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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593; *Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353

Dear Ms. Dortch:

In this *ex parte* letter, AT&T Services, Inc. ("AT&T") responds to arguments proffered by TDS Telecommunications Corporation ("TDS") in its March 26, 2015 *ex parte* filing.[1] TDS asserts that failure to further regulate special access and Ethernet services "will significantly undermine, perhaps destroy entirely, many competitive carriers' ability to compete."[2] But, as demonstrated below, these assertions are directly refuted by public statements made by TDS's own manager of commercial product management who, just last month, stated that TDS "can buy [such services] for a competitive price, [and] make a few bucks on it and [AT&T and Verizon] deliver the service."[3] Moreover, AT&T expects that the additional industry-wide data collected by the Commission (but not yet released to interested parties) will definitively demonstrate robust competition for special access and Ethernet circuits, thus confirming a need to reduce the regulatory burdens for these services to facilitate further investment, innovation and competition.

[1] The TDS *ex parte* includes as an attachment the Declaration of James Butman, Group President for TDS Telecommunications Corporation. ("Butman Decl.").

[2] *TDS ex parte* at 2.

[3] "*TDS takes three-pronged approach to lighting business fiber*," FierceTelecom, May 12, 2015 at 2 ("*FierceTelecom*") available at http://www.fiercetelecom.com/story/tds-takes-three-pronged-approach-lighting-business-fiber/2015-05-12?utm_campaign=AddThis&utm_medium=AddThis&utm_source=email#.VXBs6aqx2TM.email. For purposes of citations, page references are made to the article as it would print.

1. TDS CLEC's Claims of Competitive Disadvantage Conflict with Its Public Pronouncements of Success in the Marketplace.

Comparing its ILEC and CLEC business, TDS makes the claim that unlike TDS ILEC, TDS CLEC is unable to consistently deploy the necessary facilities to meet the needs of business.[4] TDS claims that it has tested and studied the available wholesale options (e.g., purchasing Ethernet from incumbent LECs, bonding DS1s purchased as UNEs or special access, and providing Ethernet over copper loops leased as UNEs) but that "[n]one of these has proven to be a sustainable way for TDS CLEC to serve the needs of its customers."[5] Among other things, TDS requests the Commission adopt rate regulations governing incumbent LEC Ethernet special access services that yield wholesale prices "that enable CLECs to effectively compete." [6]

The apocalyptic picture TDS presents in its advocacy does not comport to the real-world description of its CLEC business that was just featured in the May 12, 2015, edition of *FierceTelecom*.[7] The article featured an interview with Mark Lyons, "manager of commercial product management for TDS Telecom."[8] Similar to the Butman Declaration, Mr. Lyons discusses the approach TDS is taking to roll out fiber-to-the-building (FTTB) initiatives in the territories TDS serves as an ILEC and as a CLEC.[9] But, Mr. Lyon's public statements — made outside the realm of advocacy — paint a very different picture than does its Declaration.

For example, the Butman Declaration states:

> TDS CLEC has attempted to rely on Ethernet purchased from incumbent LECs at unregulated rates pursuant to 'commercial agreements.' TDS has generally been satisfied with the quality of these services where it has obtained them. However, even during TDS CLEC's initial experimentation with this approach, incumbent LECs have insisted on excessive rates.[10]

The *FierceTelecom* piece — and Mr. Lyons — describe this option quite differently:

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[4] *Id.*

[5] *Id.* at 3.

[6] *Id*. at 4. TDS also requests the Commission rule that ILECs may not be permitted to discontinue legacy wholesale services unless and until they offer packet-based replacement services on terms and conditions that are equivalent to those applicable to the services being discontinued and that such services be offered at a wholesale discount from the ILECs' retail rates. *Id*.

[7] *See* fn 3.

[8] *Id.* at 1.

[9] *Id*.

[10] Butman Decl. at 14 ¶28.

> To complement its fiber builds in the CLEC area, TDS will also purchase wholesale fiber-based Ethernet services from other larger providers like AT&T. The service provider will purchase such a service as a way to reduce costs while getting services to more customers quickly.
>
> 'Similar to what a lot of the competitors do in traditional AT&T and Verizon (NYSE:VZ) areas, they are trying to maintain these rings, it costs more to do so that's why services like AT&T Switched Ethernet that's available on a wholesale basis to us and many other[s] has some appeal.' Lyons said. 'We can buy the service *for a competitive price, make a few bucks on it and they deliver the service.'*[11]

The juxtaposition is just as stark in the claims that TDS CLEC does not typically have fiber pre-deployed along routes and that TDS CLEC has challenges negotiating with building owners. In connection with that claim, Mr. Butman states that "TDS CLEC generally has not operated facilities along the routes over which it considers deploying fiber. Thus, TDS CLEC must deploy or obtain access to conduit or aerial attachments and/or negotiate rights-of-way along these routes for the first time."[12] By contrast, Mr. Lyons describes one strategy TDS CLEC is using of pre-building fiber routes near multi-tenant focused buildings which allows TDS CLEC to negotiate better rates with the construction crews to lay the fiber and exposes the CLEC to potential new customers.[13]

> One way to get over the fiber build expense in the CLEC area was to pre-build routes along streets in a community near buildings with a particular focus on multi-tenant units.
>
> This strategy enabled it to gain two benefits: negotiate better rates with local construction companies to dig up streets to lay fiber and connect it to buildings and exposure to new clients.
>
> 'We could negotiate good rates where we had a contractor [ ] build six miles of fiber in a suburban business park versus doing ten 300-yard builds, so our prices were very good,' Lyons said. 'We had a lot of exposure because we had contractors with backhoes and trucks up and down the streets and we paired that up with a very aggressive marketing campaign and worked with a couple of primary multi-tenant buildings and we signed a master building entrance agreement.'[14]

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[11] *FierceTelecom* at 2 (emphasis added).

[12] Butman Decl. at 6 ¶ 11.

[13] *Id*. at 2.

[14] *Id*.

The reference to these master building entrance agreements also contrasts with Mr. Butman's claim that the TDS CLEC is significantly disadvantaged in gaining access to buildings as compared to the TDS ILEC which frequently has a preexisting presence in buildings/relationships with building owners.[15] "'The master building entrance agreement was one of the thoughts that became surprisingly successful to take into these multi-tenant buildings,' Lyons said. 'Oftentimes an occupant is reluctant to do something to a building they don't own, but if your owner is already approved for this to be delivered, you don't have to worry about it.'"[16]

Finally, Mr. Butman's examples of the strategies TDS CLEC has implemented over the last few decades further undermine claims that TDS CLEC cannot effectively compete without regulatory intervention on its behalf. Indeed, the only strategy from this decade described by Mr. Butman was clearly a success. As Mr. Butman explains, TDS CLEC deployed, on spec, facilities to an industrial park in the Fox Valley area, where it had "success in signing customers up for service."[17] This statement is consistent with Mr. Lyons' statement that in "business parks," we have "been able to also pick up 25 percent additional customers that used another provider."[18]

Bottom-line, competitive carriers like TDS have many viable options available to them to compete.

2. Where Available, Unbundled DS3 Loops Would More than Serve TDS CLEC's Claimed Capacity Needs.

TDS argues that the availability of unbundled DS1 loops is an inadequate solution because the Commission's capacity-based limitation of ten DS1s per building severely limits the amount of bandwidth that TDS CLEC can provide over UNEs.[19] TDS fails to appreciate the Commission's rationale for the ten DS1 cap and, apparently, the other options available to it in serving buildings desiring that level of capacity.[20] In establishing the ten DS1 cap the

[15] Butman Decl. at 7 ¶ 13.

[16] *FierceTelecom* at 2.

[17] Butman Decl. at 10 ¶ 20.

[18] *FierceTelecom* at 2.

[19] Butman Decl. at 15 ¶ 28.

[20] It is highly questionable why unbundled DS1s are unsuitable for serving TDS CLEC's market base. TDS CLEC indicates that small businesses with 10 or fewer employees comprise more than 75% of its market (Butman Decl. at 8 ¶ 15) and yet earlier TDS CLEC states that many of these same customers (businesses with 10 or fewer employees) "have different needs than larger companies and at time compromise on their preference for reliable and secure service by downgrading to best efforts broadband internet access service [presumably supplied by cable companies] for cost savings." (*Id.* at 3 ¶5). These statements strongly indicate both that TDS CLEC is competing with the cable companies for 75% of its customer base and that unbundled DS1s apparently would be more than adequate for allowing TDS CLEC to compete in acquiring those customers.

Commission found "[t]he record indicates that a competitor serving a building at the ten DS1 capacity level or higher would find it economic to purchase a single DS3 loop rather than purchasing individual DS1 loops."[21] TDS has not made any showing that it lacks alternatives to purchasing 10 DS1 loops (e.g., a DS3 loop or an Ethernet service).

Very truly yours,

/s/ Keith M. Krom

Keith M. Krom

cc: Matthew DelNero
Eric Ralph
Daniel Kahn

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[21] Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶ 181 (2005), *petitions for review denied, Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).