

**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 Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service)	RM-10593
)	

**REPLY IN SUPPORT OF JOINT REQUEST
FOR FURTHER EXTENSION OF TIME
OF THE UNITED STATES TELECOM ASSOCIATION AND
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

The United States Telecom Association (“USTelecom”) and ITTA – the Voice of Mid-Size Communications Companies (“ITTA”) (collectively “Petitioners”), respectfully submit this reply in support of their request that the Federal Communications Commission (“Commission”) extend the deadlines for submission of comments and reply comments in the special access rulemaking proceeding 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.¹ Given the complexity of producing the “granular geographic analysis” that the Commission has suggested is a key to analyzing special access competition, and the current absence

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 (Nov. 10, 2015) (“Petition”). The twelve weeks is comprised of the ten weeks needed for the analyses to be conducted and two weeks for reports and comments presenting those findings to be drafted.

of data on the location of competitive facilities that is essential to that analysis,² the requested extension is necessary to give parties sufficient time to produce the kinds of directly probative analyses that the Commission has suggested are most useful, and, indeed, required by the Administrative Procedure Act.

The only oppositions to the Petition were submitted by Incompas/CCA (“Incompas”)³ and Sprint.⁴ They acknowledge that the data set is large and complex, that it is not yet stable and is subject to substantial future changes, and that the software and tools needed to do the type of geospatial analysis that the data collection was designed to enable are not yet fully available.⁵ Nonetheless, they assert that these issues should not prevent parties from analyzing the data within the current deadlines.

As demonstrated in the attached Reply Declaration of Professor Woroch, these assertions do not address the production of at least one type of analysis that the Commission has identified as very relevant. Incompas’s and Sprint’s main argument is that their consultants expect to be able to conduct their analyses of the data within the allotted time, regardless of when or whether the data set becomes stable. But these arguments prove little because neither of these consultants appears to be conducting the type of geospatial analysis that Petitioners’ experts are hoping to conduct and that is directly responsive to the Commission’s 2012 Rulemaking Notice in this proceeding.⁶ Incompas’s consultant provides no details at all about his planned analysis, and

² See Exhibit A ¶10, attached hereto (Reply Declaration of Glenn Woroch In Support Of Request For Extension Of Time To File Comments) (“Woroch Reply Decl.”).

³ Opposition of Incompas and CCA, WC Docket No. 05-25; RM-10593 (Nov. 18, 2015) (“Incompas Opp.”).

⁴ Sprint Opposition to Joint Request for Extension of Time, WC Docket No. 05-25; RM-10593 (Nov. 18, 2015) (“Sprint Opp.”)

⁵ Sprint Opp. at 2-5; Incompas Opp. at 2-9.

⁶ Report and Order and Further Notice of Proposed Rulemaking, *Special Access for Price Cap*

Sprint’s consultant evidently is conducting a simple market share and concentration ratio analysis. It may well be that their analyses can be completed by January 6, notwithstanding the changing content and format of the data and the lack of final software and applications tools. But “the geospatial analysis of the special access data that [the ILECs’ experts] are conducting takes much more time and is far more sensitive to changes in the content and format of the data and available software applications and tools”⁷ than the analysis Sprint and Incompas are evidently conducting. And that is critical because the Commission’s data request was *designed* to facilitate a granular geospatial analysis of the competitive alternatives available to purchasers of dedicated services, and for good reason.⁸ The issues in this proceeding relate in important respects to the *location* of competitors’ facilities, so that the Commission can assess the extent to which there are competitive alternatives, the need for regulation, and the appropriate structure of any such regulation, at the geographically granular levels proposed in the Commission’s Notice of Proposed Rulemaking.⁹ A geospatial analysis is far more useful for assessing special access competition than simplistic approaches like Sprint’s proposed analysis of “basic market shares and concentration ratios.”¹⁰ Indeed, as the Commission explained when it initiated this data collection, “[w]e do not propose to conduct a simple market share or market concentration analysis,”¹¹ but rather to enable parties to “identify with *geographic precision* those areas that

Local Exchange Carriers, et al., 27 FCC Rcd 16318, 16353 ¶ 87 (2012) (“NPRM”).

⁷ Woroch Reply Decl. ¶ 5.

⁸ *Id.* ¶¶ 5-6 (“we note that the design of the data request itself reveals the importance of geospatial analysis to the Commission”).

⁹ *See generally* NPRM.

¹⁰ Woroch Reply Decl. ¶ 5; Sprint at 4.

¹¹ NPRM, 27 FCC Rcd at 16346 ¶ 67.

are subject to actual and potential special access competition today.”¹² A geospatial analysis of the type described by the Commission will take eight to ten weeks to perform, however (exclusive of the time necessary to draft the report setting forth the findings and comments based on that analysis), and the CLECs cannot and do not dispute that the data set is not in a state in which the parties could complete such an analysis during the current comment schedule.

This failure to take into account the more rigorous and probative type of analysis being undertaken by Petitioners and their members infects the entire oppositions of Incompas and Sprint. For example, both assert that Professor Woroch’s team ought to be able to write computer code and do other advance work that will enable them to easily and quickly incorporate the additional data, software and tools when they become available.¹³ But Professor Woroch refuted this very argument in his original declaration, which Incompas and Sprint both largely ignore.¹⁴ As Dr. Woroch makes clear, the team “cannot write computer programs until we know the format of the tools to be used for certain tasks (*e.g.*, the contents of the tables that translate the CLEC fiber network maps into geospatial locations) and the final format of the data.”¹⁵ Moreover, “until the data set is stable, much of the planning and analyses are aimed at a moving target and must ultimately be modified.”¹⁶ Neither Incompas nor Sprint addresses these

¹² *Id.* at 16353 ¶ 87 (emphasis added); *see also id.* (“For example, the analysis may enable the Commission to create a map for the United States that details the extent of competition with respect to special access services, including potential competition, in different areas of the country. We seek comment on whether and how the Commission could use a *granular geographic* analysis of competition to modify its existing regulatory treatment of special access services.”).

¹³ Sprint Opp. at 4-5; Incompas Opp. at 4-5.

¹⁴ *See* Exhibit A to Petition ¶ 29 (Declaration of Glenn Woroch In Support of Request for Extension of Time to File Comments) (“Woroch Decl.”).

¹⁵ Woroch Reply Decl. ¶ 7.

¹⁶ Woroch Reply Decl. ¶ 7. Dr. Woroch provided specific examples in his original declaration. *See* Woroch Decl. ¶ 31.

points in the context of a geospatial analysis. Professor Woroch further noted that “the size and scope of the analysis here requires an iterative process . . . under which [Mr. Woroch’s team] must plan, run computer code, review output, trouble shoot errors, revise the computer code, and repeat.”¹⁷ Moreover, this iterative process “almost always identifies problems, inconsistencies, or other issues that must be fixed or a work around devised.”¹⁸ And even after all of this work is complete, Mr. Woroch’s team must prepare a report that documents their procedures and findings, and petitioners must draft a comprehensive set of comments that describes the report and applies its findings to the issues raised in this proceeding.¹⁹ All of these tasks must occur *after* the data set is stable and all software applications and tools are made available, and Mr. Woroch’s showing that they will take eight to ten weeks is unrefuted.²⁰

Incompas’s consultant, Professor Baker, argues that the data and software problems that have caused delays so far are insubstantial. He is incorrect. For example, Professor Baker incorrectly asserts that the current absence of location information for CLEC fiber networks should not delay Professor Woroch’s analysis. But “[t]his information is critical to a comprehensive assessment of the competitive landscape of the special access services market” and the fact that “none of the location information regarding CLEC fiber networks is available” is indeed causing substantial delay.²¹ Similarly, contrary to Professor Baker’s assertions,²² the lack of geocode information for many data entries has not yet been resolved. The existing tables are still missing geocodes for about 20 percent of these data, and these geocodes must be

¹⁷ Woroch Reply Decl. ¶ 7; Woroch Decl. ¶¶ 33-34.

¹⁸ Woroch Reply Decl. ¶ 7; Woroch Decl. ¶¶ 33-34.

¹⁹ Woroch Reply Decl. ¶ 7; Woroch Decl. ¶ 27.

²⁰ *Id.*

²¹ Woroch Reply Decl. ¶ 10.

²² Baker Decl. ¶ 6.

identified using ArcGIS software that was only recently made available. Further work on this issue will likely be necessary when the next data update occurs, which will likely include new locations that need to be geocoded.²³ In addition, although Professor Baker acknowledges that the Commission’s design of the data request is the reason the links needed to match a circuit element to its price were originally severed in the data set; he argues that “[p]roviding parties with more time would not change this aspect of the data set.”²⁴ In fact, as Professor Woroch demonstrates, more time has made a difference; the relevant links in the source data have been reestablished, but only after they had already “caused substantial delay.”²⁵

Sprint’s additional arguments are makeweights. Contrary to Sprint’s characterization (at 3), Petitioners are not complaining about having to use the NORC platform; to the contrary, there is a strong public interest in maintaining the confidentiality of the data. Rather, the point that Sprint seems to miss is that the need to use the remote platform increases the time needed to analyze the data set, as this latest episode when the NORC Platform became unavailable for a day due to technical difficulties and data was lost confirms.²⁶ Sprint also asserts (at 2-3) that parties have always known that the data set would be large and complex, but that argument is hardly reason to give parties inadequate time to review the data set, which, even now is not yet stable.

There is also no merit to Incompas’s and Sprint’s efforts to portray Petitioners as seeking the “perfect” as the “enemy of the good.”²⁷ Petitioners do not seek the “perfect” but merely a

²³ Woroch Reply Decl. ¶ 11; Woroch Decl. ¶ 23.

²⁴ Baker Decl. ¶ 5.

²⁵ Woroch Reply Decl. ¶ 9.

²⁶ Woroch Reply Decl. ¶¶ 12-13.

²⁷ Incompas Opp. at 8-9; *see also* Sprint Opp. at 5.

data set that will facilitate the sort of analysis envisioned when the data were collected. In that regard, Incompas's and Sprint's contention that there are certain preliminary or less comprehensive analyses that could perhaps be accomplished by the current deadline of January 6 fails to take into account the need for a geospatial analysis.²⁸ Finally, we note that even as we file this Reply, the data set is *still* not stable and the full suite of necessary software tools has *still* not been provided. Yet it is five weeks before comments are due – a period that includes the end-of-year holiday season – and Professor Woroch's showing that it will take eight to ten weeks just to complete a geospatial analysis and prepare a report detailing that analysis remains unrefuted.

Under these circumstances, the lack of adequate time for producing analysis directly responsive to the NPRM issued in this proceeding would be so arbitrary and unfair as to violate the Administrative Procedure Act (APA). The entire point of this comment cycle is to solicit analysis of a data set that parties were asked to submit in a format that would facilitate the very geospatial analysis that petitioners are attempting to conduct and which petitioners have rightly assumed is what the Commission is seeking. This analysis is essential to any further consideration of the issues in this proceeding because the Commission has acknowledged that it cannot assess the reasonableness of the ILECs' special access rates without a comprehensive analysis of this broad, industry-wide data.²⁹ The APA requires the agency to provide both full and complete access to the data³⁰ and sufficient time to review it.³¹ The current data set and

²⁸ Woroch Reply Decl. ¶ 9; *cf.* Sprint Opp. at 4; Incompas Opp. at 6.

²⁹ Report and Order, *Special Access for Price Cap Local Exchange Carrier, et al.*, 27 FCC Rcd. 10557, 10560 ¶ 3, (2012) (Commission “cannot yet evaluate these claims of competitive harm based on the evidence to date in the record,” which is why the Commission has undertaken the data collection); *see also id.* ¶¶ 6-7, 50, 52.

³⁰ *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (agency must “disclose in detail” the “data upon which [the proposed] rule is based” so that there can be “an *exchange* of

deadlines provide neither. Indeed, as the Petitioners explained, the comment schedule here implicates the APA's principles of fundamental fairness.³² Given that the Commission is seeking comment on rule changes that could fundamentally alter the ILECs' rates, services, and contractual arrangements, the Commission has an obligation to provide the ILECs a full and fair opportunity to examine, analyze, and comment on the complete set of data in the Commission's possession and on which the Commission might rely.³³ Against these core values of the APA, Incompas and Sprint cite no countervailing concern other than their own desire for the hastiest possible conclusion to this proceeding. But a desire for haste cannot trump the APA's requirement of a meaningful opportunity to comment, and thus the Commission should grant an extension of the current deadlines.

views, information, and criticism between interested persons and the agency”) (emphasis added); *Air Trans. Ass’n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) (“the most critical factual material that is used to support the agency’s position on review must have been made public in the proceeding and exposed to refutation”).

³¹ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011) (meaningful opportunity for comment means “enough time with enough information to comment”).

³² *Home Box Office*, 567 F.2d at 35 (the APA’s requirements are designed to “provide fair treatment for persons affected by a rule”); *Prometheus*, 652 F.3d at 449 (same).

³³ *Prometheus*, 652 F.3d at 453 (rule vacated where parties did not have adequate time to comment); *North Carolina Growers’ Association, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012) (“Our conclusion that the Department [of Labor] did not provide a meaningful opportunity for comment further is supported by the exceedingly short duration of the comment period.”).

CONCLUSION

For the foregoing reasons, the Commission should extend the due dates for initial comments until twelve weeks after the issues described above have been resolved.

Respectfully Submitted,

UNITED STATES TELECOM ASSOCIATION

By:  _____
Diane Griffin Holland
Jonathan Banks
607 14th Street, N.W.
Suite 400
Washington, DC 20005
(202) 326-7300

ITTA – The Voice of Mid-Size Communications
Companies

By: _____ /s/ Micah M. Caldwell
Micah M. Caldwell
ITTA
1101 Vermont Ave., N.W.
Suite 501
Washington, D.C. 20005
(202) 898-1520

November 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2015, I caused true and correct copies of the foregoing Reply in Support of Joint Request for Further Extension of Time of USTelecom and ITTA – The Voice of Mid-Size Communications Companies to Oppositions to Request for Further Extension of Time to be served by electronic mail to the following:

Angie Kronenberg
INCOMPAS
akronenberg@incompas.org

Karen Reidy
INCOMPAS
KReidy@incompas.org

Rebecca Murphy Thompson
Competitive Carriers Association
rebecca.thompson@competitivecarriers.org

Charles W. McKee
Sprint Corporation
charles.w.mckee@sprint.com

Sincerely,



Diane Griffin Holland
Vice President, Law & Policy

EXHIBIT A

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

In the Matter of)	
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Special Access for Price Cap Local Exchange Carriers;)	WC Docket No. 05-25
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AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM-10593
)	
)	

**REPLY DECLARATION OF GLENN WOROCH
IN SUPPORT OF REQUEST FOR EXTENSION OF TIME TO FILE COMMENTS**

My name is Glenn Woroch. I authored a declaration that was attached to the Joint Request submitted by USTA and ITTA on November 10, 2015. I am leading a team that is analyzing the enormous, complex dataset collected by the Federal Communications Commission (Commission) in the above-captioned proceeding. My team has substantial experience evaluating issues related to special access services and analyzing very large sets of data using the type of software that has been installed on the secure platform containing the data (the “Data Enclave”) by its manager, NORC.

As I explained in my earlier declaration, based on my team’s experience evaluating data sets of this sort, and based on our initial exploration of the Data Enclave, it will take between eight and ten weeks to complete our analysis and to write a report that collects our findings to be shared with our clients. This estimate represents the amount of time needed for a comprehensive analysis only after the data set is stable and all of the software applications and tools needed to perform an efficient analysis have been installed on the Data Enclave.

The filings opposing USTA's and ITTA's petition seeking an extension of time to file comments contain responses to my initial Declaration by consultants hired by Sprint and a group of competitive local exchange carriers (CLECs). I have carefully reviewed these submissions and have found nothing in them that addresses the specific reasons identified in my Declaration as to why the Commission should adopt a schedule that allows at least eight to ten weeks for analysis of the data after it is stable and all software and tools have been installed on the Data Enclave.

As I explained in my prior declaration, consistent with the Commission's past approaches to analyzing competition in the special access marketplace, my team is conducting a granular geospatial analysis of competitive alternatives available to purchasers of dedicated services, among other empirical exercises. This kind of analysis requires a substantial amount of time to complete.

Neither Sprint's consultant, Susan M. Gately, nor the CLECs' consultant, Jonathan B. Baker, discloses any details about the analyses they are conducting. It is quite possible that they are pursuing a less detailed analysis that can be done in less time and that is less likely to be impacted by the changing content and format of the data and the lack of final software applications and tools. For example, Ms. Gately states that she is "calculating basic market shares and concentration ratios." We agree that, depending on when the data becomes stable, it may be possible to conduct such an analysis within the current deadlines. However, the geospatial analysis of the special access data that we are conducting takes much more time and is far more sensitive to changes in the content and format of the data and available software applications and tools. We believe this kind of analysis will be most useful to the Commission, and we note that the design of the data request itself reveals the importance of geospatial analysis

to the Commission. The fact that Ms. Gately and Prof. Baker state that some unidentified type of analysis could be completed within the allotted time does not mean that the allotted time is sufficient for more comprehensive analyses likely to be most useful to the Commission in this proceeding.

Moreover, neither Ms. Gately nor Mr. Baker address the specific data issues I identified in my Declaration. Both assert that my team ought to be able to write computer code and do other work in advance, and which can easily accommodate any new data that the Commission adds to the Data Enclave. But as I explained in my initial declaration, although we are writing computer code and doing preliminary data analyses while we wait for the Data Enclave to stabilize, no “turnkey” solution exists that can simply be applied to whatever new data, software applications and tools are added to the Data Enclave.

First, we cannot write computer programs until we know the format of the tools to be used for certain tasks (*e.g.*, the contents of the tables that translate the CLEC fiber network maps into geospatial locations) and the final format of the data. Second, until the data set is stable, much of the planning and analyses is aimed at a moving target and must ultimately be modified once the data set is stable; I provided specific examples of modifications that were necessary in my initial Declaration (§ 31). Third, the size and scope of the analyses here requires an iterative process (which Ms. Gately acknowledges (§ 4)), under which my team must plan, run our computer code, review output, trouble shoot errors, revise the computer code, and repeat. This iterative process almost always identifies additional problems, inconsistencies, or other issues with the data (which Dr. Baker acknowledges (§ 7)) that need to be fixed or a work around devised. Fourth, once all of these issues are addressed and we have generated our output, we must prepare a report that documents our procedure and findings for our clients to incorporate in

their comments in this proceeding. It bears repeating that all of these tasks could only occur *after* the data set is stable and all software applications and tools are made available.³⁴

Prof. Baker does not address the reasons we identified as to why it will take eight to ten weeks to complete our analysis *after* the data is stable and the software applications and tools have been finalized. Instead, Prof. Baker offers observations about *past* problems with the data set, software applications and tools and states that those problems should not have caused significant delay. But Prof. Baker's discussion of these issues indicates that he misunderstood the problem we identified.

For example, upon gaining access to the Data Enclave, we discovered that the links needed to match a circuit element to its price was severed in the data set when it was placed in the Data Enclave. Prof. Baker incorrectly states that the cause of this problem stems from the source data and cannot be fixed. He therefore states that “[p]roviding parties with more time would not change this aspect of the data set.” That is incorrect. The relevant links exist in the source data. We raised this issue with Commission Staff and NORC, and several days later, NORC uploaded a “crosswalk” to the Enclave allowing researchers to restore the link between these responses. This issue had, in fact, caused substantial delay.

Prof. Baker's response to the fact that much of the data lack geocode information is likewise inapt. Our progress in conducting our analysis of the Data Enclave continues to be delayed by the absence of the location information for CLEC fiber networks and nodes that was requested by the Commission. At present, that location information has not been released in the

³⁴ We also explained that our time estimates are conservatively low because they are based on our experience analyzing data using our own hardware and software systems that are under our control. In this proceeding, however, we are working within the constraints of the Data Enclave, where it generally takes longer to resolve data and software issues.

Data Enclave while the original network maps are being translated into less specific location identifiers. This information is critical to a comprehensive assessment of the competitive landscape of the special access services market. Prof. Baker asserts that the “the unavailability of some location data for a time” should not prevent my team from analyzing the location data that is available. Such a holding pattern is not possible in this particular case, however, since none of the location information regarding the CLEC fiber networks is available on the Data Enclave.

Prof. Baker notes that, in any event, the Commission has provided the geocode information. In fact, software programs exist which generate geocodes based on street addresses and we requested that such software be installed in the NORC archive. Instead, as Prof. Baker notes, the Commission Staff supplied a table that assigns geocode information for each street address. It took significant time for the Commission Staff to provide this table, and to this day it is still missing geocode data for more than 20% of locations. Eventually, data was added to the ArcGIS software provided by NORC to geocode these remaining locations. These data, however, required us to apply many manual adjustments to the address fields; we fully expect the same sort of issues will arise once the next data “refresh” occurs.

Finally, I fully expect that additional issues will arise and that these issues will impair the parties’ ability to conduct their analyses in a timely fashion. As an example, on the morning of November 19, 2015, a member of my team discovered that he could not access the Data Enclave or was disconnected a short while after logging on. Once the problem was brought to the attention of NORC, it instructed its engineers to investigate the problem. After it had assessed the problems that users faced in accessing the Data Enclave, NORC sent the following email:

We are currently experiencing issues that may prevent some of our users from authenticating. We are working to resolve these issues as quickly as possible and will keep you updated.

Later in the evening of the same day we received the following email:

Users should now be able to authenticate normally although we are having some residual issues with some desktops. We will send out an update when the desktop issues have been resolved.

As a result of these issues, programs running analyses were prematurely terminated and we lost access to the Data Enclave for the better portion of the working day. This episode illustrates how unexpected issues can consume available time that parties have to evaluate the data.

CONCLUSION

For the foregoing reasons, we strongly encourage the Commission to provide us and other interested parties with the extension of time being requested by USTA and ITTA.

VERIFICATION PAGE

I hereby swear under penalty of perjury that the foregoing is true and correct.

/s/ Glenn Woroch
Glenn Woroch

Dated: November 30, 2015