

June 21, 2019

**BY ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144; *Petition of U S Telecom for Forbearance Pursuant to 47 U.S.C. §160(c)*, WC Docket No. 18-141; Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On Wednesday, June 19, 2019, Leonard Steinberg and Bill Bishop of Alaska Communications, Richard Cameron of Cameron Law & Policy LLC, and I met with the following FCC personnel regarding the above-captioned proceedings: Pamela Arluk, Lisa Hone, Christopher Koves, Pam Megna, Eric Ralph, David Zesiger, and (by tele-conference) Michele Berlove, Edward Krachmer, and Terri Natoli.

Alaska Communications summarized the arguments, which can be found in the previous filings the company has made in this proceeding,<sup>1</sup> opposing the reimposition of rate regulation

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<sup>1</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *et al.*, Comments of Alaska Communications (filed June 28, 2016); Reply Comments of Alaska Communications (filed Aug. 9, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, and Declarations and Supplemental Declaration attached thereto (filed Sept. 2, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary (filed Sept. 12, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary (filed Oct. 14, 2016); Letter from Richard Cameron, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary (filed Oct. 24, 2016); Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary (filed April 13, 2017); Comments of Alaska Communications (filed Jan. 30, 2019); Additional Comments of Alaska Communications (filed May 10, 2019); Additional Reply Comments of Alaska Communications (filed May 28, 2019).

for lower-capacity (DS1 and DS3) special access services provided using TDM-based technology, at least in the highly competitive Alaska business data services (“BDS”) market. For the same reasons Alaska Communications supports delisting of DS1 and DS3 transport as an unbundled network element (“UNE”) under Section 251(c)(3) of the Communications Act and Section 51.319 of the Commission’s rules.<sup>2</sup>

In the meeting it was observed that the Commission had proposed to detariff TDM-based BDS transport services (non-packet-switched inter-office incumbent local exchange carrier (“ILEC”) transmission services) as well as “other transport” used by interexchange carriers (“IXCs”), specifically the ILEC service known as “IXC channel terminations” connecting an interexchange carrier’s facilities to an ILEC network (also referred to by the Commission as “non-end-user channel terminations”).<sup>3</sup>

Just hours after that meeting, the Commission announced that it would consider at its July 10, 2019 open meeting an order resolving the tariffing and pricing requirements for TDM-based special access services and the UNE status of DS3 and DS1 transport.<sup>4</sup> In the combined draft “Transport Services” decision made available on the Commission’s web site that evening (the “Draft Order”), the Commission reiterated that it had proposed “to eliminate ex ante pricing regulation of price cap LECs’ BDS TDM transport and other transport (i.e., non-end user channel termination) services.”<sup>5</sup> The Commission (in the Draft Order) concludes that the record is “even more robust” today than it was several years ago in support of granting the proposed pricing de-regulation.<sup>6</sup>

Nevertheless, after paragraph 8, several paragraphs in the Draft Order discuss eliminating pricing regulation of price cap LECs’ “TDM transport services”<sup>7</sup> and omit the “other” transport, namely non-end-user channel terminations, that ought to be de-tariffed as well, in keeping with the Notice of Proposed Rulemaking and paragraph 8 of the draft order. Perhaps this was merely a form of shorthand, as “BDS TDM transport” clearly was defined in the Notice of Proposed

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<sup>2</sup> 47 U.S.C. §251(c)(3); 47 C.F.R. §51.319(d).

<sup>3</sup> See, e.g., *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, et al.*, WC Docket No. 17-144, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146, ¶147 (rel. Oct. 24, 2018) (hereinafter the “Notice of Proposed Rulemaking”). As noted in footnote 6 of the Draft Order, the term “BDS TDM transport” as used in this proceeding also excludes rate elements associated with switched access, namely, entrance facilities, dedicated transport between the serving wire center and tandem switching office, and direct-trunked transport.

<sup>4</sup> “FCC Announces Tentative Agenda for July Open Meeting,” FCC rel. June 19, 2019, available at: <https://docs.fcc.gov/public/attachments/DOC-358064A1.pdf>. For simplicity, the draft decision is referred to herein as the “Draft Order” though it contains both a Report and Order on Remand (dealing with the remanded portion of the Commission’s 2017 *BDS Order*) and a Memorandum Opinion and Order (dealing with UNE transport).

<sup>5</sup> Draft Order ¶8.

<sup>6</sup> *Id.*

<sup>7</sup> E.g., Draft Order ¶¶15-17, ¶¶35-41.

Rulemaking as going beyond “TDM transport” and including non-end-user channel terminations.<sup>8</sup> Alaska Communications respectfully requests that the Draft Order be edited to state clearly that the relief granted in this order, eliminating *ex ante* pricing regulation of TDM-based transport services, and detariffing those services, in areas where they are offered by price cap ILECs, extends equally to the “other transport” described in the Notice of Proposed Rulemaking – that is, it includes non-end-user channel terminations.

Finally, Alaska Communications observes that the Draft Order would grant transport UNE relief in price cap ILEC wire centers where actual or potential competition has been shown to exist, based on proximity of competitive fiber. Paragraph 52 of the Draft Order states that the Commission “forbear[s] from continued application of the unbundling requirements of the Act and our rules for DS1/DS3 Transport along routes where competitive fiber is present within a half mile of each UNE-triggering endpoint (i.e., the Tier 2 or Tier 3 wire center that triggers the unbundling obligation).”<sup>9</sup>

The Draft Order directs the Wireline Competition Bureau to publish on or before August 2, 2019 a list of CLLI codes of price cap ILEC wire centers that have been verified as having competitive fiber within a half-mile, based on the 2015 special access data collection.<sup>10</sup> However, the Draft Order does not explain what steps should be taken by ILECs to memorialize DS1/DS3 Transport unbundling relief in wire centers where competitive fiber was not documented in the 2015 special access data collection, where it has been deployed since that time, or where it might be deployed in the future.

It is reasonable to assume that much competitive fiber has been deployed since the 2015 data collection (which collected data available through 2013 – more than five years ago). It is also reasonable to assume that additional fiber will be deployed going forward. How does the Commission intend to provide relief to an ILEC that gathers evidence of this competitive fiber within the required half-mile of its wire centers? Does it believe that UNE transport relief for such carriers only can be granted upon filing of yet another forbearance petition and a year-long (or longer) process? Or may the carrier submit such information to the Wireline Competition Bureau, and request that the Bureau expand its list, based on delegation of authority to the Bureau in this proceeding? Further, this UNE relief may trigger change-of-law provisions under existing interconnection agreements. Should disputes that arise under interconnection agreements be addressed through the Section 252(b) arbitration process,<sup>11</sup> or should carriers avail themselves of the Commission’s Section 208 complaint processes?<sup>12</sup>

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<sup>8</sup> See *supra*, note 3.

<sup>9</sup> Draft Order ¶52; see also *id.* ¶57 (“we proceed incrementally and limit our analysis to wire center endpoints where we know that actual or potential competition exists—i.e., those endpoints where competitive fiber is located within a half mile”).

<sup>10</sup> Draft Order ¶59, n. 194.

<sup>11</sup> 47 U.S.C. §252(b).

<sup>12</sup> 47 U.S.C. §208.

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Alaska Communications suggests that the Commission provide a clear and simple process to ensure that the Commission's UNE transport forbearance relief reflects the extent of competitive fiber deployment, and to permit price cap ILECs to obtain appropriate relief in the future, without the undue delay associated with filing a petition for rulemaking, forbearance or waiver. It would reduce inefficiency and improve regulatory transparency for the Commission in this order to delegate to the Wireline Competition Bureau the necessary authority to consider future showings by price cap ILECs that their wire centers are now within a half-mile of competitive fiber and, if they find in the affirmative, apply the relief granted in this decision to those wire centers as well.

Please direct any questions concerning this matter to me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Karen Brinkmann".

Karen Brinkmann

*Counsel to Alaska Communications*

cc: Preston Wise  
Jamie Susskind  
Arielle Roth  
Travis Litman  
Randy Clarke  
Pamela Arluk  
Lisa Hone  
Michele Berlove  
Christopher Koves  
Edward Krachmer  
Pam Megna  
Terri Natoli  
Eric Ralph  
David Zesiger