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## EX PARTE

December 9, 2015

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

**Re: Technology Transitions, GN Docket No. 13-5; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593**

Dear Ms. Dortch:

AT&T submits this *Ex Parte* in response to what apparently is becoming a seasonal activity – BT complaining that it is unfairly impaired in its ability to compete for enterprise customers, because it is paying more for special access services in the United States than what *it* charges for similar services in the United Kingdom.<sup>1</sup> AT&T has previously submitted facts to debunk BT’s baseless claims, and outlined in detail the fatal flaws in the underlying assumptions of BT’s claimed analysis of *like-for-like* services.<sup>2</sup> BT’s latest filing – which continues its past practice of disregarding all prior critiques of its methodological flaws and simply repeats its hollow (and refuted) allegations – is similarly specious. For example, there is no information in BT’s submission that would allow a determination as to whether the circuits being compared by BT are actually *like-for-like* circuits. In previous submissions BT erroneously compared its rates for point-to-POP-like services, which involve one channel termination, with AT&T’s rates for point-to-point services – which involve two channel terminations.<sup>3</sup> Nor does the submitted information provide any way to determine if BT has consistently considered any associated non-recurring charges (NRC) involved with installation of the circuit or maintenance fees. Notably, in prior filings, BT omitted any comparison of NRCs or extra service charges.<sup>4</sup> Finally, it is

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<sup>1</sup> Letter from Sheba Chacko, BT Americas Inc., to Marlene H. Dortch, FCC, WC Docket No. 05-25, GN Docket No. 13-5 and RM-10593 (filed Nov.20, 2015). (“*BT 11/20/15 Ex Parte*”). BT proffered similar arguments in 2009 (*see* Letter from Sheba Chacko, BT Americas Inc., to Marlene H. Dortch, FCC, GN Docket No. 09-51 (filed Sept. 17, 2009) (“*BT 09/17/09 Ex Parte*”) and then again in 2013 (*see* Letter from Matthew Jones, Counsel for BT Americas Inc., to Marlene H. Dortch, FCC, WC Docket No. 05-25, RM-10593 (filed May 2, 2013) (“*BT 05/02/13 Ex Parte*”).

<sup>2</sup> *See e.g.*, Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25, at 8-10 (filed Nov. 4, 2009) (“*AT&T 11/04/09 Ex Parte*”); Reply Comments of AT&T Inc., WC Docket No. 05-25, RM-10593, at 8-8 (February 24, 2010).

<sup>3</sup> *See BT 09/17/09 Ex Parte*.

<sup>4</sup> *Id.* BT’s NRCs are generally much higher than those charged by AT&T. Including them is a necessary component of the comparison especially since BT is precluded under its tariffs from waiving NRCs. In contrast, US tariffs often allow these charges to be waived for customers who make multi-year purchases. In addition, BT’s base

unclear how BT accounted for Federal Universal Service Fund (FUSF) charges. In the past filings BT simply and erroneously marked-up AT&T's rates by up to 12.9%-16% to account for claimed FUSF levels<sup>5</sup>, whereas a proper like-for-like comparison would have either excluded this FUSF mark-up, *or* required that BT mark up *its own* rates to account for similar government mandates in the UK – e.g., VAT. Given its poor methodological track record of comparing different, not like, services, its disregard of prior detailed critiques of its methodology and aggressively engineered findings, and its failure to provide sufficiently detailed information showing that this latest filing is any more reliable, BT's arguments lack credibility.

Indeed, BT's claims that its tariffed Ethernet prices in the UK are cheaper than rates for Ethernet in the US reveal a number of egregious flaws. First, BT is citing the rack rates for AT&T's Optical Ethernet Metropolitan Area Network (OPT-E-MAN®) Service product.<sup>6</sup> As BT well knows (*and benefits from*), in the US, customers purchasing multiple services or committing to take services for terms (e.g., 1, 2, 3, 5 years) receive substantial discounts from rack levels for an equivalent term. In addition, BT's contention that BT's rates are somehow lower than US rates is belied by the Commission's own estimates that show the cost of 1 Gbps Ethernet transport in the US to be below what BT claims is its UK rate. In its Official Blog<sup>7</sup> the FCC reports the results of a poll it conducted of E-rate recipients to establish what these eligible entities (largely schools and libraries) paid for 1 Gbps Ethernet transport service – and the median figure is \$1211.<sup>8</sup> In comparison, Tariff pages for BT Openreach state that a UK 1 Gbps Ethernet EAD circuit would cost £3900 for installation, £5664 in annual base rental and £3720 annually for 10km of reach. Amortizing the installation charge over 36 months yields a total monthly cost of £890 for this line. Converting to USD at the current exchange rate of roughly USD 1.50 per GBP, this £890/month figure becomes \$1335. This UK rate is approximately 10% more than the \$1211 rate the Commission found for comparable service in the US.

Consistent with such independent analysis, a study by the Organisation for Economic Development (OECD) further refutes BT's claim that the rates for special access services in the US are higher than in the UK. OECD's *Digital Economy Outlook 2015* demonstrates that rates for a multiple-distance basket of 2 Mbit/s leased lines in the UK were over 47% higher than in the US based on PPP exchange rates and over 93% higher based on actual currency exchange rates.<sup>9</sup> In addition, this same table shows that UK rates for a multiple-distance basket of

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rates only provide a lower level of service guarantee than AT&T's. There also are potential comparative issues related to the conversion calculation of US Dollars and GBP. Previously, BT erroneously converted UK GBP rates to USD using the OECD Purchasing Power Parities (PPP) rate rather than commercial exchange rates (the rate the services would cost if purchased using dollars exchanged commercially at a bank). *Id.*

<sup>5</sup> See e.g., *BT 09/17/09 Ex Parte* at 16; *BT 05/02/13 Ex Parte*, App. A at 3.

<sup>6</sup> *BT 11/20/15 Ex Parte*, Competify Comparison at 5 citing the rates listed in AT&T's Guidebook.

<sup>7</sup> <https://www.fcc.gov/blog/dialogue-e-rate-pricing-data> (last checked December 8, 2015).

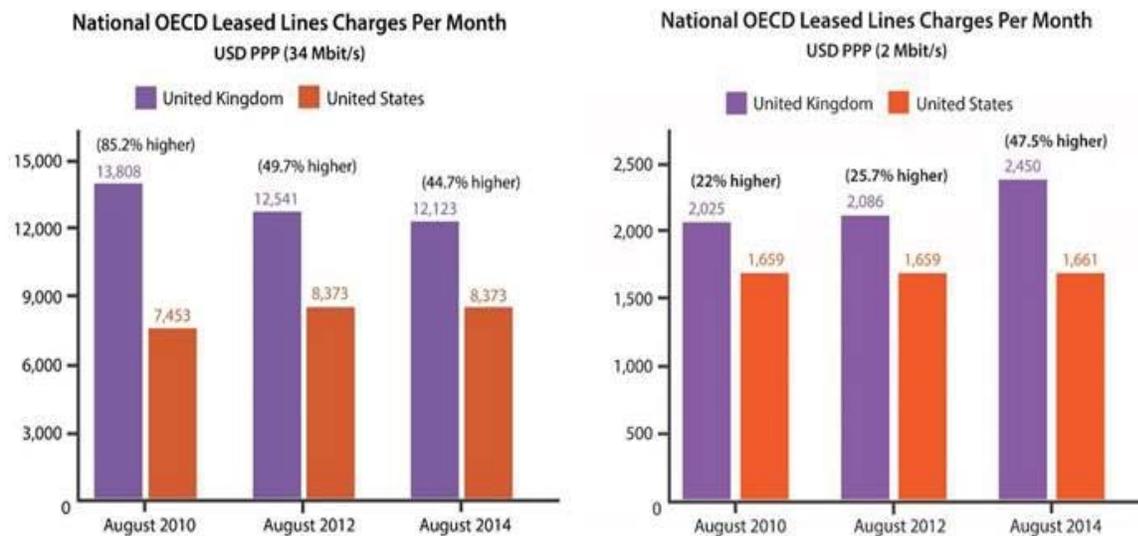
<sup>8</sup> While it is unclear as to whether the FCC figures include an amortization of installation costs (NRC), as noted earlier it is quite common for US carriers not to impose such costs – especially on high capacity circuits purchased for significant terms.

<sup>9</sup> Table 2.70, OECD *Digital Economy Outlook 2015* available at [http://www.oecd-ilibrary.org/science-and-technology/oecd-digital-economy-outlook-2015\\_9789264232440-en](http://www.oecd-ilibrary.org/science-and-technology/oecd-digital-economy-outlook-2015_9789264232440-en) or <http://www.oecd.org/sti/ieconomy/deo2015data/2.70.%20Leased%20lines.xls> (last checked December 8, 2015). Table 2.70 is based on August 2014 data and Verizon-New York tariffs in the US).

34 Mbit/s leased lines were nearly 45% higher than the documented PPP US rate and nearly 90% higher than the documented currency exchange rates.<sup>10</sup>

Tellingly, previous biennial studies by the OECD reached a similar comparative conclusions. In particular, Table 7.17 in the OECD's *Communications Outlook 2013* (based on August 2012 data) showed that the rates for the same multiple-distance basket of 2 Mbit/s leased lines in the UK were 25.7% higher than the PPP rate prices for comparable baskets of leased lines in the US and 65.9% higher than US currency exchange rate prices.<sup>11</sup> And, this same table showed that UK rates for a multiple-distance basket of 34 Mbit/s leased lines were nearly 49.7% higher than the US price at PPP exchange rates and 97.8% higher at currency exchange rate prices.<sup>12</sup>

These comparisons (based on the OECD's more conservative PPP exchange rates) are best illustrated in the following charts:



Taken together, these OECD studies demonstrate that the prices BT charged in the UK for the past five years were higher – *almost 50% higher* in 2014 on PPP terms (and even higher than that on actual currency exchange rate terms) - than equivalent services in the United States. Further, these multiple years of OECD comparisons understate the differences between the US and EU rates, because the US rates that the OECD references are full-price month-to-month rack rates. As discussed above, US customers who purchase these services under term plans receive substantial discounts from these rack rates. Further, these OECD comparisons do not include the very important contribution of initial installation charges that customers must pay in order to receive monthly service. BT's NRCs are particularly high – relative both to US NRCs and to

<sup>10</sup> *Id.*

<sup>11</sup> Table 7.17, *OECD Communications Outlook 2013*, OECD Publishing, Paris, available at [http://dx.doi.org/10.1787/comms\\_outlook-2013-en](http://dx.doi.org/10.1787/comms_outlook-2013-en) (last checked December 8, 2015).

<sup>12</sup> *Id.* Similar results were obtained by the OECD in 2011. See Table 7.15, *OECD Communications Outlook 2011*, OECD Publishing, Paris, available at [10.1787/comms\\_outlook-2011-en](http://dx.doi.org/10.1787/comms_outlook-2011-en) (last checked December 8, 2015).

NRCs charged by other major EU carriers. Further, as noted above, NRCs are commonly forgiven in the US for larger or longer term purchase commitments and options also are available that permit customers to avoid termination charges when disconnecting circuits.

Hoping to brush aside the inconvenient comparative facts supplied by multiple years of OECD studies, BT asserts that reliance on the OECD's comparisons of 34 Mbps and 2 Mbps rates in the UK versus in the US are inapposite because: (a) 34 Mbps lines in the UK are obsolete; and (b) no one buys 100, 200 or 500 km 2 Mbps leased lines in the UK.<sup>13</sup> This argument – arguably the only thing *new* in BT's analysis - is as unavailing as BT's previous arguments.

First, the OECD's comparison of tariffed leased line rates incorporates a market basket comprised of several line lengths – and this OECD basket is the *same* for the US as it is for the UK. While AT&T would agree that it is likely that very few customers in the UK purchase 100/200/500 km 2 Mbps lines, it is likely equally as rare that customers in the US purchase low-speed lines of these long lengths out of a rack rate tariff. But while the OECD's market basket of distances may not be very representative of actual purchases in either country, this does not mean that the OECD's *like-for-like* comparison of available rates is invalid. It just means that BT does not like the results or implication of the OECD's *like-for-like* comparisons on available rates.

Second, just as new 34 Mbps TDM lines are rarely purchased (but many are still in existence) in the UK, so too is the situation of similar speed 45 Mbps TDM lines in the US. Indeed, it is quite ironic that BT is dismissing the relevance of its 34 Mbps rates in the UK because they are “obsolete,” when in the present Commission proceeding it is vigorously advocating that it should have the ability to continue to purchase new similarly *obsolete* 45 Mbps TDM lines in the US. Although BT's own studies compare “unlike” services, its attempt to discredit the OECD study for failing to commit the same error is unavailing.

Finally, BT tries to describe statements made by AT&T's CEO and Chairman, in the context of AT&T's entry into the Mexican communications market, as a ‘concession’ that AT&T believes re-regulation of the special access market will not adversely affect investment in the United States.<sup>14</sup> This is facile, and once again, BT ignores both facts and context. AT&T has always argued that smart regulation must be tailored to the market conditions that exist in a specific jurisdiction. The market for special access services in the United States bears absolutely no resemblance to the facts of the wireless marketplace in Mexico. Competition for special access services in the United States has existed for years and has recently grown even more intense as cable companies have made the provision of business services one of their overarching priorities and the market has shifted away from TDM services and towards Ethernet. In fact, cable companies are expressly marketing their business services as alternatives to traditional ILEC DS1 and DS3 services<sup>15</sup> and evidence in the public domain indicates that the cable

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<sup>13</sup> *BT 11/20/15 Ex Parte*, Competify Comparison at 1, footnote 4.

<sup>14</sup> *BT 11/20/15 Ex Parte* at 2.

<sup>15</sup> See Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 05-25, at 3 (filed June 4, 2014). See also <https://business.timewarnercable.com/services/network-services/ethernet/ethernet-private-line/overview.html> (last checked December 8, 2015) (“Ethernet Private Line (EPL) is a cost-effective, high-capacity

industry will be approaching \$14B in business services revenue this year.<sup>16</sup> And in the Ethernet space publicly available data confirm that providers of all types are successfully competing in the Ethernet services market. In 2014, the US base of Ethernet port installations increased by 23 percent, following a 26 percent increase in 2013; no provider has a port share that exceeds one-fifth of the market; eight providers have port shares that exceed five percent, including three ILECs, two CLECs, and three of the nation's largest cable companies; and smaller providers – *i.e.*, those with port shares under four percent – together have a port share of more than twenty percent.<sup>17</sup> In contrast, the wireless marketplace in Mexico is characterized by one of the highest Herfindahl-Hirshman Index (HHI) concentration levels in the world.<sup>18</sup> Moreover, the percent of Mexico's population that has wireless service lags Latin America overall and Smartphone penetration in Mexico is about half that of the United States.<sup>19</sup> The need for continued smart regulation in a nascent, newly-reformed wireless market like Mexico has no relationship to a market where effective competition is firmly established like the special access market here in the US.

Sincerely,

*/s/ Keith M. Krom*

Keith M. Krom

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business Ethernet solution. EPL reliably connects Customer Premises Equipment (CPE) with a lower-cost User-to-Network Interface (UNI), making it a smart replacement for traditional TDM private line service. EPL can instantly and privately transmit mission-critical data at speeds from 5 Mbps to 10 Gbps.”)

<http://www.optimumbusiness.com/business-phone/sip-trunking.jsp> (last checked December 8, 2015) (“Business Trunking from Optimum can save your business up to 50% over traditional T1-based services. For starters, we charge you only for what you use. And, we're flexible. Whether you're bringing on more consultants or working remotely during the off season, our Business Trunking services makes it easy to add and remove lines, so you can scale back costs or ramp up to fit your growing call volume”); <https://www.suddenlinkbusiness.com/ethernet-private-line> (last checked December 8, 2015) (“Ethernet Private Line (EPL). Cost-effectively connect any two locations with point-to-point EPL service. Offering more bandwidth, reliability and flexibility than TDM Private Lines, this advanced solution brings people and resources together as if working in the same location”).

<sup>16</sup> For the sake of comparison, in its order suspending further grants of pricing flexibility, the Commission noted that the 4 largest ILECs reported combined revenues from the sale of DS1s and DS3s of approximately \$12 Billion in 2010. *See Special Access for Price Cap Local Exchange Carrier*, WC Docket No. 05-25, Report and Order, at p. 3 (rel. Aug 22, 2012). That was five years ago. DS1 and DS3 revenues have only decreased since the time of that decision.

<sup>17</sup> *See* Letter from Keith M. Krom, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25, RM-10593 at 7 (filed Oct 13, 2015).

<sup>18</sup> *See* “Mexican telcos Looking at Mexico in the global context,” Bank of America/Merrill Lynch Research Report (November 27, 2016) citing BOA Merrill Lynch Global Research estimates.

<sup>19</sup> “AT&T: Why Its New Acquisition Makes Sense?” November 11, 2014 available at: <http://seekingalpha.com/article/2670095-at-and-t-why-its-new-acquisition-makes-sense> (last checked December 8, 2015).

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