



October 7, 2015

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Ex Parte

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

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

The Commission should reject renewed calls to act prematurely and make decisions about the special-access marketplace before it analyzes both the data it collected and other more recent marketplace developments.¹ Just as the Commission announced it will start to make available for public review the massive amount of industry data it collected from 2013,² several companies urged the Commission to take action now without a data-driven analysis and change the terms and conditions of certain special access discount plans customers buy voluntarily.³ The Commission cannot jump the gun.

Despite what these companies urge in their recent ex parte submissions, the Commission must view the pro-customer voluntary special-access discount plans that Verizon and other providers offer in the context of the marketplace as a whole. And the Commission cannot do that without first evaluating the data it collected for this very purpose. The specific terms and conditions on which a company provides special access are relevant only if the Commission first finds that market forces are insufficient to protect customers. Where competition is adequate to protect customers, the Commission need not consider the specific terms and conditions on which that competition is occurring. Terms and conditions like those found in ILEC special access

¹ See, e.g., Comcast Press Release, "Comcast Business Announces New Unit Targeting Fortune 1000 Enterprises," <http://business.comcast.com/resource-library/press-releases> (Sept. 16, 2015).

² See FCC News Release, *FCC Takes Major Step in Review of Competition in \$40 Billion Special Access Market* (Sept. 17, 2015); see also *Special Access for Price Cap Local Exchange Carriers, et al.*, Order and Modified Collection Protective Order, WC Docket No. 05-25, RM-10593; DA 15-1035 (Sept. 18, 2015).

³ See, e.g., Letter from Thomas Jones, Willkie Farr & Gallagher LLP, counsel for [Level 3, to Marlene Dortch, FCC \(Sept. 23, 2015\)](#); Letter from Paul Margie, Harris, Wiltshire & Grannis LLP, counsel for [Sprint, to Marlene Dortch, FCC \(Sept. 23, 2015\)](#); Letter from John T. Nakahata, Harris, Wiltshire and Grannis LLP, counsel for [Windstream](#), to Marlene H. Dortch, FCC (Sept. 24, 2015); and Letter from Edward A. Yorkgitis, Jr., Kelley Drye & Warren LLP, counsel for [XO, to Marlene Dortch, FCC \(Sept. 23, 2015\)](#).

Ms. Marlene H. Dortch

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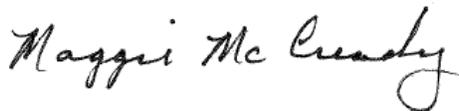
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discount plans not only are similar to those offered in other markets for other products, but they are also similar to plans CLECs offer in this marketplace.⁴ No one has alleged those companies have market power. That firms without market power offer plans like these demonstrates they are efficiency motivated.⁵ And while the data analysis will show that no firm has market power, until it analyzes the data, the Commission itself has found it has “insufficient evidence in the record upon which to base general or categorical conclusions about the competitiveness of the special access market.”⁶

The recent ex parte letters offer no new arguments about the plans themselves. Verizon has explained that its voluntary discount plans reflect economic efficiencies and offer customers a variety of choices, and we have debunked the recycled mischaracterizations of the plans.⁷ We’ve explained that Verizon’s discount plans benefit both customers and Verizon. The plans offer customers significant discounts in exchange for term or term-and-volume commitments, and they enhance efficiencies and reduce transaction costs and risk for both the buyer and the seller. Verizon’s discount plans do not link discounts to commitments to purchase from Verizon a percentage of the customer’s total purchases from all sources. And Verizon offers customers a range of options when their voluntary discounts expire, including migrating some or all of their circuits away from Verizon.⁸

The Commission therefore should focus its efforts on the market analysis and allow the parties to do the same, without the burden and distraction of premature activity related to discount plans.

Sincerely,



cc: Matthew DelNero
Deena Shetler
Pam Arluk

⁴ See AT&T Comments, at 41 (Feb. 11, 2013).

⁵ See Verizon Reply Comments, at Att. A: Declaration of Kevin W. Caves and Jeffrey A. Eisenach, ¶¶ 48-49 (Mar. 12, 2013).

⁶ *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, ¶ 69 (2012).

⁷ See, e.g., Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC (March 2, 2014); Reply Comments of Verizon, at 18-28 (March 12, 2013); Comments of Verizon, at 28-31 (Feb. 11, 2013); Letter from Evan T. Leo, Counsel for Verizon, to Marlene H. Dortch, FCC (July 16, 2012); Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC, at 1-5 (June 6, 2012); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC (Apr. 25, 2012); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC (Mar. 27, 2012); Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC (July 14, 2011); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC (Feb. 28, 2011).

⁸ See Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC (March 2, 2015).