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VIA ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: *Notice of Ex Parte;* Business Data Services in an Internet Protocol Environment; WC Docket No. 16-143; Special Access for Price Cap Local Exchange Carriers; WC Docket No. 05-25; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; RM-10593

Dear Ms. Dortch:

This letter summarizes the *ex parte* presentations in the above-referenced proceedings made by Paul Hudson of Davis Wright Tremaine LLP, on behalf of Mediacom Communications Corporation ("Mediacom") on October 11, 2016 to Claude Aiken, Legal Advisor to Commissioner Clyburn, and Amy Bender, Legal Advisor to Commissioner O'Rielly, and on October 13, 2016 to Travis Litman, Legal Advisor to Commissioner Rosenworcel, and Nicholas Degani, Julia Palermo, and Alexandra McLeod from the office of Commissioner Pai.

Mediacom's existing business data services ("BDS") are offered exclusively under private carriage arrangements. Notwithstanding the D.C. Circuit's affirmation of the Commission's classification of broadband Internet access services as common carriage, the classification of BDS as private or common carriage by every new entrant competitor would require a fact-specific analysis that cannot and should not be attempted by the Commission on the existing record. Competitive BDS services are plainly distinguishable from broadband Internet access services, which are commonly sold at standard rates published on provider websites and on non-negotiable standard terms. Mediacom's rates and terms for BDS are not advertised; the services are all individually priced on negotiated terms and are offered only to select locations at the company's discretion.

Mediacom offers BDS services on a case-by-case basis, often only by constructing new fiber facilities to meet customer demand.[1] The costs of new construction are often recovered through monthly service rates, rather than an initial construction charge. The company would often be deterred from continuing to make such decisions to invest in new fiber construction if a potential customer could, for example, sign a contract and then complain to the FCC that the monthly rates are unlawfully high because they exceed an ILEC's TDM rates for what may be an inferior service offered over older, pre-existing facilities. The risk of incurring costs to defend negotiated BDS agreements and the risk of being ordered to re-price BDS after many costs of providing the service had been incurred would depress investment in new facilities, especially in smaller and rural markets and other locations that would be costlier to serve.

Thus, even if the Commission does generally classify commercial BDS services offered over pre-existing facilities as common carriage, it should clearly state that it will continue to allow providers to offer BDS on a private carriage basis if new construction or upgrades would be employed to provide the service. In addition, contracts executed prior to the effective date of any new Commission order should not be retroactively converted to common carriage, exposing the service provider to complaints that could not have reasonably been anticipated at the time it committed to invest in the costs of delivering the service.

If the Commission does permit complaints against competitive Ethernet services, it should not, as stated in the Chairman's Fact Sheet, "apply greater scrutiny when there is evidence of rates for low-bandwidth Ethernet service that are materially higher than rates for the nearest-bandwidth TDM rates." Mediacom's rates for its fiber-to-the-premises Ethernet services may include premium features such as service level commitments, and/or recover location-specific costs, that cannot be fairly compared on apples-to-apples basis with an ILEC's geographically-averaged rates for a different service over different facilities. If a potential customer believes that it can obtain a comparable TDM service from an ILEC at a lower price, it should purchase service from the ILEC, not pursue a complaint against Mediacom.

While no customer has ever filed a complaint with the FCC regarding Mediacom's existing BDS services, the company is concerned that some parties could abuse a new complaint process by feigning interest in service in order to try to obtain commercially-sensitive confidential information about Mediacom's network and cost structure. The Commission should guard against unwittingly inducing such fishing expeditions by not permitting discovery unless and until the Bureau makes a determination during the proposed mediation process that a complaint is being pursued in good faith in response to a *prima facie* case of unlawfully unreasonable rates or conduct.

Mediacom urges the Commission not to issue a new notice of proposed rulemaking if it does not have specific new proposed rules on which to seek comment. Any solicitation of input

[1] As previously noted, Mediacom does not presently offer Ethernet service over its existing HFC plant, which would require upgrades to all of its CMTSs.

should instead be done through a Notice of Inquiry. Mediacom believes that the Commission should wait an additional two years or more before launching a new review of the competitive market for packet-based services, which remains nascent at this time.

Finally, the proposed across-the-board reduction in the ILECs' price caps could inadvertently result in islands of monopoly where an ILEC is forced to offer BDS at rates below the cost to competitors of serving a location, particularly in small and rural markets with lower business densities to locations that have the highest cost to serve. Customers in these locations could be left with no choice of providers and likely an inferior service from a provider that would have no incentive to invest in improving the quality of the service. Given that nearly everyone agrees that the existing price-cap rate structure is outdated and no longer suitable in today's market, it is arbitrary to inflexibly employ those flawed rates as the starting point for new ones. The Commission therefore should permit ILECs to demonstrate the propriety of higher rate caps to serve higher-cost locations.

Sincerely,

Paul B. Hudson

cc: Claude Aiken
Amy Bender
Nick Degani
Travis Litman