

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

In the Matter of

Special Access for Price Cap Local  
Exchange Carriers;

AT&T Corporation Petition for  
Rulemaking to Reform Regulation of  
Incumbent Local Exchange Carrier Rates  
for Interstate Special Access Services

Application for Review of the United  
States Telecom Association

WC Docket No. 05-25

RM-10593

**COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS**

Alaska Communications Systems (“ACS”)<sup>1</sup> hereby submits these comments in response to the Application for Review (“Application for Review”) filed by the United States Telecom Association (“USTelecom”) in the above-captioned dockets.<sup>2</sup>

**INTRODUCTION**

On December 18, 2012, the Commission released its Report and Order and Further Notice of Proposed Rulemaking, in which it (1) adopted a framework for collecting data from 2010 and 2012 on special access facilities and services in areas served by the nation’s price cap carriers; and (2) sought comment on the appropriate means through which to use the resulting data to support the development of revised

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<sup>1</sup> In these comments, “Alaska Communications Systems” signifies the subsidiaries of Alaska Communications Systems Group, Inc. that are required to respond to the Commission’s data request issued in the above-captioned dockets, including its incumbent local exchange carrier (“ILEC”) affiliates: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

<sup>2</sup> *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Application for Review of the United States Telecom Association (filed Oct. 24, 2014).

pricing flexibility rules for such services.<sup>3</sup> Recognizing the tremendous burden the data collection would impose, particularly on small entities with limited resources to respond, the Office of Management and Budget refused to approve the data collection as proposed, and required the Wireline Competition Bureau (“Bureau”), purportedly acting on authority delegated from the Commission, to limit it to a single year, 2013, and make several of the response categories optional.<sup>4</sup>

The Application For Review argues that the Bureau exceeded its delegated authority when it limited the data collection to a single year, in light of the Commission’s determination in the Data Collection Order that “[w]e will collect two years’ worth of data.”<sup>5</sup> As such, the Application for Review asks that the Commission “issue a notice seeking public comment on alternative approaches – including statistical sampling – that would comply with the PRA and fulfill the goal of the Data Collection Order of providing the Commission with a comprehensive set of data.”<sup>6</sup>

As discussed herein, ACS believes that the Commission should not order the collection of additional special access data, but should respect the considered judgment of OMB that the industry burden of producing two years of special access data was too

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<sup>3</sup> *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153, 27 FCC Rcd 16318 (2012) (“Data Collection Order” or “Special Access FNPRM”).

<sup>4</sup> *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, DA 14-1327 (Wir. Comp. Bur. rel. Sept. 15, 2014) (“Reconsideration Order”).

<sup>5</sup> Data Collection Order at ¶ 28.

<sup>6</sup> Application for Review at 4.

great. ACS not only concurs in that judgment, but also believes that the concerns raised in the Application for Review are encompassed by the Commission's existing Special Access FNPRM. There, the Commission has already adopted a process for developing a record on which to evaluate alternatives for analyzing the results of the data collection in support of new pricing flexibility rules. There is no need for the Commission to short-circuit that process before even the first datum has been filed.

## DISCUSSION

### **A. The Commission Should Defer the Questions Raised in the Application for Review to the Larger Context of the Pending Special Access FNPRM**

The Bureau's decision to proceed with a single-year data collection is well within the Commission's explicit delegation of authority to the Bureau to "amend the data collection based on feedback received through the PRA process" and "proceed with the remainder of the [data] collection" if OMB approval of the entire request were withheld.<sup>7</sup> Faced with OMB rejection of the two-year data collection, this delegation of authority authorized the Bureau's decision to proceed with a single-year alternative.

The pending Special Access FNPRM already encompasses the concerns the Application for Review raises with respect to the sufficiency of the resulting data to support the Commission's planned "one-time, multi-faceted market analysis."<sup>8</sup> There, in addition to seeking comment on that proposal and other options for analyzing the special access data, the Commission has also asked "commenters to propose alternate actions that the Commission could take in the near future to obtain a more complete understanding of

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<sup>7</sup> Data Collection Order at ¶ 52 and n.111.

<sup>8</sup> Special Access FNPRM at ¶ 79.

competitive conditions for special access services.”<sup>9</sup> The Application for Review’s contention that “limiting the collection of high capacity services data to just a single year will not provide the Commission with the requisite data to conduct the comprehensive analysis of competition in the special access market”<sup>10</sup> is one early response to the Commission’s question. Other comments will be filed in due course.<sup>11</sup> Action by the Commission before that record is fully developed would be premature.

The 2013 data that the Commission will receive in response to its Reconsideration Order will provide meaningful opportunities for the Commission to conduct a “multi-faceted market analysis,” even without the two-year trend the original data request would have produced. Even if two years of data would be “superior,”<sup>12</sup> the Commission’s goal now should be to develop creative approaches to reach meaningful market insights using the data available from the currently authorized collection, rather than to create more delay by requesting additional data.<sup>13</sup> Following the release of the Data Collection Order, it took nearly two years to finalize and gain OMB approval for the actual data request, thus

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<sup>9</sup> *Id.*

<sup>10</sup> Application for Review at 3.

<sup>11</sup> Public Notice, WC Docket No 05-25, RM-10593, “Comment Deadlines Extended in Special Access Proceeding,” DA 14-1328 (rel. Sept. 15, 2014).

<sup>12</sup> Application for Review at 6.

<sup>13</sup> See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order, FCC 12-92, 27 FCC Rcd 10557 (2012), at ¶ 7 n.16 (“*Special Access Pricing Flexibility Suspension Order*”) (“It is our intent that we work as quickly as possible to conclude this proceeding as soon as possible to provide all parties the certainty they seek in the marketplace”).

derailing the Commission's goal to minimize market uncertainty and produce "final conclusions on the need for overall reform of the special access marketplace . . . in 2013."<sup>14</sup>

Only once the data are received will the Commission be able to explore the analytical possibilities fully. But, at a minimum, comparisons of pricing and other market dynamics among varying geographic areas, as well as comparisons of areas with and without Phase I and Phase II pricing flexibility, may yield important insights. It is too soon to conclude that a second year of data is indispensable.

Even if a second year of data would be valuable in refining new pricing flexibility rules, the resulting delay would prolong the current period of extended regulatory uncertainty, which itself is harming market dynamics. Further, the Commission has already recognized that data from two consecutive years is less "likely to include changes in the relevant variables" than data that establish a two-year trend, *i.e.*, with one year intervening.<sup>15</sup> To achieve that goal, however, the Commission would need to collect 2015 data, not 2014, further compounding the delay.

**B. The Commission Should Limit Any Additional Collection of Special Access Data**

At a minimum, if the Commission decides to order the collection of a second year of special access market data, it should be limited to the areas served by mandatory price cap local exchange carriers, *i.e.*, the Bell Operating Companies and former GTE service areas. Supplemental data collection should also be further limited to areas – unlike those served by ACS – where evidence has emerged of pricing, discrimination, or other complaints regarding special access services. ACS is confident that the market dynamics

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<sup>14</sup> *Id.*

<sup>15</sup> Data Collection Order at ¶ 27.

at work in Alaska can be sufficiently understood from the one-year snapshot ACS and its competitors and special access customers are now obligated to produce.

ACS has repeatedly explained in the record of this proceeding the crippling and unwarranted burden that the special access data collection represents.<sup>16</sup> For an efficient and leanly-staffed provider such as ACS, the multitude of extraordinary demands being made by the Commission far exceeds our capacity to respond in a complete and considered manner. The same staff who bear the responsibility for compiling the special access data request response are also involved with the developing Form 477 data, evaluating CAF Phase II census block challenges, analyzing company options and developing deployment commitments to accompany the Commission's anticipated offer of CAF Phase II support, ensuring compliance with the Commission's local rate floor rules and other Section 54.313 mandates, preparing tariff amendments, and other regulatory tasks, not to mention meeting the company's day-to-day business planning and revenue management needs. ACS's systems, like those of many other providers, do not capture the special access data requested by the Commission, at a minimum in any readily accessible form and, in some cases, at all.

Furthermore, neither in the original AT&T Petition for Rulemaking nor at any point in the subsequent record developed in this proceeding has any evidence emerged of pricing, discrimination, or other complaints regarding ACS's special access services.

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<sup>16</sup> See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Comments of Alaska Communications Systems (filed Feb. 11, 2013); *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Comments of Alaska Communications Systems (filed Apr. 15, 2013); ACS Letter to Nicholas A. Fraser, Office of Information and Regulatory Affairs, Office of Management and Budget (Jan. 8, 2014).

This is despite the fact that the Commission granted ACS Phase I and Phase II pricing flexibility across significant portions of its service area many years ago.<sup>17</sup> With no evidence that the market is not functioning in ACS's service areas, there is no need for the Commission to collect additional special access market data in those areas beyond that already requested for 2013. To the contrary, the greatest and most evident failure in the market for dedicated services lies outside of ACS's price cap service territory in a remote portion of southwest Alaska. There, GCI accepted \$88 million in federal subsidies (and programmatic nondiscrimination and interconnection obligations) from the Broadband Initiatives Program to construct the terrestrial TERRA-SW transport network. Having done so, GCI now refuses to make any but a small portion of the TERRA-SW capacity available to unaffiliated providers and asks rates that are more than double the rate for equivalent satellite capacity.

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<sup>17</sup> See *Petition of ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc. for Pricing Flexibility Pursuant to Sections 69.709 and 69.711 of the Commission's Rules*, WCB/Pricing File No. 10-02, Order, Da 10-100, 25 FCC Rcd 7128 (Wir. Comp. Bur. 2010).

## CONCLUSION

For the foregoing reasons, ACS requests that the Commission (1) defer questions of the sufficiency of the current special access data request to the pending Special Access FNPRM on that subject; and (2) limit any further special access data request to any locations served by the mandatory price cap local exchange carriers where evidence has emerged of pricing, discrimination, or other complaints regarding special access services.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that, on this day, a true and correct copy of the foregoing  
document was served by electronic mail, on the following party to this proceeding:

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Richard R. Cameron  
November 10, 2014