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EX PARTE OR LATE FILED

Accepted / Filed

JUN 22 2015

Federal Communications Commission
Office of the Secretary

June 22, 2015

VIA COURIER & ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, 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:

On behalf of TDS Telecommunications Corporation, please find enclosed two copies of the redacted version of an *ex parte* letter for filing in the above referenced proceedings. The letter contains information that the Wireline Competition Bureau has deemed confidential under the protective orders in these proceedings.[1] Pursuant to the procedures outlined in the protective orders, the original confidential version of the letter is being filed with the Secretary's office under separate cover. Two copies of the confidential version are being delivered to Andrew Mulitz of the Pricing Policy Division of the Wireline Competition Bureau, and two copies are being delivered to Jonathan Reel of the Competition Policy Division of the Wireline Competition Bureau. Additionally, one machine-readable copy of the redacted version is being filed electronically via ECFS.

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[1] *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* Modified Protective Order, 20 FCC Rcd. 1994 (2005); *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, Protective Order, 29 FCC Rcd. 2014 (2014).

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Please do not hesitate to contact Thomas Jones at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
Matthew Jones

Counsel for TDS Telecommunications Corporation

Enclosure

cc: Matthew DelNero
Eric Ralph
Deena Shetler

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Dear Ms. Dortch:

As TDS Telecommunications Corporation ("TDS") has explained, competitive carriers remain highly dependent on access to incumbent LEC local transmission facilities in order to serve downstream business customers. Due to the FCC's failure to update its policies regarding access to these facilities, competitors are increasingly unable to deliver the retail services that business customers demand. TDS has submitted a comprehensive assessment, supported by internal company data, of the attempts of its competitive LEC subsidiary ("TDS CLEC") to deliver such services using various last-mile solutions.[1] As TDS explained, none of these solutions has proven to be sustainable on a widespread basis.

As part of its ongoing effort to ward off Commission action in this area, AT&T has filed an *ex parte* that it claims undermines TDS's analysis.[2] In AT&T's view, competitors like TDS CLEC have access to a wide variety of options for reaching business customer locations, including self-deploying

[1] *See* Letter from Thomas Jones and Matthew Jones, Counsel for TDS Telecommunications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, GN Docket Nos. 13-5, 12-353 (Mar. 26, 2015).

[2] *See* Letter from Keith M. Krom, General Attorney & Associate General Counsel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, GN Docket Nos. 13-5, 12-353 (June 9, 2015).

fiber facilities, purchasing unregulated Ethernet services from the RBOCs, and purchasing DS3s as UNEs. AT&T has offered no data in support of these claims. Rather, AT&T attempts to play "gotcha" by quoting offhanded statements that a front-line product manager for TDS made in an attempt to portray TDS CLEC's efforts in a positive light.

As explained in the attached declaration of Matthew J. Loch, Vice President of Commercial Sales and Marketing for TDS, neither the statements cited by AT&T nor AT&T's characterization thereof provide an accurate impression of the difficulties facing TDS CLEC. TDS CLEC was able to run a limited fiber deployment trial in a single market that yielded a modest profit margin, but it has been unable to identify another workable target location for a second trial and has thus abandoned the effort.[3] Likewise, TDS CLEC has been purchasing commercial Ethernet services from an RBOC for more than a year, but due to the RBOC's cost-prohibitive rates, TDS CLEC has been able to use this service as a last-mile solution to serve only 6 business customers—a nominal fraction of its customer base.[4] And while TDS CLEC has repeatedly sought to purchase DS3 UNEs over the past 17 years, RBOCs have generally denied these requests based primarily on claims that they lack the facilities needed to provide these services.[5]

As a result, nearly all of the connections between TDS CLEC and its business customers are provided over DS1s purchased as UNEs or special access from the RBOCs.[6] TDS CLEC and other competitors need access to reasonably priced Ethernet services in order to continue to meet the increasing bandwidth needs of their customers. The Commission should reject AT&T's delay tactics and act quickly to ensure that these customers can continue to experience the benefits of competition.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
Matthew Jones

Counsel for TDS Telecommunications Corporation

Enclosure

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[3] *See* Declaration of Matthew J. Loch at ¶ 4.

[4] *See id.* at ¶¶ 5-6.

[5] *See id.* at ¶ 7.

[6] *See id.* at ¶ 8.

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

In the Matter of	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation 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
	)	

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JUN 22 2015
Federal Communications Commission
Office of the Secretary

DECLARATION OF MATTHEW J. LOCH
ON BEHALF OF TDS TELECOMMUNICATIONS CORPORATION

1. I am the Vice President of Commercial Sales and Marketing for TDS Telecommunications Corporation ("TDS"), a wholly owned subsidiary of Telephone and Data Systems, Inc. In my role, I have responsibilities for all wireline commercial sales, marketing, product development, and product management functions.

2. The purpose of this declaration is to respond to claims made by AT&T in its June 9, 2015 filing in the above-referenced proceedings. AT&T suggests (1) that a fiber deployment trial conducted by TDS's CLEC subsidiary ("TDS CLEC") in the Fox Valley region of Wisconsin demonstrates that TDS CLEC can profitably self-deploy facilities to business customer locations; (2) that TDS CLEC can profitably serve business customers over Ethernet services purchased from the RBOCs; and (3) that TDS CLEC can readily rely on DS3s

purchased as UNEs as an alternative means of reaching business customers. Each of these claims is inaccurate.

3. In support of its assertions, AT&T relies almost entirely on a Fierce Telecom interview of Mark Lyons, a front-line product manager for TDS and a member of the team over which I have supervisory responsibility. In his position, Mr. Lyons does not have access to the full range of information regarding TDS CLEC's efforts to serve business customers. He does not oversee the acquisition of circuits from wholesale carriers and has not been involved in TDS CLEC's attempts to rely on Ethernet services purchased from RBOCs as a last-mile solution. While Mr. Lyons sought to portray TDS CLEC's efforts in a positive light, his interview (and AT&T's characterization thereof) gave an impression that is contrary to the facts.

4. In early 2014, Mr. Lyons was assigned to lead a project to identify fiber "hot spots"—target areas in TDS's CLEC markets where TDS could build a fiber network to serve customers and generate a reasonable return. Mr. Lyons identified what appeared to be one such market in the Fox Valley region of Wisconsin, and he led a limited fiber deployment trial in this market. This trial required an investment of over **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** by TDS CLEC, served only **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** customers, and generated a net present value of less than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** over a **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** investment term—well below the standards of a viable business case, but authorized as a trial. In nearly 18 months, TDS CLEC has been unable to find a second workable target location for a fiber deployment trial. TDS CLEC has concluded that the modest profit margin yielded by the Fox Valley, Wisconsin project is as good as it gets and

has accordingly abandoned the initiative. Overbuilding the AT&T network with fiber is simply not a sound business decision for TDS CLEC in the vast majority of cases.

5. In the Fierce Telecom interview, Mr. Lyons also discussed the availability and affordability of last-mile, fiber-based, Ethernet circuits from the RBOCs. TDS CLEC has been purchasing Ethernet service from one RBOC for more than a year (it does not purchase Ethernet from any other ILEC), but unfortunately, this service is generally cost-prohibitive. Again, Mr. Lyons sought to portray TDS CLEC's efforts in a positive light, but the reality is that TDS CLEC has been able to provide services using ILEC Ethernet as a last-mile solution to only 6 business customers out of over **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** total TDS CLEC business customers. That is less than three one-hundredths of one-percent of TDS CLEC's current customers. Even for these 6 customers, the economics are not attractive for TDS CLEC. A five-year financial analysis shows that the circuits sold thus far will require TDS CLEC to invest over **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** to earn a **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** internal rate of return (compared with a common industry objective of 25% or higher) with a negative net present value.

6. Moreover, the 6 customers that TDS CLEC serves in this manner are not representative of traditional SMBs. The customers generally have more sophisticated data requirements and larger budgets that they can leverage to satisfy these requirements. Ethernet purchased from the RBOCs at unregulated rates does not offer a cost-effective data solution to meet the needs of the vast majority of SMBs that do not meet this profile. Only **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** of TDS CLEC customers have more than

25 employees, and that sample is approximately representative of the universe of business customers nationwide.

7. Finally, AT&T claims in its filing that TDS CLEC could purchase DS3 circuits as UNEs to serve customers that demand high levels of bandwidth. Purchasing DS3 circuits at UNE rates would indeed be a cost-effective approach in many instances, if such UNEs were available. However, in TDS CLEC's experience, DS3 UNEs are very rarely available. TDS CLEC has sought to purchase DS3 UNEs from one RBOC repeatedly over the past 17 years. In the vast majority of these cases, the RBOC has responded that facilities were not available to fulfill these requests and has said that it would require upfront payments for facilities additions/modifications and would charge TDS CLEC special access rates rather than UNE rates. As a result, TDS CLEC purchases far more DS1 circuits from this RBOC than DS3 circuits. As of March 2015, TDS CLEC purchased **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** DS1 circuits from the RBOC and only **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** DS3 circuits.

8. The bottom line is that nearly all of the connections between TDS CLEC and its business customers are provided over DS1s purchased as UNEs or special access from the RBOCs. Notwithstanding the Fierce Telecom article or AT&T's characterization thereof, TDS CLEC generally cannot rely on self-deployed fiber, RBOC commercial Ethernet services, or DS3 UNEs to reach end users. TDS CLEC needs access to scalable, fiber-based, reasonably priced Ethernet services to continue to meet the increasing bandwidth needs of SMBs and other customers.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Matthew J. Loch

Dated: 6/19/2015