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February 5, 2015

VIA ELECTRONIC DELIVERY

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

Re: *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*

Dear Ms. Dortch:

The marketplace for special access and high-capacity services remains robustly competitive. Cable companies, CLECs, and other providers continue to invest in their networks and grow their business services revenues and customer bases as the Ethernet and other new-technology services they provide compete with and win customers from traditional special access services. Verizon expects that the data the Commission receives will confirm this marketplace fact. But while the econometric analysis of the data that the Commission plans to conduct can provide some benefit, a model has limits and cannot be the only tool the Commission uses to analyze competition.

In addition, the revisions that the Bureau ordered after OMB took action on the data collection diminished the value that the data may yield. It remains critical that the Commission's inquiry into special access competition take into account the full panoply of competitive data available -- and not just the model -- to assess whether the marketplace is contestable.

The marketplace is highly competitive.

While the marketplace has been highly competitive for a long time, over the past several years demand has exploded and the industry has accelerated its march away from legacy special access services to IP-based high-capacity services. Customers have increasingly turned to business Ethernet services, for example, and for a significant number of customers, Ethernet has become a substitute for DS1 and DS3 services.

The increased demand for Ethernet services as well as mobile wireless backhaul has fueled new growth in competition and innovation. The cable companies, CLECs, and many other providers are vigorously competing with incumbent providers to provide business customers with Ethernet and similar high-capacity services.

Comcast, for example, now delivers Ethernet services across 39 states and Washington DC, including 20 of the top 25 U.S. markets.¹ Its business services revenue increased 22.3% year-over-year for the first nine months of 2014, and it attributes its increase in business customers to “our efforts to gain market share from competitors by offering competitive services and pricing.”² Comcast already is ranked sixth in size amongst U.S. Ethernet providers (based on retail ports), and it stands to grow larger when combined with Time Warner Cable, which ranks fifth. For its part Time Warner Cable grew its fourth-quarter 2014 Business Services revenue by 22.6%, added nearly 70,000 commercial buildings to its network in 2014,³ and, in its third quarter results, noted “expand[ing] its serviceable market opportunity by over \$250 million per year.”⁴ Time Warner Cable has attributed its revenue growth in part to increases in high-speed data subscribers, which include its Metro Ethernet customers, as well as growth in cell tower backhaul revenue.⁵ Time Warner Cable provides both retail and wholesale business services and is continuing to invest to connect new buildings to its network, as “Business Services growth is critical to our operating plan....our Business Services strategy is working, and we're right on track to reach \$5 billion in annual revenue by 2018..”⁶

Cox Communications, too, touts its business Ethernet as a competitive alternative to “outdated TDM” services.⁷ Cox serves more than 300,000 business and government customers, and claims to be “one of the largest providers of business Ethernet services in the U.S.”⁸ Vertical Systems Group ranks

¹ See *Comcast Targets SMB Segment with Ethernet Everywhere*, Zacks Equity Research Analyst Blog (Dec. 10, 2014), <http://www.zacks.com/stock/news/156970/comcast-targets-smb-segment-with-ethernet-everywhere>.

² Comcast Corp Form 10-Q For the Quarterly Period Ending Sept. 30, 2014, <http://www.sec.gov/Archives/edgar/data/902739/000119312514379913/d792357d10q.htm>, at 35 (“Comcast 3Q 2014 10-Q”).

³ Time Warner Cable Quarterly Earnings Release, “Time Warner Cable Reports 2014 Fourth-Quarter and Full-Year Results,” http://ir.timewarnercable.com/files/2014%20earnings/4q14/q4-2014-twc-earnings-release-final_v001_14nw06.pdf, at 2 (Jan. 29, 2015).

⁴ Time Warner Cable Inc. Form 10-Q for the Quarterly Period Ending Sept. 30, 2014, <http://www.sec.gov/Archives/edgar/data/1377013/000119312514388277/d806224d10q.htm> at 2 (Oct. 20, 2014) (“TWC 3Q 2014 10-Q”).

⁵ See *id.* at 15.

⁶ *TWC - Q4 2014 Time Warner Cable Inc Earnings Call*, Thomson Reuters StreetEvents, Edited Transcript, Event Date/Time: January 29, 2015/1:30pm GMT, at 4 (statement by Time Warner Cable Inc. Chairman, CEO Rob Marcus).

⁷ See Cox Communications, “Cox Business Recognized for Advanced Metro Ethernet Products,” <http://newsroom.cox.com/> (Follow “News Releases” to “2014”) (June 5, 2014).

⁸ *Id.*

Cox as the seventh largest U.S. Ethernet provider.⁹ Overall, the cable companies are major competitors for special access and high-capacity services. Whereas analysts thought it “unthinkable just a couple of years ago,” the U.S. cable industry eclipsed \$10 billion in business services revenue in 2014.¹⁰

And while cable provides extensive intermodal competition, traditional CLECs are also vigorously competing with incumbent LEC special access services. Before it was acquired by Level 3, TW Telecom ranked third amongst U.S. Ethernet providers – ahead of incumbent CenturyLink – and Level 3 ranked eighth.¹¹ TW Telecom announced in November 2013 a “strategic market expansion to increase our addressable market by significantly expanding our metropolitan fiber miles.”¹² By mid-2013 TW Telecom served 77 metropolitan markets with local fiber networks providing business Ethernet, IP VPN, and converged solutions for business customers.¹³ Its revenue from enterprise customers increased 9.0% for the first six months of 2014, “primarily due to increased installations of our data and Internet services such as business Ethernet, managed and Internet services,” and it expected its business revenues to continue to grow.¹⁴ Level 3, meanwhile, reported growth in its IP data services and transport and fiber services over the first nine months of 2013, and it attributed its firm-wide revenue growth during that period to growth in its “Core Network Services revenue from enterprise customers.”¹⁵ Other CLECs like XO, Windstream, and others are expanding their network footprints to compete for business customers’ high-capacity services.¹⁶ Overall, Ethernet offerings from many competitors now flood the marketplace as competitive alternatives to legacy TDM special access services as customers migrate towards these newer services.¹⁷

The rise of mobile wireless backhaul also has created significant opportunities for expansion and new entry. Atlantic-ACM estimates that as a result of the move to mobile high-speed data networks,

⁹ See Mid-Year 2014 U.S. Carrier Ethernet LEADERBOARD, http://www.verticalsystems.com/vsglb/mid-year-2014-u-s-carrier-ethernet-leaderboard/?utm_source=NEWSFlash+-+Leaderboards+September+2014&utm_campaign=Newsfl (Aug. 20, 2014) (“VSG Ethernet Leaderboard”)

¹⁰ Carol Wilson, *US Cable Nears \$10B in Business Service Revenues*, Light Reading (Dec. 2, 2014), [http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-\\$10b-in-business-service-revenues/d/d-id/712347](http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-$10b-in-business-service-revenues/d/d-id/712347).

¹¹ See VSG Ethernet Leaderboard.

¹² tw telecom inc. Form 10-Q For the Quarterly Period Ending June 30, 2014, <http://www.sec.gov/Archives/edgar/data/1057758/000105775814000023/twtc2q1410q.htm>, at 29.

¹³ See *id.*

¹⁴ *Id.* at 30.

¹⁵ Level 3 Communications Inc. Form 10-Q For the Quarterly Period Ending Sept. 30, 2014, http://www.sec.gov/Archives/edgar/data/794323/000079432314000033/lvlt-093014_10q.htm, at 45.

¹⁶ Sean Buckley, *Comcast, Level 3's mega-mergers could shake up the Ethernet market, says VSG*, Fierce Telecom (Aug. 20, 2014), http://www.fiercetelecom.com/story/comcast-level-3s-megamergers-could-shake-ethernet-market-says-vsg/2014-08-20?utm_medium=nl&utm_source=internal.

¹⁷ See *id.*

“bandwidth for backhaul at U.S. cell sites has grown five times over the past four years.”¹⁸ In light of this demand, “The massive base of T1, DS3, OCn access is rapidly decreasing and moving to Ethernet as the preferred solution to support ... the wireless backhaul capacity required for nation-wide 4G LTE.”¹⁹ Analysts predict “fierce” competition for wireless backhaul “as ILECs, Fiber Providers, and Cable companies all vie for business.”²⁰

Cable companies are meeting this demand and their Ethernet backhaul business is growing.²¹ Cox recently said that it has had “great success in macrocell backhaul services, with double-digit growth again in the wireline last mile.”²² Time Warner Cable first provided wireless backhaul service in 2008 and by mid-2013 had wired 10,000 towers.²³ Regarding competition it recently said: “The competitive landscape has widened significantly in the last five years” and estimates the number of competitors bidding to provide service has tripled during that timeframe.²⁴ It recently reported an increase in cell tower backhaul revenue of \$30 million over the first nine months of 2014.²⁵ Comcast, too, attributes some of its business services revenue growth to cellular backhaul services.²⁶

Verizon’s experience in bidding to provide wireless backhaul to Sprint demonstrates how competitive the marketplace has become. Sprint launched its network modernization plan, Network Vision, in 2010, including moving its wireless backhaul throughout its network away from TDM-based special access services to next-generation higher-capacity services. Sprint opened its backhaul business to competitive bids for backhaul to approximately 38,000 sites.²⁷ As a result of this competitive bidding process, Sprint said it “will end up with ‘25 to 30 significant backhaul providers,’ that will likely be a mix of incumbent LECs, cable MSOs and alternative carriers, all of whom will be expected to deliver

¹⁸ Aaron Blazar, *Analyst Angle: Dark fiber’s role in the mobile backhaul ecosystem*, RCRWireless News (Sept. 3, 2014), <http://www.rcrwireless.com/20140903/opinion/analyst-angle-dark-fibers-role-in-the-mobile-backhaul-ecosystem-tag9>.

¹⁹ ATLANTIC-ACM, *Connectivity is King: U.S. Telecom Wired and Wireless Sizing and Share 2014-2019*, at 28 (Aug. 1, 2014).

²⁰ *Id.* at 101.

²¹ *See id.* at 23.

²² Steve Rowley, Cox Business SVP, *quoted in* Carol Wilson, *Cox Biz Looks Beyond SMBs*, Light Reading (Dec. 4, 2014), <http://www.lightreading.com/cable-video/cable-business-services/cox-biz-looks-beyond-smbs/d/d-id/712419>.

²³ See Mike Robuk, *Mobile backhaul a pillar in TWCBC’s commercial services*, CED Magazine (Mar. 26, 2014 5:39 PM), <http://www.cedmagazine.com/articles/2014/03/mobile-backhaul-a-pillar-in-twcbc%E2%80%99s-commercial-services>.

²⁴ *Id.*, *quoting* Thane Storck, Group Vice President, *Time Warner Cable Business Class*.

²⁵ *See* TWC 3Q 2014 10-Q, at 15.

²⁶ *See* Comcast 3Q 2014 10-Q, at 35.

²⁷ *See* Ex Parte Letter from Tara S. Emory, Skadden, Arps, Slate, Meagher & Flom LLP, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, FCC, *Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, and Cox TMI Wireless, LLC For Consent To Assign Licenses*, WT Docket No. 12-4, at attached, p.3 (filed July 12, 2012).

Ethernet predominantly over fiber for Sprint's new multi-mode network."²⁸ Sprint attested that this expansion will provide it substantial "flexibility" in reducing its backhaul costs, telling investors that, while it previously was "basically a T1 organization," it now has the "opportunity to use fiber or microwave and we choose site by site," and, as a result, has "a very much improved cost structure."²⁹ A Sprint executive explained to analysts that "all of [Sprint's] towers will be Ethernet," and "for roughly the same cost of \$1,500 a month" for three T1 lines at each tower, "you have almost 20 times the bandwidth through that location," at approximately "100 megabits per second even though it's scalable to more than that."³⁰ In this context, purveyors of traditional T1 lines cannot be said to possess meaningful market power going forward.

The bidding process for Sprint's network evolution in Verizon's region was consistent with the results that Sprint reported more generally.³¹ Verizon responded to Sprint's Request for Quotes with pricing and availability at the sites in its region. *After bidding, Sprint awarded Verizon the backhaul business at less than six percent of the sites in the Verizon incumbent footprint.*³² Although Verizon has no direct information about what Sprint did with the contracts and sites Verizon did not win, public reports indicate that "all cable operators are involved."³³

This experience shows that competitive intermodal alternatives for high-capacity services are available on a widespread basis and that companies like Sprint are using them in earnest. The high-capacity marketplace is undergoing dramatic change as a result of exploding demand and the emergence of new technologies to supply that demand. These new technologies and services act as constraints on prices for traditional special access while creating the conditions for rapid and successful entry and expansion by competitors and potential competitors of all stripes.

The model can shed some light on the marketplace but its value is limited.

The Sprint experience also demonstrates the risk of relying too heavily on a model and on using facts from the past as inputs to that model. Model data from one point in time – year-end 2013 – will not capture the fundamental shifts going on in the marketplace, which the Sprint experience embodies.

²⁸ Carol Wilson, *Sprint To Reveal Backhaul Contract Winners Friday*, Light Reading (Oct. 5, 2011), http://www.lightreading.com/document.asp?doc_id=213050 (emphasis added).

²⁹ *Sprint 4G Strategy/Network Update – Final*, FD (Fair Disclosure) Wire, Transcript 100711a4207432.732 (Oct. 7, 2011) (statement by Sprint - Network Operations & Wholesale President Steve Elfman).

³⁰ *Sprint Nextel Corporation at Pacific Crest Global Leadership Technology Forum – Final*, FD (Fair Disclosure) Wire, Transcript 081312a4874232.732 (Aug. 13, 2012) (statement by Sprint VP, Strategic Programs Marty Nevshemal).

³¹ See Mike McCormack *et al.*, Nomura Equity Research, *Sprint Nextel Corporation: Takeaways from Meetings with Management*, at 2 (June 21, 2012) ("*Nomura Equity Research Report*"), attached to Ex Parte Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25 & RM-10593 (July 24, 2012).

³² See Ex Parte Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC, *Competition Data Requested in Special Access NPRM*, WC Docket No. 05-25 & RM-10593 (Sept. 12, 2012).

³³ *Nomura Equity Research Report* at 2.

It is imperative that the Commission investigate what is likely to happen in the marketplace by focusing on competitive providers' plans to provide service, and their ability to provide service, even if most of that information falls outside the Commission's model.

To be sure, an econometric model can be valuable and can shed some light on the competitive dynamics of the high-capacity services marketplace. But a model has limits and can only go so far. First, a model is only as reliable as its inputs. In this proceeding, the model now will be based solely on 2013 data, as a result of the Office of Management and Budget's approval and the Bureau's subsequent Order on Reconsideration.³⁴ Even when the original data request was based on two years of data, it only would have captured the characteristics of the marketplace at those times. Now with just one year's worth of data the model is further limited. In a rapidly changing marketplace a model relying on historical data inevitably will not account for changes that are already occurring or those that are readily foreseeable. The competitive activity taking place today results from rapidly rising demand and changing economics of new technologies, yet the data will be more than one year old when the Commission receives it.

In the highly dynamic marketplace for high-capacity services, the Commission must look not just at competitive alternatives available to customers today but also at new sources of supply that competitors have planned or that are likely to become available going forward. The Commission itself has acknowledged the problems associated with a data collection limited to one year.³⁵

Other changes to the original data request resulting from OMB's approval also will result in the Commission obtaining less data than it originally intended, leaving it with less information that it had determined it needed to conduct a comprehensive review of special-access competition. Information required from Purchasers now is much less than originally planned, as many of the questions to Purchasers now are voluntary. The Commission will receive less information related to Requests for Proposals, and as a result likely will learn less about competitors plans and the addressability of markets. And cable companies now are required to provide less granular information about their networks, which also will detract from the value of the collected data and will show less about those companies' ability to compete than the Commission originally deemed necessary.

With these limitations on the data the Commission is collecting it is imperative that the Commission not over rely on the model and that its analysis ultimately is driven by the full set of competitive data that are available. Similarly, it is critical that the model is transparent so that interested parties have the

³⁴ *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*, Order on Reconsideration, 29 FCC Rcd 10899 (2014). USTelecom has sought reconsideration of that Order, and Verizon supports USTelecom's petition.

³⁵ See *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, ¶ (2012) ("*Data Collection Order*"); *id.*, ¶ 26 ("a two year period between observations is more likely to include changes in the relevant variables than a one year period."); ¶ 28 (data for a two-year period "allows for an analysis that controls for factors that may vary widely across geographic areas, but not within a given geographic area (e.g., entry factors such as building codes or soil quality)"); ¶ 29 (stressing the importance of "obtaining structural, pricing, and demand data over a two-year period to observe and better understand how and why competition has evolved over time and, therefore, where potential competition exists.")

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ability to evaluate its structure to ensure that it does not contain what economists refer to as “specification errors” – errors in the process of converting theoretical hypotheses into an empirical model – that improperly bias the results.

Therefore the model must be only one part of the Commission’s analysis. As the Commission analyzes whether the marketplace is contestable it must take into account the rapidly changing economics that make deploying high-capacity facilities more cost-effective than ever before. Where can cable, CLECs, and other providers offer services today that discipline market performance? And where will they be able to do so in the future? The Commission must carefully analyze other qualitative data that answer these questions and demonstrate whether and how competitive alternatives will better discipline market performance than regulation.

Sincerely,

A handwritten signature in cursive script that reads "Maggie McCreedy". The signature is written in black ink and is positioned centrally below the word "Sincerely,".