opposed these changes. Tellingly, however, Windstream does not refute that grandfathering these longer term plans is needed to facilitate the transition to IP-based services. Instead, Windstream's concerns center mostly on its own contract tariff with AT&T (rather than the tariffs at issue in AT&T's transmittals), and it complains that AT&T's

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Technology Transitions Order") ("the Commission has focused closely on the ongoing transitions from networks based on [legacy TDM-based] services . . . to all-Internet Protocol (IP) multi-media networks. . . ."); Order, Report and Order and Further Notice of Proposed Rulemaking, *Technology Transitions*, 29 FCC Rcd. 1433, ¶ 2 (2014) ("*2014 Technology Transitions Order*"); Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, 26 FCC Rcd 17663, ¶ 783 (2011) (vowing to "facilitate the transition" away from the TDM-based network and toward the all-IP network of the future); *id.* ¶ 1335; Notice of Proposed Rulemaking, Order and Notice of Inquiry, *Numbering Policies for Modern Communications et al.*, 28 FCC Rcd. 5842, ¶ 54 (2013) ("The Commission has already set its goal to 'facilitate the transition to an all-IP network. . . .'").

proposed changes may lead Windstream to purchase more legacy TDM-based services under three-year term plans that have higher rates. Windstream's concerns about its negotiated contract tariffs are really business-to-business issues, and it has provided no legal basis for the Commission to suspend or investigate the underlying AT&T tariffs at issue here.

Windstream's main argument is that its contract tariffs "incorporate by reference" the relevant terms of the underlying tariffs, and that the tariff transmittals here thus "revise" the contract tariffs in violation of the new Rule 1.776 (adopted in the *BDS Order*). In fact, Windstream's contract tariffs expressly *permit* AT&T to change the underlying tariffed terms. Accordingly, AT&T has not "revised" the contract tariffs at all; it has merely exercised rights reserved to it under the contracts as written. It is Windstream that is proposing to "revise" the Contract Tariffs by eliminating a right that those contracts expressly grant to AT&T. In all events, Windstream is attacking the wrong target. AT&T's transmittal contains no revisions to the contract tariffs themselves. Windstream has no basis to seek suspension of the underlying generally available tariffs as they relate to the entire industry merely because of an asserted effect on one party's contract tariff. Rather, the proper vehicle for Windstream's contract-related concerns is a complaint.

There is likewise no merit to Windstream's claim the tariff revisions raise prices in violation of the six-month "rate freeze" in the *BDS Order* and Rule 69.807(c)'s rate "freeze" for "grandfathered" counties. The reason is simple: AT&T's transmittals do not change any rates. The rates Windstream will pay under any existing, grandfathered five- or seven-year term plan remain the same. The rates Windstream will pay for any other term plan (such as a three-year term plan) also remain the same. The only change is that AT&T's tariffs no longer permit customers to initiate a new five- or seven-year term plan, but nothing in either the *BDS Order* or Rule 69.807

prohibits a price cap LEC from *discontinuing* a term plan, and thus removing an offer from its tariffs entirely. The "rate freezes" are therefore inapplicable.

Windstream also argues that AT&T's tariff revisions are an unjust and unreasonable practice in violation of 201(b) of the Act. But the Communications Act establishes a regime of carrier-initiated rates and does not require AT&T to offer *any* particular discount arrangement.[2] Indeed, Petitioners' Section 201(b) argument is, in effect, a collateral attack on the reasonableness of the rate offers that will remain available in AT&T's tariffs – rate offers that have never been challenged, much less found to be unjust and unreasonable. Because AT&T's tariff filing does not change the rates or terms of those offerings, they cannot be "suspended" or investigated here. To the contrary, AT&T filed those rates previously in full compliance with the tariffing, price cap and pricing flexibility rules, and those rates now are not only presumptively reasonable, but in most cases are deemed lawful. And Windstream's argument that the Commission suspended similar tariff revisions related to BDS in the past fails to account for the fact that the Commission has since completed its analysis of competition in the BDS marketplace and adopted a new regulatory regime, with which AT&T's revisions fully comply.

Finally, AT&T's transmittal is strongly in the public interest. The Commission has repeatedly emphasized the importance of the IP transition and has consistently sought to eliminate regulations and other barriers that slow or undermine providers' ability to make that transition.[3] Most recently, in the *BDS Order*, the Commission rejected rules that would have required AT&T and other providers to continue offering certain legacy TDM-based voice services because doing

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[2] *See BellSouth Telecomms., Inc.* v. *FCC*, 469 F.3d 1052, 1057 (D.C. Cir. 2006).

[3] *See 2016 Technology Transitions Order* ¶ 1; *BDS Order* ¶ 25; Connecting America: The National Broadband Plan, at 59, https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.

so would "have a similar negative impact on incumbent LEC deployment of, and transition to, next-generation network infrastructure and innovative IP services that benefit all Americans, businesses and consumers alike."[4] AT&T's transmittals here, by eliminating the longest (five- and seven-year) term plans for legacy TDM services, furthers the Commission's goals by incrementally reducing incentives for continued reliance on legacy technologies slated for retirement. Windstream's only answers are to collaterally challenge AT&T's remaining rates, which cannot be at issue in this suspension proceeding, and to regurgitate its prior "price squeeze" arguments that the Commission explicitly considered and rejected in the *BDS Order*.

I. THERE IS NO BASIS FOR FINDING AT&T's TARIFF REVISIONS TO BE UNLAWFUL.

Windstream argues that the Commission should suspend and investigate AT&T's proposed tariff changes on the grounds that AT&T's proposed tariff revisions: (1) violate the provisions of the *BDS Order* and implementing rules that prohibit unilateral revisions to contract tariffs; (2) violate the "rate freezes" adopted in the *BDS Order*; and (3) are unjust and unreasonable in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b). None of these arguments has merit.

A. AT&T's Tariff Revisions Do Not Alter Windstream's Contract Tariffs And Are Thus Consistent With The *BDS Order* And Rule 1.776.

Windstream argues that the tariff changes AT&T proposes in its transmittals effectively "revise" Windstream's separate Contract Tariffs in violation of Rule 1.776, which states that "[s]pecial access contract-based tariffs" that were in effect on August 1, 2017 "are grandfathered" and "may not be . . . revised without "mutual agreement" of the parties.[5] But, as demonstrated

[4] *BDS Order* ¶ 288.

[5] *See BDS Order*, Appendix A, Proposed Rule 1.776. As Windstream concedes (at 8 n.11), this new rule has not yet taken effect because it is still under review by the Office of Management and Budget pursuant to the Paperwork Reduction Act. If approved, the rule will be cited as 47 C.F.R. § 1.776.

below, Windstream concedes that its Contract Tariffs expressly permit AT&T to make the tariff changes proposed in AT&T's transmittals. Those transmittals, therefore, do not, by definition, "revise" Windstream's Contract Tariffs, but simply exercise an express right granted to AT&T under those Contract Tariffs *as written.* It is Windstream that is seeking to modify the Contract Tariffs by prohibiting AT&T from exercising an express right granted by those Contract Tariffs.

Windstream's Contract Tariffs are standalone, overlay contracts that provide Windstream with additional discounts based on the volume of services purchased by Windstream under other AT&T tariffs, including the tariffs subject to AT&T's transmittals.[6] The Contract Tariffs make clear that the terms for those services are governed by the underlying tariffs: "All terms and conditions for those Spend-Eligible Services that are tariffed *are governed by their respective tariff sections.*"[7] Equally important, the Contract Tariffs make clear that AT&T has the right to change the terms of those underlying tariffs at any time: "Subject Services are subject to certain rates, charges and general terms and conditions in other sections of SWBT Tariff F.C.C. No. 73 . . . and such terms and conditions may be modified through the filing of tariff changes at any time during the Contract Term."[8] Therefore, changes to the tariffs proposed in AT&T's transmittals do not "revise" the Contract Tariffs, but are expressly permitted by the Contract Tariffs as written.[9]

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[6] For ease of exposition, AT&T uses Windstream's arrangements in the Southwestern Bell region as representative, as Windstream did in its petition.

[7] *See* Southwestern Bell Telephone Company Tariff F.C.C. No. 73, § 41.193.2(C) (emphasis added). *See also* Pacific Bell Telephone Company Tariff F.C.C. No. 1, § 33.173.2(C); BellSouth Telephone Company Tariff F.C.C. No. 1, § 25.91.2(C); Ameritech FCC No. 2, § 22.223.2(C); Nevada Bell Telephone Company Tariff F.C.C. No. 1, § 23.7.2(C).

[8] *See id.* § 41.193.5(I). *See also* Pacific Bell Telephone Company Tariff F.C.C. No. 1, § 33.173.5(I); BellSouth Telephone Company Tariff F.C.C. No. 1, § 25.91.5(I); Ameritech FCC No. 2, § 22.223.5(I); Nevada Bell Telephone Company Tariff F.C.C. No. 1, § 23.37(H).

[9] Indeed, AT&T has the *contractual* right to make far more fundamental changes to the underlying tariffs than it actually did. For example, Windstream's contract permits AT&T to eliminate the underlying portability plan altogether (*see, e.g.*, Southwestern Bell Telephone Company Tariff

Windstream concedes (at 12-13 & n.27) that the Contract Tariffs by their own terms permit the tariff changes proposed in AT&T's transmittals. That concession is fatal, because Rule 1.776 merely provides that price cap carriers must abide by their existing contracts as written. That rule imposes no obligations (rate-related or otherwise) apart from the Contract Tariffs. AT&T thus has not "revised" Windstream's Contract Tariffs at all; rather, AT&T's transmittals constitute an entirely proper exercise of rights expressly contemplated by those Contract Tariffs. In fact, as noted, it is Windstream that is seeking to alter its Contract Tariffs – and thus violate Rule 1.776 – by asking the Commission to abrogate the terms in those Contract Tariffs that expressly permit AT&T to make changes to the underlying tariffs proposed in AT&T transmittals.

Windstream's Rule 1.776 arguments fail for an additional reason. AT&T's transmittals seek to revise generally available tariffs. Windstream has no basis for seeking suspension of those transmittals merely because those revisions may have some effect on the prices one party – Windstream – may ultimately have to pay under the Contract Tariffs it separately negotiated with AT&T. If Windstream believes that AT&T has violated its Contract Tariffs, the proper course is to file a complaint seeking to vindicate its *contractual* rights, not to attack other tariffs in a way that would affect scores of other parties that have nothing to do with Windstream's Contract Tariffs.

F.C.C. No. 73, § 41.193.6(B)). The contract even permits AT&T to stop offering an entire service, such as DS1s or DS3s: "[n]othing in this Contract Offer No. 193 shall prevent the Qualified Companies from terminating the provision of Subject Services or Non-Subject Services, in part, or in their entirety, prior to the end of the Term Period, to the extent permitted by applicable law." *See, e.g., id.* § 41.193.9.

B. AT&T's Tariff Revisions Do Not Change Any Rates And Thus Do Not, By Definition, Violate The "Rate Freeze" Provision Adopted In The *BDS Order*.

Windstream asserts that the tariff revisions will "raise the prices that Windstream pays" under its contract, which it argues violates both the six-month "rate freeze" in the *BDS Order* and Rule 69.807(c)'s rate "freeze" for "grandfathered" counties.[10] Windstream's argument fails for a simple reason: AT&T's transmittals do not change any rates. The rate Windstream will pay under any existing, grandfathered five- or seven-year term plan remains the same. The rate Windstream will pay for any other term plan (such as a three-year term plan) also remains the same. The only change is that AT&T's tariffs no longer permit customers to initiate a new five- or seven-year term plan. With no tariffed rate changes, there can be no violation of the rate freeze.

Windstream is therefore forced to argue that the "effect" of these changes is to "increase" rates, on the theory that the discontinuance of any new five- and seven-year plans will lead customers to purchase service under three-year plans with higher rates instead. Nothing in the *BDS Order* or Rule 69.807, however, prohibits a price cap LEC from *discontinuing* a term plan, and thus removing an offer entirely from its tariffs. The *BDS Order* merely prohibits any increase in a "tariffed rate" as long as the offer remains tariffed; those provisions clearly have nothing to do with forcing carriers to continue to offer any specific tariffed plans, given that the *BDS Order* would permit AT&T to detariff these services or contracts (and thereafter modify them) at any

[10] Windstream at 14-16. *See BDS Order* ¶ 167 ("for six (6) months after the effective date of this Order, we require price cap incumbent LECs to freeze the tariffed rates for end-user channel terminations in newly deregulated counties, as long as those services remain tariffed."); 47 C.F.R. § 69.807(c) ("A price cap local exchange carrier that was granted Phase II pricing flexibility prior to June 2017 in a grandfathered market must retain its business data services rates at levels no higher than those in effect as of [the adoption date of August 1, 2017], pending the detariffing of those services pursuant to § 61.201 of this chapter").

time. The "rate freezes" are therefore inapplicable: the permissible discontinuance of these plans means that there is no tariffed offer, and thus no "tariffed rate," at all.

C. AT&T's Tariff Revisions Are Just and Reasonable Under Section 201(b) of The Act.

Windstream contends that AT&T's tariff revisions constitute an "unreasonable practice" "in violation of Section 201(b) of the Act," 47 U.S.C. § 201(b). According to Windstream, AT&T's decision to grandfather but otherwise sunset certain long-term discounts is "unjust and unreasonable" because the changes would "effectively" "increase" rates, which will "raise competitors' input costs and squeeze them out of the market."[11] Windstream relies heavily on the fact that the Bureau suspended similar AT&T tariff revisions four years ago and argues that it should do so here.[12] These arguments are meritless.

First, and most fundamentally, the mere elimination of a discount plan does not violate Section 201(b), because Section 201(b) does not obligate AT&T to maintain any specific type of discount plan. As the D.C. Circuit has explained, any argument that it is an unreasonable practice not to keep certain discounts in place "neglect[s] a critical fact, namely" that a carrier generally has "no obligation to offer" any discount plans "at all, much less" specific types of discounts like the long term plans AT&T has grandfathered.[13] The Communications Act establishes a system of

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[11] Windstream at 16-18.

[12] *Id.*

[13] *BellSouth*, 469 F.3d at 1057. Like any other discount offer, AT&T's long-term discount plans are "most naturally viewed as a bargain containing terms that both benefit and burden its subscribers." *BellSouth*, 469 F.3d at 1060. As market conditions change, the terms that "benefit and burden" customers will also necessarily need to change, and thus it is commonplace for carriers to revisit their tariffed offerings, including sunsetting "bargain[s]" that once made sense for carriers and customers alike but no longer are appropriate under new market conditions. Here, no one disputes that the transition to all-IP networks is progressing rapidly and demand for traditional TDM DS1/DS3 services is steadily decreasing. As a result of these changed circumstances, lengthy term plans that require AT&T to maintain outdated TDM circuits now impose unreasonable burdens on AT&T and harm the larger transition to IP-based services. Given these

carrier-initiated rates.[14] The *BDS Order* does not prohibit the discontinuance of a rate plan, and absent a prescription under Section 205, AT&T cannot be forced (through "suspension" or otherwise) to continue to offer any particular multi-year term plan.[15] Thus, simply removing a rate plan cannot be an unreasonable practice under Section 201(b).

This is especially true here, where Windstream's real complaint here is not that AT&T has eliminated certain term discounts, but that it ostensibly will be "forced" to purchase services at *other* tariffed rates that AT&T has not changed in this tariff filing. Thus, Windstream's Section 201(b) claim is actually an impermissible collateral attack on AT&T's longstanding discount plans of terms at or below 3 years, and a claim that *those* rates are unreasonably high in violation of Section 201(b).[16]

This proceeding is not the proper forum for such a claim. Under Section 204, the Commission's authority is limited to "suspend[ing]" and investigating "new or revised" charges or practices.[17] The only revisions AT&T made in its current tariff filings are the elimination and grandfathering of certain long-term discounts. AT&T has not revised or changed the rates that Windstream implicitly claims are unreasonable, and therefore under Section 204 the Commission has no authority to "suspend" or investigate those rates in this proceeding. If Windstream believes that AT&T's three-year, two-year, one-year or month-to-month rates are unjust or unreasonable,

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changes in the overall marketplace, Windstream has no basis for its insistence that Section 201 grants it a perpetual right to purchase TDM services via lengthy term plans at heavily discounted rates.

[14] *See AT&T Co.* v. *FCC*, 487 F.2d 865, 871 (2d Cir. 1973).

[15] *Id.* at 874-75.

[16] *See, e.g.*, Windstream at 18.

[17] 47 U.S.C. § 204.

the Act provides a remedy: Windstream may pursue such claims in a formal complaint under Section 208 (or a petition to suspend any future tariff filings that actually do adjust those rates).

In fact, suspension on Windstream's theory would be particularly unwarranted here because AT&T's remaining rates are *presumptively* reasonable and deemed lawful. AT&T's other rate plans were filed previously in full compliance with the tariffing, price cap, and pricing flexibility rules. Those plans were submitted in tariffs filed pursuant to Section 204(a)(3), and when those tariffs went into effect without suspension, those rates became "deemed lawful" under the Act.[18] It would be odd indeed (and patently unlawful) if the Commission were to suspend a tariff as possibly "an unreasonable practice" just because it leaves customers with a set of rates that, under the Act and Commission rules, are "deemed" or presumptively lawful.

The mere fact that the Commission suspended a similar tariff transmittal in 2013 has no bearing on whether the Commission should suspend AT&T's current tariff changes. Considering the pace of change in the BDS marketplace, 2013 was effectively an eon ago. When the Bureau suspended AT&T's 2013 tariff, it specifically noted that the Commission was still in the early

[18] To the extent those plans were submitted in price cap areas, those filings were made in compliance with the price cap rules and, as the Commission and courts have made clear, thereby became presumptively just and reasonable under those rules as well. *See, e.g.*, *Nat'l Rural Telecom Ass'n* v. *FCC*, 988 F.2d 174, 184-85 (D.C. Cir. 1993) (the Commission acted reasonably in allowing price cap carriers – even if they are classified as dominant – to "enjoy a presumption of reasonableness" for tariff filings below the caps and within band); Memorandum Opinion and Order, *1993 Annual Access Tariff Filings*, 12 FCC Rcd. 6277, ¶ 91 (1997) (refusing to investigate a tariffed charge that was below cap and within band, because the "charge is a presumptively reasonable rate under price caps"). The purpose of price cap regulation was to create a "no-suspension zone" for rates filed in compliance with the price cap rules. Second Report and Order, *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd. 6786, ¶ 291 (1990); Order on Reconsideration, *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd. 2637, ¶ 13 (1991) (filings within the caps and bands are "presumed lawful" and take effect under "streamlined review"). Similarly, the pricing flexibility rules and now the *BDS Order* lift the price caps in certain counties altogether because rates can be presumed reasonable. Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd. 14221, ¶¶ 153-55 (1999); *BDS Order* ¶¶ 86-93.

stages of comprehensive reviews of both the "legal, policy, and technical considerations of an all-IP transition" and "the scope of competition in the special access market generally" – noting it had only begun the process of "a substantial data collection" to support an analysis of the BDS marketplace.[19] The Commission has since completed those investigations and has adopted new regulatory frameworks that are designed to maximize incentives to invest in and transition to IP-based services. The discontinuance of the longest-term plans for legacy TDM services is fully consistent with those purposes, and is well within the letter and spirit of the Commission's findings in the *BDS Order* and the current regulatory framework for implementing Section 201(b). Indeed, Windstream's arguments about the state of competition in the marketplace and the proper approach to regulating AT&T's provision of legacy TDM-based services is effectively an attempt to re-litigate the very issues the Commission resolved in the *BDS Order*.

II. THE PUBLIC INTEREST BENEFITS OF AT&T'S TARIFF REVISIONS FAR OUTWEIGH ANY POTENTIAL HARM TO WINDSTREAM.

The public interest benefits of AT&T's tariff revisions far outweigh the unsupported harms asserted by Windstream. These tariff changes directly further AT&T's ability to continue an efficient transition from legacy TDM-based services to next-generation IP-based data services, and the Commission has repeatedly found that the IP transition in the public interest. The Commission has emphasized that "[m]odernizing communications networks can dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices. It also catalyzes further investments in innovation that both enhance existing products and unleash new services, applications and devices,

[19] Order, *Suspension and Investigation of AT&T Special Access Tariffs,* 28 FCC Rcd. 16525, ¶ 4 (2013).

thus powering economic growth."[20] Accordingly, "the Commission has focused closely on the ongoing transitions from networks based on [legacy TDM-based] services . . . to all-Internet Protocol (IP) multi-media networks," and has consistently sought to eliminate regulations and other barriers that slow or undermine providers' ability to make that transition.[21] Notably, in the *BDS Order*, the Commission rejected rules that would have required AT&T and other providers to continue offering certain legacy TDM-based voice services because doing so would "have a similar negative impact on incumbent LEC deployment of, and transition to, next-generation network infrastructure and innovative IP services that benefit all Americans, businesses and consumers alike."[22]

AT&T's tariff revisions are a necessary step to the critical transition from legacy TDM-based services to IP-based services. Absent these tariff revisions, AT&T would be committed to supporting TDM-based services well into the next decade, impeding the transition to IP-based services, and thus harming the public interest. Accordingly, anyone seeking to block these tariff changes must show that the resulting harms are justified to prevent even greater harms that might be caused by AT&T's tariff revisions. Windstream does not come close to meeting this standard.

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[20] *2014 Technology Transitions Order* ¶ 2.

[21] *2016 Technology Transitions Order* ¶ 1.

[22] *BDS Order* ¶ 288; *see also id.* ¶ 25 ("Substitution between these two services [TDM and packet-based services], however, is generally one directional. New customers, more likely than not, are choosing to purchase Ethernet services, subject to their availability and pricing, and existing customers of TDM-based service are switching to Ethernet. There is no evidence suggesting Ethernet customers are switching to DS1s and DS3s. Nor as a policy matter would we want that to occur as the technology transition is moving towards the eventual termination of TDM service offerings altogether. We want to encourage that migration, while mitigating disruptions to existing customers, to help unleash the benefits of network innovation for American businesses and consumers" (citations omitted)).

Windstream argues that AT&T should have reduced its rates for three-year term plans to match those of the seven-year term plans that are being grandfathered. But, as explained above, Windstream cannot challenge AT&T's three-year rates in this suspension proceeding, because AT&T is not proposing any changes to its three-year rates. Those three-year rates are "deemed lawful" and thus are presumed to be "just and reasonable." In all events, as explained by the Commission, "[r]equiring DS1 and DS3 rates to be reduced by percentages that ignore the transition from a legacy, TDM technology to an advanced technology could require the incumbent LECs to supply DS1s and DS3s at rates that do not recover their costs, and that inefficiently incentivize businesses to rely on DS1 and DS3 services, rather than more advanced business data services."[23]

Windstream's "price squeeze" argument is likewise meritless. When Windstream raised these same arguments (relying on the exact same testimony) in the BDS proceeding, the Commission rejected them, finding "little concrete evidence that incumbent LECs charge their wholesale customers higher rates than they charge retail customers for like business data services."[24] The Commission also rejected Windstream's argument that the Commission should require a carrier's wholesale prices for BDS to be set below its retail prices, explaining that "any such mandate could have the unintended effect of preventing providers from reducing retail rates to competitive levels, as the provider would then have to reduce its wholesale rates to below those

[23] *Id.* ¶ 234. Windstream also asserts that that, rather than grandfathering longer-term plans, AT&T should instead negotiate with customers to amend contract tariffs to address the transition. But that would not address the issue, because AT&T does not have a contract tariff with all customers that purchase legacy TDM-based services for terms greater than three years.

[24] *Id.* ¶ 262.

levels."[25] Similarly, in the antitrust context, the Supreme Court has even found that the type of "price squeeze" arguments raised by Windstream do not raise legitimate antitrust concerns.[26]

CONCLUSION

For the foregoing reasons, the Commission should reject Windstream's Petition to suspend or reject the above captioned tariffs.

Respectfully submitted,

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September 11, 2017

[25] *Id.* ¶ 263.

[26] *Pac. Bell Tel. Co. v. Linkline Commc'ns Inc.*, 555 U.S. 438, 452 (2009) (rejecting plaintiffs' "price squeeze" claim as "an amalgamation of a meritless claim at the retail level and a meritless claim at the wholesale level").

CERTIFICATE OF SERVICE

I, Marc Korman, do hereby certify that on this 11th day of September 2017, I have caused the forgoing Opposition Of AT&T Services Inc. To Petition To Reject Or Suspend And Investigate Ameritech Operating Companies Tariff F.C.C. No. 2, Transmittal No. 1861 & 1862, BellSouth Telecommunications, LLC Tariff F.C.C. No.1, Transmittal No. 131, Nevada Bell Telephone Company Tariff F.C.C. No.1, Transmittal No. 302, Pacific Bell Telephone Company Tariff F.C.C. No.1, Transmittal No. 554, Southwestern Bell Telephone Company Tariff F.C.C. No.73, Transmittal No. 3445 to be served on the following parties:

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