

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

In the Matter of)	
)	
Special Access Rates 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

**OPPOSITION OF INCOMPAS AND CCA TO
REQUEST FOR FURTHER EXTENSION OF TIME**

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November 18, 2015

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INCOMPAS¹ and Competitive Carriers Association (“CCA”) hereby oppose the incumbent LECs’ request for a further extension of the upcoming comment and reply comment deadlines in the above-referenced proceeding.² The Commission should reject this request and continue its progress toward adopting much-needed reform of the special access marketplace.

I. INTRODUCTION AND SUMMARY

Less than two weeks after the Commission partially granted the incumbents LECs’ request for an extension to account for delays parties experienced in gaining access to the data set,³ the incumbents have filed yet another extension request. This time, the incumbents ask that

¹ COMPTTEL is now doing business as INCOMPAS.

² Joint Request for Further Extension of Time of the United States Telecom Association and ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 05-25, RM-10593 (filed Nov. 10, 2015) (“Request for Further Extension”).

³ *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, WC Docket No. 05-25, RM 10593, DA 15-1239 (rel. Nov. 2, 2015) (“November 2 Extension Order”).

the deadlines be delayed until *12 weeks* from the time when the data set is “stable” and all “remaining impediments” to analyzing the data are removed.⁴

The incumbent LECs have failed to show that the newly-established pleading cycle, January 6, 2016 for comments and February 5, 2016 reply comments, deprives interested parties of a reasonable opportunity to participate in this rulemaking. As explained in the attached declaration of Dr. Jonathan Baker, a leading economist with extensive experience overseeing the analysis of large data sets, the incumbents and their economist exaggerate the problems with the special access data set and overstate the impact that these issues will have on parties’ ability to conduct a timely analysis. In addition, the incumbents cite several cases to support their claim that the current pleading cycle violates the Administrative Procedure Act. However, as explained below, each of these cases is either distinguishable or completely irrelevant. Accordingly, the Commission should reject the incumbents’ further request.

II. DISCUSSION

Before reaching the underlying merits of the Request for Further Extension, it is important to set the record straight on one preliminary matter. In an attempt to deflect attention away from their relentless delay tactics, the incumbent LECs begin their filing by repeating their tired refrain that the delay in this proceeding is actually the fault of the very competitors that have been seeking a new regulatory framework for special access services for more than a decade.⁵ In support of this implausible claim, the incumbent LECs assert that some competitive

⁴ Request for Further Extension at 2 (“Specifically, we request that the Commission extend the due date for opening comments until at least twelve weeks after two criteria have been satisfied: (1) the Commission issues a Public Notice confirming that the data set has been finalized and a change control process has been instituted for any further modifications (including explanations for all future changes); and (2) all software and tools necessary to conduct relevant data analysis have been made available by NORC. “).

⁵ *Id.* at 2-3.

LECs did not respond to the Commission's voluntary data request in 2010—fully five years ago. The 2010 voluntary data request sought information on the extent to which carriers had deployed their own loop facilities.⁶ In fact, as INCOMPAS has previously explained, most of the companies that did not respond to that request had not deployed more than a *de minimis* number of loops, and therefore did not have the information sought in the data request.⁷ Companies that had deployed loops generally did respond to the data 2010 voluntary data request.⁸ The competitors' responses to the 2010 voluntary data request could not therefore have resulted in meaningful delay.

Of course, it is the incumbent LECs, not the competitive LECs, that have a powerful incentive to delay the resolution of this proceeding since every extra day of delay is one more day of unreasonably high special access service profits for the incumbent LECs. Large buyers of incumbent LEC special access, such as the members of INCOMPAS and CCA, must pay those high prices, and they therefore have every incentive to facilitate the completion of this proceeding as soon as possible. The incumbents have meanwhile pursued delay from every conceivable angle—by arguing that the data is already too old to be reliable, by arguing that records in special access proceedings should be needlessly expanded to include unnecessary

⁶ *Data Requested in Special Access NPRM*, Public Notice, 25 FCC Rcd. 15146 (2010); *see also Clarification of Data Requested in Special Access NPRM*, Public Notice, 25 FCC Rcd. 17693 (2010).

⁷ *See* Letter from Angie Kronenberg and Karen Reidy, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, 1-2 (filed July 16, 2014).

⁸ *See 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, 27 FCC Rcd. 10557, App. C (2012) (identifying the respondents to the 2010 and 2011 voluntary data requests).

information, and by seeking extension after extension.⁹ The incumbent LECs' most recent ploy, a request that the deadline for filing comments and reply comments be further delayed, has no basis in fact, law, or policy.

First, the incumbent LECs assert that they need more time to analyze the data because it is in flux, the NORC platform lacks important software, and analyzing data takes time. These assertions rest primarily on the declaration of Dr. Glenn Woroch, an economist who is participating in the incumbents' review of the special access data set. As explained in the attached declaration of Dr. Jonathan Baker, a leading economist that has been retained by competitive LECs and has extensive experience overseeing the analysis of large data sets, Dr. Woroch exaggerates the problems with the data and the impact that these issues will have on parties' ability to conduct a timely analysis. He offers no factual basis for a further delay in the pleading cycle for this proceeding.

Dr. Woroch states that the Commission's "refreshes" of the data set have delayed his team's efforts. He focuses primarily on the Commission's October 23, 2015 refresh, which added additional competitive LEC data to the enclave and in some cases "introduced commas in table entries having numbers exceeding three digits."¹⁰ But this refresh occurred only three days

⁹ See Letter from Jonathan Banks and Diane Griffin Holland, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, RM-10593, at 2 (filed Sept. 18, 2015) ("[T]he competition data the Commission collected and now is preparing to release already is stale."); Joint Request for Extension of Time of the United States Telecom Association and ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 05-25, RM-10593 (filed Oct. 21, 2015) (requesting an extension of the comment deadlines); Motion of AT&T Inc., Verizon, CenturyLink, and Frontier to Modify Protective Orders, WC Docket Nos. 15-247 & 05-25 (filed Oct. 23, 2015) (requesting that the Commission modify the protective orders in this proceeding); Request for Further Extension (requesting an additional extension).

¹⁰ Declaration of Glenn Woroch in Support of Request for Extension of Time to File Comments, ¶¶ 15, 20 (Nov. 10, 2015 ("Woroch Decl.") (*attached as* "Exhibit A" to Request for Further Extension).

after Dr. Woroch and his team obtained access to the data set.¹¹ As Dr. Baker explains, “[i]t is highly unlikely that, in these few days, they had conducted a significant amount of work tied to the pre-refresh data.”¹² For Dr. Baker’s team, the first two-to-three days after obtaining access to the data were largely devoted to understanding the software available in the enclave, the format in which the data set could be viewed and manipulated, and the contents of each data set and their relation to each other.¹³ It is true that Dr. Woroch’s team could have written software scripts before or during this period, but any work required to modify those software scripts to account for commas in the refresh data would be unlikely to have substantially delayed Dr. Woroch’s analysis of the data.¹⁴

Moreover, even if the October 23rd refresh somehow rendered all of the team’s work during this period obsolete (which is highly unlikely), it still would have delayed their efforts by only three days, which in no way warrants the indefinite extension that the incumbents now seek. Indeed, the Commission was well aware of the October 23rd refresh when it adopted the *November 2 Extension Order* and presumably took any associated delay into account when determining the current deadlines.¹⁵

¹¹ *Id.* ¶ 12 (“[T]he first day that we could have – and did – obtain access to the Data Enclave was October 20, 2015.”)

¹² Declaration of Jonathan B. Baker in Support of Opposition to Request for Further Extension of Time, ¶ 3 (Nov. 18, 2015) (“Baker Decl.”).

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *November 2 Extension Order* ¶ 7 (“While any delays with obtaining remote access do not merit the length of the extension of time requested by the Joint Petitioners, we find a modest extension of time is warranted. The size and complexity of the data collection is significant, as are the issues the data and analysis.”).

Dr. Woroch's statements regarding the other data refreshes fare no better. He observes that the Commission refreshed the data on November 3 and that the Commission plans to add new tables, including one regarding the locations of competitive LEC fiber routes and nodes, in "mid-November."¹⁶ However, he provides no explanation as to how these changes have affected or will affect his team's analysis in any concrete way. As explained in Dr. Baker's declaration, "[t]he unavailability of this subset of information for a time should not have prevented Dr. Woroch and his team from proceeding with other aspects of cleaning, understanding, and analyzing the data, many of which can be conducted in parallel with or prior to the availability of the additional information, and is unlikely to create a material overall delay."¹⁷

Furthermore, several of Dr. Woroch's complaints concern characteristics of the data set that are a result of reasonable decisions by the FCC that the incumbent LECs could have addressed at an earlier stage of the proceeding but failed to do so. For example, Dr. Woroch states that the incumbent and competitive LEC circuit element descriptions do not allow his team to evaluate the portions of a circuit's price attributable to mileage or channel terminations.¹⁸ The Wireline Competition Bureau ("Bureau") considered this issue in its order implementing the data request and decided that, given the variation in how providers bill for dedicated services, filers would not be required to adhere to the traditional incumbent LEC mileage/channel termination model and could instead "create [their] own descriptions for the billed elements."¹⁹ If the

¹⁶ Woroch Decl. ¶ 17.

¹⁷ Baker Decl. ¶ 4. Dr. Woroch also anticipates a possible future update related to a purported problem associated with the coding of competitive LEC billing adjustments. Woroch Decl. ¶ 21. Dr. Baker and his team have not encountered this problem. Baker Decl. ¶ 4 n.4.

¹⁸ Woroch Decl. ¶ 22.

¹⁹ *See 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*

incumbents were concerned that this would inhibit their ability to analyze the data (which it will not), they should have filed a petition for reconsideration of that order. As Dr. Baker explains, “[p]roviding parties with more time would not change this aspect of the data set.”²⁰

Similarly, Dr. Woroch expresses concern about the “lack of geocode information” in some filers’ responses, but he acknowledges that “geocodes were designated as optional for respondents.”²¹ Indeed, in response to concerns from certain providers regarding the potential burden associated with obtaining geocode data that they did not already possess, the Office of Management and Budget required the Bureau to amend the data request so that “[p]roviders are only required to provide the geocode for [a] Location if the respondent keeps such information in the normal course of business.”²² The time to disagree with that decision has come and gone.

In any event, researchers have a variety of tools at their disposal that can be used to link street addresses to latitude and longitude coordinates,²³ and NORC went above and beyond what was required under the Bureau’s orders by uploading a file that provides many of these links.

Special Access Services, Report and Order, 28 FCC Rcd. 13189, ¶ 46 (2013); *see also* Special Access Data Collection FAQs at 15 (Nov. 7, 2014) (“Question II.A.14 does not require you to use the ILEC-centric diagram and descriptions to assign billing codes. As set forth in Question II.A.14(c), ‘[i]f none of the possible entries describes the circuit element, enter a short description.’ This allows you to create your own unique billing codes and provide your own description as to what a particular code relates to.”)

²⁰ Baker Decl. ¶ 5.

²¹ Woroch Decl. ¶ 23.

²² Notice of Office of Management and Budget Action, OMB Control No. 3060-1197, at 2 (Aug. 15, 2014), *available at* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-3060-001# (last visited Nov. 18, 2015); *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, ¶ 8 (2014) (implementing this required change).

²³ *See, e.g.*, Baker Decl. ¶ 6 (explaining that “ArcGIS is . . . capable of performing the types of distance analysis Dr. Woroch describes in his declaration”).

Dr. Woroch's complaint that his "initial inspection of that file" revealed that it does not provide links for *every* address is not grounds for an extension.²⁴

Finally, Dr. Woroch asserts that the software provided by NORC either is inadequate or was provided too late. For example, he states that NORC installed its GIS software on October 29th (nine days after Dr. Woroch and his team gained access to the data set and four days before the Commission set the current filing deadlines) and that he would have preferred a different GIS software package.²⁵ He also complains that, while his team is familiar with many of the software programs in the enclave, it is "not as familiar" with others.²⁶ But the Commission never promised that every participant in the proceeding would be able demand the software suite of its choosing. Doing so would have been unworkable. In fact, when the Bureau explained in a June 2013 Public Notice that it was exploring how certain software programs could be made available for parties to analyze the data,²⁷ AT&T was the only incumbent that addressed the point, and it failed to request any specific software programs at all.²⁸ The fact that the software programs that have been made available are not the ones that Dr. Woroch prefers is no basis for further delay.

More generally, Dr. Woroch's proposed approach would make the perfect the enemy of the good. The data set as it exists now provides an extraordinarily comprehensive picture of the special access market, one that is far more complete than any record the Commission has ever

²⁴ Woroch Decl. ¶ 23.

²⁵ *Id.* ¶¶ 25-26, 29.

²⁶ *Id.* ¶ 30.

²⁷ *See Wireline Competition Bureau Seeks Comment on Protective Order for Special Access Data Collection*, Public Notice, 28 FCC Rcd. 9170, 3 (2010).

²⁸ *See Comments of AT&T Inc. Concerning the Proposed Protective Order*, WC Docket No. 05-25, RM-10593, at 9 (filed July 29, 2013).

had at its disposal. As Dr. Baker explains, “[a]ny large data set will be, in some respects, incomplete, improperly formatted, incorrect, or duplicative,” and “[t]he data cleaning needed to make use of the Special Access data does not appear to be unusual in kind or scope.”²⁹ In other words, no data set is perfect, but this one is more than sufficient for interested parties and the Commission to analyze the market. The Commission must balance the need for improving the data set against the need for prompt action in a proceeding that has been delayed far too long already. That balance clearly weighs in favor of prompt action at this point.

Second, the incumbent LECs assert that the current comment cycle violates the Administrative Procedure Act (“APA”), but this is incorrect. Under Section 553 of the APA, an agency must publish “notice” of “either the terms or substance of the proposed rule or a description of the subjects and issues involved,” so as to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.”³⁰ Such notice is sufficient if it affords interested parties “a reasonable opportunity to participate in the rulemaking process.”³¹ There is no basis for concluding that the current pleading cycle somehow deprives the incumbent LECs or anyone else of “a reasonable opportunity to participate” in this proceeding.

As explained above, the incumbent LECs have failed to demonstrate that they will be unable to submit a comprehensive analysis of the data on or before January 6, 2016. But even if the incumbents were to need to supplement their January 6th comments with further analysis of the data in their reply comments filed on February 5th or even in subsequent *ex parte* filings, that

²⁹ Baker Decl. ¶ 7.

³⁰ See 5 U.S.C. § 553(b)(3), (c).

³¹ See *WJG Tel. Co. v. FCC*, 675 F.2d 386, 389 (D.C. Cir. 1982) (citation omitted).

would not deprive them of a reasonable opportunity to participate in the proceeding. As the D.C. Circuit has held, the opportunity to make *ex parte* filings under the FCC's permit-but-disclose procedural rules satisfies the requirement that parties be given a reasonable opportunity to participate in a proceeding.³²

The incumbent LECs cite two cases to support their claim that the right to file *ex parte* pleadings is insufficient for this purpose, but neither one supports the incumbent LECs' argument. In *John Doe #1 v. Rumsfeld*,³³ the court held that the Food and Drug Administration violated the APA because it relied on data that became available after the close of the comment period. But since there was no indication that parties were able to address the data in *ex parte* filings, as is the case here, that holding is irrelevant. In *American Federation of Labor and Congress of Industrial Organizations v. Donovan*,³⁴ the court held that the Department of Labor failed to provide adequate notice of its proposed rule change in the Notice of Proposed Rulemaking initiating the proceeding. Since the incumbent LECs do not even address the adequacy of notice in their motion, that case is also irrelevant.

Similarly, the incumbent LECs cite two cases in support of their claim that the Commission may not withhold the data from interested parties until it is too late for them to comment on it, but these cases are also irrelevant to this proceeding. In *Prometheus Radio Project v. FCC*,³⁵ the court held that the FCC failed to provide notice of its planned rule changes

³² See *EchoStar Satellite L.L.C. v. FCC*, 457 F.3d 31, 39 (D.C. Cir. 2006) (holding that EchoStar had not been deprived of a reasonable opportunity to comment on data since “[u]nder the [FCC’s] liberal *ex parte* rules, EchoStar could have submitted a written presentation at any time during the rulemaking – even, as Commission counsel said at oral argument, at the ‘11th hour’”).

³³ 341 F. Supp. 2d 1, 15-16 (D.D.C. 2004).

³⁴ 757 F.2d 330, 337-40 (D.C. Cir. 1985).

³⁵ 652 F.3d 431, 449-54 (3d Cir. 2011).

in the notice of proposed rulemaking, a problem that was not cured by a subsequent public notice that did not comply with the APA requirements for a rulemaking notice (e.g., it was not published in the Federal Register and it was not voted by the Commission). This holding is irrelevant because, as explained, the incumbents do not argue that the further extension is necessary to cure a failure by the Commission to provide adequate notice of a planned rule change. In *North Carolina Growers' Association, Inc. v. United Farm Workers*,³⁶ the court held that the Department of Labor violated the APA where it refused to consider comments on the merits of rules it proposed to reinstate, and where it set a comment deadline of 10 days. The FCC has of course not restricted parties to addressing procedural rules. In addition, it has given parties more than two months from the time they accessed the data to file comments, and those comments can of course be supplemented in reply comments due a month later and in subsequent *ex parte* filings. This extensive opportunity to file comments, reply comments, and *ex partes* is nothing like a 10-day deadline.

The other cases cited by the incumbent LECs are also inapposite. The incumbents rely on *Rural Cellular Association v. FCC*, but the court in that case found no APA violation.³⁷ They cite several cases involving an agency's reliance on studies and data that the agencies did not disclose to interested parties, thereby depriving them of the ability to participate meaningfully.³⁸

³⁶ 702 F.3d 755, 769-71 (4th Cir. 2012).

³⁷ See *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1100-01 (D.C. Cir. 2009) (rejecting petitioners' argument that the FCC failed to provide interested parties a reasonable opportunity to participate in the rulemaking proceeding)

³⁸ See *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236-40 (D.C. Cir. 2008) (FCC violated APA where it relied on technical studies and denied interested parties access to key portions of the studies); *Air Transp. Ass'n of Am. v. FAA*, 169 F.3d 1, 6-8 (D.C. Cir. 1999) (FAA violated notice and comment requirement similar to APA where it relied on an amendment to an application not made available to interested parties for comment); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 51-58 (D.C. Cir. 1977) (FCC violated the APA where it relied on information shared

Those cases are irrelevant because the FCC has made the information submitted in response to the mandatory data request available to outside counsel and outside experts for review and comment. Nor is *Portland Cement Association v. Ruckelshaus*,³⁹ also cited by the incumbents, relevant since that case involved an agency failure to explain the basis for its decision. This holding is obviously irrelevant to the special access proceeding since the FCC has not reached a decision in this proceeding, let alone failed to explain that decision.

Third, the incumbent LECs' proposal that the deadlines for comments and reply comments be set 12 weeks from an indeterminate point in time in the future is completely inappropriate. The incumbents LECs fail entirely to explain why an additional 12 weeks are needed. The incumbent LECs define the point from which the 12 weeks would be counted as when "the data set is stable and the remaining impediments to commenters' ability to efficiently analyze the marketplace data collection are removed."⁴⁰ The incumbent LECs have no incentive ever to be satisfied that the data set is "stable" or that "the remaining impediments" to analysis have been removed. They will therefore likely dispute any finding to the contrary, introducing further delay and uncertainty into the timing of this proceeding. The Commission must not fall into this trap. It must therefore maintain the existing, firm deadlines for filing comments and reply comments that are not contingent on vague and inappropriate triggering events in the future.

with Commission staff in *ex parte* communications of which there was no description in the record).

³⁹ 486 F.2d 375, 392-94 (D.C. Cir. 1973).

⁴⁰ Request for Further Extension at 1.

III. CONCLUSION

For the reasons set forth herein, the Commission should deny the incumbent LECs' Request for Further Extension.

Respectfully submitted,

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ATTACHMENT

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**DECLARATION OF JONATHAN B. BAKER IN SUPPORT OF
OPPOSITION TO REQUEST FOR FURTHER EXTENSION OF TIME**

1. I am an economist specializing in antitrust, industrial organization economics, and regulation. I am currently a Professor of Law at American University Washington College of Law, where I have taught since 1999. I served as the Chief Economist of the Federal Communications Commission from 2009 to 2011, and as the Director of the Bureau of Economics at the Federal Trade Commission from 1995 to 1998. Previously, I worked as a Senior Economist at the President’s Council of Economic Advisers, Special Assistant to the Deputy Assistant Attorney General for Economics in the Antitrust Division of the Department of Justice, an Assistant Professor at Dartmouth’s Amos Tuck School of Business Administration, an Attorney Advisor to the Acting Chairman of the Federal Trade Commission, and an antitrust lawyer in private practice. I am also a Senior Consultant for a subsidiary of FTI Consulting, the co-author of an antitrust casebook, a past Editorial Chair of the *Antitrust Law Journal*, and a past member of the Council of the American Bar Association’s Section of Antitrust Law. I have received American University’s Faculty Award for Outstanding Scholarship, Research, and Other Professional Accomplishments, and the Federal Trade Commission’s Award for

Distinguished Service. I earned a J.D. from Harvard and a Ph.D. in economics from Stanford University.

2. I have been asked by three competitive local exchange carriers – Level 3 Communications, Windstream, and XO Communications – participating in this proceeding to work with a team of economists and other professionals in reviewing the data made available by the Federal Communications Commission in response to the Commission’s Special Access Data Collection. This declaration is written at the request of Level 3 Communications, which is a member of INCOMPAS (formerly COMPTTEL), as a response to the Declaration of Glenn Woroch attached to the recent joint request by the United States Telecom Association and ITTA for further extension of time.¹ In his declaration, Dr. Woroch offers three primary reasons for the requested extension: the data set is not yet stable, the NORC platform lacks important software, and analyzing data takes time.

3. Dr. Woroch states that the Commission’s “refreshes” of the data set have delayed his team’s efforts. He observes that the Commission’s October 23, 2015 update added additional competitive local exchange carrier (CLEC) data to the enclave and in some cases introduced commas in table entries having numbers exceeding three digits.² This update occurred three days after one member of Dr. Woroch’s team obtained initial access to the data and one day after the entire team had obtained access.³ It is highly unlikely that, in these few days, they had conducted a significant amount of work tied to the pre-refresh data. My team found it necessary

¹ Joint Request for Further Extension of Time of the United States Telecom Association and ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 05-25, RM-10593 (filed Nov. 10, 2015) (Request for Further Extension).

² Declaration of Glenn Woroch in Support of Request for Extension of Time to File Comments (Woroch Decl.) ¶¶ 15, 20.

³ *Id.* ¶ 12 (“One of our team members attended the October 20, 2015 training, and two others who need[ed] access to the Data Enclave attended the October 22, 2015 training.”)

to devote the first three days after obtaining access to the data largely to understanding the software available in the enclave, the format in which the data set could be viewed and manipulated, and the contents of each dataset and their relation to each other. Moreover, any work required to modify software programs written before or during this period to account for commas in the updated data would be unlikely to have substantially delayed Dr. Woroch's data analysis.

4. Dr. Woroch observes that the Commission again updated the data on November 3 and that in mid-November, the Commission plans to add new tables, including one regarding the locations of CLEC fiber routes and nodes.⁴ The unavailability of this subset of information for a time should not have prevented Dr. Woroch and his team from proceeding with other aspects of cleaning, understanding, and analyzing the data, many of which can be conducted in parallel with or prior to the availability of the additional information, and is unlikely to create a material overall delay.

5. Some of Dr. Woroch's other comments concern the FCC's decision to design the data request in a manner that accommodates the different billing practices of incumbent local exchange carriers (ILECs) and CLECs.⁵ For example, Dr. Woroch observes that the ILEC and CLEC circuit element descriptions do not allow his team to evaluate the portions of a circuit's

⁴ Woroch Decl. ¶ 17. Dr. Woroch also references a concern associated with the coding of CLEC billing adjustments. *Id.* ¶21. My team has not encountered this problem.

⁵ See *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*, Report and Order, 28 FCC Rcd. 13189, ¶ 46 (2013) (stating that filers would not be required to conform to the traditional ILEC mileage/channel termination distinction and could instead "create [their] own descriptions for the billed elements."); see also Special Access Data Collection FAQs at 15 (Nov. 7, 2014) ("Question II.A.14 does not require you to use the ILEC-centric diagram and descriptions to assign billing codes. As set forth in Question II.A.14(c), '[i]f none of the possible entries describes the circuit element, enter a short description.' This allows you to create your own unique billing codes and provide your own description as to what a particular code relates to.")

price attributable to mileage or channel terminations.⁶ Providing parties with more time would not change this aspect of the data set.

6. Similarly, Dr. Woroch expresses concern about the “lack of geocode information” in some filers’ responses. He recognizes that “geocodes were designated as optional for respondents.”⁷ In any event, NORC has uploaded a file that links many street addresses in the data to latitude and longitude coordinates.⁸ Relatedly, as Dr. Woroch also recognizes, NORC has also already installed industry standard Geographic Information System software (ArcGIS) to facilitate geocoding the remainder of addresses provided in the data. ArcGIS is also capable of performing the types of distance analysis Dr. Woroch describes in his declaration.⁹ He also acknowledges that NORC is continuing to work on installing additional software that his team has requested.¹⁰ The unavailability of some location information for a time does not prevent Dr. Woroch’s team from analyzing the currently available data.

7. Any large data set will be, in some respects, incomplete, improperly formatted, incorrect, or duplicative. The data cleaning needed to make use of the Special Access data does not appear to be unusual in kind or scope. Some concerns about the Special Access data raised by Dr. Woroch have already been addressed by the Commission to a substantial extent, and others will not be affected by an extension of time. Accordingly, the delay requested by United States Telecom Association and ITTA is unlikely to lead to a material improvement in the quality of the Special Access data.

⁶ *Id.* ¶ 22.

⁷ Woroch Decl. ¶ 23. *See also 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, ¶ 8 (2014) (“Providers are only required to provide the geocode for [a] Location if the respondent keeps such information in the normal course of business.”).

⁸ *See* Woroch Decl. ¶ 23.

⁹ *See id.* ¶¶ 25-26.

¹⁰ *Id.* ¶ 26.

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

A handwritten signature in blue ink, appearing to read "Jonathan B. Baker". The signature is fluid and cursive, with a large initial "J" and "B".

Jonathan B. Baker

Dated: November 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2015, I caused true and correct copies of the foregoing Opposition of INCOMPAS and CCA to Further Request for Extension of Time to be served electronically upon the following:

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