

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

In the Matters of)	
)	
Investigation of Certain Price Cap Local)	WC Docket No. 15-247
Exchange Carrier Business Data Services Tariff)	
Pricing Plans)	
)	

**JOINT REQUEST FOR EXTENSION OF TIME OF
AT&T INC., VERIZON, CENTURYLINK, AND FRONTIER**

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**JOINT REQUEST FOR EXTENSION OF TIME OF
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AT&T Inc. (“AT&T”), Verizon, CenturyLink, and Frontier (the “ILECs”) respectfully request that the Federal Communications Commission (“Commission”) extend the deadline for submission of the ILECs’ Direct Cases in the above-referenced proceeding to allow the parties time to incorporate into their Direct Cases analyses of the data set that the Commission placed in the record on December 4, 2015. The ILECs will not be able to access those data for the purposes of this proceeding until December 16, 2015 at the earliest, which is only two days before the ILECs’ Direct Cases are due under the current schedule. As the Commission has previously acknowledged, and as the ILECs have previously documented, these data are relevant to this proceeding. It will take at least several weeks, not a few days, to analyze these data and to incorporate the results into the ILECs’ Direct Cases. For the reasons discussed in the separate Motion for Extension of Time filed by USTelecom and ITTA, a twelve-week extension would be necessary, at a minimum, for a comprehensive geospatial analysis of the data and is therefore the most appropriate extension of time. The Commission should extend the deadline for Direct Cases by at least 60 days, however, which is the minimum amount of time necessary for a useful, albeit less comprehensive, analysis of these data.

The new data the Commission has placed in the record for this proceeding contain the results of an unprecedented, industry-wide data collection of geographically granular information relating to business data services that the Commission initiated in the Special Access proceeding (WC Docket No. 05-25). Although this data set was collected for a different proceeding, it contains information that is also relevant to this tariff investigation. The Chief of the Wireline Competition Bureau has already found these data, which were “submitted in the [Special Access] rulemaking proceeding,” “are relevant to the question of the reasonableness of the incumbent LEC pricing plan terms and conditions in the tariff investigation.”¹ Having found that these data are relevant to the ILECs’ Direct Cases – and indeed having already relied on it in the *Designation Order*² – fundamental fairness and the requirements of the Administrative Procedure Act (“APA”) require the Commission to give the ILECs’ sufficient time to analyze the data and to incorporate the results of that analysis into their Direct Cases.

Indeed, the only real question is how much time the ILECs should be given. The Bureau has always recognized that analyses of these data will take substantial time, and it has always set deadlines that allow for several weeks for the parties to review and analyze these data. When the data were first thought to be available in the Special Access proceeding, the Bureau allowed parties eight weeks to analyze and incorporate the data into their comments. But when it turned out that the parties did not obtain prompt access to the data and that the data set was more complex than initially anticipated, the Commission extended the time to 11 weeks from the time

¹ Order and Protective Orders, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, DA 15-1387 ¶ 9 (rel. Dec. 4, 2015).

² See Order Initiating Investigation and Designating Issues for Investigation, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, DA 15-1194 (rel. Oct. 16, 2015) (“*Designation Order*”).

the parties actually gained access to the data set.³ Subsequently, the experts who are analyzing the data have submitted declarations demonstrating that it will take at least 12 weeks for them to properly analyze the data, draft a report setting forth their findings, and allowing two weeks for the information in those reports to be incorporated into comments for the Commission.⁴

The same amount of time – at least 12 weeks – is needed to perform similar tasks for an analysis for this proceeding. This tariff investigation is premised on, among other things, allegations that purchasers of business data services lack alternatives to ILEC special access services, and thus that ILEC customers are forced into agreeing to terms and conditions that they would not otherwise choose if there were competitive alternatives.⁵ The availability of competitive alternatives is thus a central issue in this case, and the ILECs must be given a reasonable opportunity to include such information in their Direct Cases. Information needed to conduct such an analysis (at least for 2013) is contained in the data set that the Commission has just placed into this record; indeed, this data set was designed to permit such an analysis. As explained by the experts who are analyzing these data for the Special Access proceeding, these data permit geospatial analyses that identify, at a geographically granular level, the extent to

³ See Order, *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 (Nov. 2, 2015) (“Special Access Extension Order”).

⁴ See Declaration of Glenn Woroch in Support of Request for Extension of Time to File Comments, attached to 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); Reply Declaration of Glenn Woroch In Support Of Request For Extension Of Time To File Comments, attached to 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, WC Docket No. 05-25; RM-10593 (Nov. 30, 2015).

⁵ See *Designation Order*.

which competitors have deployed facilities to compete with ILEC special access services.⁶ These experts have demonstrated that it will take them eight weeks to conduct this analysis of the data, plus another two weeks to draft a report of their findings. It would then take their clients an additional two weeks to incorporate the findings in the expert report into their comments. Overall, therefore, this evidence establishes that it will take 12 weeks to conduct these analyses of the data and incorporate their findings into the ILECs' Direct Cases.

A less comprehensive, but still informative, analysis of the data set could be completed in 60 days. This more limited analysis would include the same geographically granular competitive analysis described above, but it would be conducted for sample locations (*e.g.*, for a sample of MSAs), rather than for all areas nationwide. Accordingly, if the Bureau determines that this more limited analysis is sufficient, the ILECs respectfully request, in the alternative, that the Bureau grant a 60 day (rather than 12 week) extension of time to file their Direct Cases from the time that the data becomes available for use in this proceeding.

The fact that the ILECs have had access to these data for the Special Access proceeding does not change these timelines. First, under the Protective Order in the Special Access proceeding, no party or expert has been allowed to use these data in this tariff investigation, so analysis of these data for this tariff investigation cannot begin until the ILECs are given access to it for use in this proceeding. The earliest date that the ILECs will have access to the data for use in this proceeding is December 16, 2015.⁷ Second, as explained by the experts in the Special

⁶ See n.4 *infra*.

⁷ The Protective Order in that proceeding has prohibited the ILECs from using those data “in any other administrative, regulatory or judicial proceedings.” Order and Data Collection Protective Order, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, DA 14-1424, Appx. A ¶ 8 (rel. Oct. 1, 2014) (“*Data Collection Protective Order*”). Under the new Protective Orders, parties seeking access to the data must first sign and file acknowledgements that they will abide by the terms of the Protective Orders; once received,

Access proceeding, their 12 week estimate was from the time the data set was stable and all of the tools and software needed to analyze it were available. The earliest that might have occurred was December 3, 2015 (the experts are still assessing), when the Commission's most recent update to the data became available.

Moreover, the time needed to analyze the data – whether the 12 week analysis or the 60 day analysis, as described above – is conservative and at the low end of the necessary time for analysis in the context of this proceeding, because this proceeding will require *additional* analysis of the data set. First, this tariff investigation includes allegations that the ILECs' tariffs have locked in all or most of the CLECs' special access demand. To evaluate this argument, it will be necessary to evaluate the extent to which CLECs purchase services from non-ILECs. This information is available in the data set (albeit, only for 2013), and is not otherwise available to ILECs. Second, this tariff investigation includes allegations about the reasonableness of certain terms and conditions in the ILECs' tariffs. One relevant question therefore is the extent to which such terms and conditions are common in the marketplace. The data set contains information relevant to that question, because it includes non-ILEC data about their use of such terms and conditions in their contracts. Third, the Commission is investigating the reasonableness of the ILEC terms and conditions, and the data set contains justifications of these sorts of terms and conditions made by non-ILECs, which are clearly relevant. Additional time is also needed to account for the upcoming winter holidays and the fact that the experts who are

Staff will then issue a Public Notice identifying the parties that have filed acknowledgements; and parties whose confidential information will be made available will then will have five (5) days to object to any of the listed parties seeking to gain access to their confidential data. *Data Collection Protective Order* ¶ 14. The Bureau issued the new Protective Order on Friday, December 4, 2015. Assuming the ILECs' submit their signed acknowledgements on the next business day, Monday, December 7, 2015 (which they did), the earliest possible day they could access the data for use in this proceeding at this stage is Wednesday, December 16, 2015.

conducting the analysis of the data for the Special Access proceeding (with a current deadline of January 6, 2016) will also have to conduct the analysis here (otherwise even more delay will occur as new experts must become familiar with the data sets).

An extension is also appropriate to avoid other manifest inequities. For example, absent a sufficient extension, ILECs will be denied an opportunity to incorporate their analysis of the data set into their Direct Cases, while their opponents will have at least five weeks to analyze the data and include it in their oppositions to the ILEC Direct Cases. It is no answer to say that the ILECs could submit their analyses of the data at a later date. They will have already missed their opportunity to put their best case forward before oppositions are submitted. It would also waste ILEC and Commission resources to have the ILECs submit their direct cases on December 18, stripped of the benefit of a comprehensive review of the additional data, only to have to provide extensive – potentially entirely new – analysis in their rebuttal cases, which could trigger further oppositions and responses. As the Bureau explained in rejecting a similar approach in the Special Access proceeding, “[a]lthough parties may supplement the record consistent with the Commission’s rules, . . . in this circumstance relying on unscheduled submissions could have the effect of adding further delay if analysis is submitted without deadlines common to all.”⁸

Indeed, the equities here lie entirely in favor of granting the requested extension. The need for an extension was not caused by any action of the ILECs. To the contrary, when this tariff investigation was opened, the ILECs informed the Bureau that the current deadlines were insufficient and that the data set from the Special Access proceeding would have to be made available in this proceeding. And the ILECs timely filed their motion to incorporate the data set

⁸ Special Access Extension Order ¶ 7.

into this proceeding.⁹ It then took the Bureau nearly 45 days to partially grant that motion, at which point only two weeks were left before the ILECs' Direct Cases are due. And further delay has been caused by the fact that the Commission chose to adopt procedures that do not permit prompt access to the data, rather than adopting the ILECs' request simply to modify the protective order in the Special Access proceeding, which would have made the data immediately available to the ILECs upon the Bureau's grant of the motion.

For all of these reasons, fundamental fairness and the requirements of the Administrative Procedure Act, under which the agency must provide both full and complete access to relevant data¹⁰ and sufficient time to review it,¹¹ require the Commission to grant the ILECs' request for a 60 day, if not 12 week, extension of time to submit their Direct Cases.

⁹ Motion of AT&T Inc., Verizon, CenturyLink, and Frontier to Modify Protective Orders, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247 (Oct. 23, 2015).

¹⁰ *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 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”); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 243 (D.C. Cir. 2008) (Tatel, J., concurring) (Commission must disclose redacted portions of the record to petitioners so they could “mount a substantial evidence challenge”).

¹¹ *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”).

Respectfully submitted,

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