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Via ECFS

September 26, 2016

***Ex Parte***

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

**Re: Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25;  
Investigation of Certain Price Cap Local Exchange Carrier Business Data  
Services Tariff Pricing Plans, WC Docket No. 15-247; Business Data Services  
in an Internet Protocol Environment, WC Docket No. 16-143**

Dear Ms. Dortch:

On September 22, 2016, Jennifer Prime of Cox Communications, Inc. ("Cox") and the undersigned met with Amy Bender, Wireline Legal Advisor to Commissioner O'Rielly.

At this meeting we summarized the arguments contained in Cox's Comments and Reply Comments in the above captioned proceeding. Cox explained that direct or indirect rate regulation of Cox's Business Data Services ("BDS") will significantly impact BDS investment decisions, particularly on competitive providers. We urged the Commission to reject competitive market tests ("CMTs") based on overly granular areas such as census blocks or specific locations, and to reject CMTs that would require multiple competitors before finding a market competitive. We noted that such tests would lead to exceedingly broad price regulation that is not supported by the record. Cox also explained that any competitive market test the Commission adopts should be designed to encourage rather than discourage investment by new entrants, regardless of whether new entrants are directly or indirectly regulated. Cox argued that the record does not support any regulation of advanced services. If the FCC imposes price regulation, it should be limited to incumbent LEC TDM-based services, and only in areas where the Commission determines that incumbent LECs retain substantial market power over these services.

Cox also explained that it provides BDS on a private-carriage basis and expressed concerns over the adoption of wholesale discounts based on avoided cost theories. Cox argued that Sections 201 and 202 of the Communications Act do not provide

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authority for such discounts. It further explained that Cox's wholesale offerings are developed, priced and marketed completely apart from its retail BDS and that the concept of avoided costs is inapplicable to Cox's wholesale offering.

Finally, we briefly described the proposal recently submitted by NCTA that would more carefully target areas where BDS regulation might reasonably be warranted.<sup>1</sup>

Respectfully submitted,

/s/ Michael H. Pryor  
Michael H. Pryor

cc (via email):  
A. Bender

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<sup>1</sup> See, Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 16-143 and 05-25 (filed Sept. 14, 2016).