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Via ECFS

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

Re: WC Docket No. 05-25; RM-10593
Notice of Ex Parte Communication

Dear Secretary Dortch:

On January 14, 2016, Steve Pitterle of TDS Metrocom, LLC ("TDS-M") and the undersigned spoke via telephone with Deena Shetler and Eric Ralph of the Wireline Competition Bureau's Front Office and David Zesiger, William Layton, Christopher Koves, Joseph Price, Shane Taylor, and William Kehoe of the Bureau's Pricing Policy Division to discuss the importance of addressing wholesale Ethernet prices in the special access rulemaking.

TDS-M is a subsidiary of TDS Telecommunications Corporation ("TDS"). TDS has subsidiaries that operate as incumbent local exchange carriers ("LECs"), a competitive LEC ("CLEC"), and cable companies. As James Butman and Matthew Loch explained in their previously filed declarations in this docket,[1] TDS therefore can draw on years of actual market experience to compare the extent to which ILECs and CLECs can compete for business customers.

TDS-M provides integrated voice and data services to small and medium business customers in second and third tier markets in four primary states. Well over 75% of TDS-M's customers have fewer than 20 employees.[2] Today, while some very small businesses are satisfied with cable best efforts broadband, even TDS-M's smaller business customers prefer symmetrical speeds of 20 Mbps or higher. Although in the past TDS-M successfully served customers using a mix of its own fiber transport and UNE Loops (mostly UNE DS-1s), its ability to continue to provide a competitive option is being threatened because as bandwidth increases, the rate of price

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[1] *See* Letter from Matthew Jones, Counsel for TDS Telecommunications Corporation, to Marlene Dortch, FCC Secretary, attaching Declaration of James Butman, (filed March 26, 2015) ("*Butman Declaration*"); Letter from Matthew Jones, Counsel for TDS Telecommunications Corporation to Marlene Dortch, FCC Secretary, attaching Declaration of Matthew Loch (filed June 22, 2015) ("*Loch Declaration*").
[2] Butman Declaration, ¶ 15.

increase drops for Ethernet but continues to climb linearly for TDM-based services.[3] As Matthew Loch previously explained in his declaration, TDS-M's recent fiber deployment trial fell well below the standards of a viable business case and TDS-M has been unable to find a second workable target location for a fiber deployment trial.[4] The competition for Ethernet services in the limited areas where cable companies offer Ethernet has driven down retail prices further such that, while already uneconomical for TDS-M to build fiber to most business premises with predominantly just the RBOCs operating in the market, it is even less possible for TDS-M to compete in markets with an RBOC/cable duopoly except in very limited situations where a customer is seeking higher bandwidth speeds, is located close to TDS-M's existing fiber, and strongly prefers TDS-M as its vendor.

Although TDS-M has attempted to serve customers using RBOC's wholesale Ethernet loops, this approach for most of TDS-M's potential or existing business is also an uneconomic solution because wholesale Ethernet rates from the RBOCs are notably higher than the RBOCs' retail Ethernet rates.[5] In short, TDS-M is facing an extreme price squeeze that does not allow it to compete in today's retail market.

Even if the Commission were to take action in this proceeding to reduce the price cap rate for a special access DS-3, it likely could not reduce the rate enough to make it a viable wholesale input to compete with a comparable retail 50 Mbps Ethernet product and it likely would not be sufficient to set special access rates low enough to compete with 100 Mbps to 1 Gbps Ethernet retail rates either. Merely adjusting price caps for TDM special access inputs will not be enough to permit competition in the markets and for the customers TDS-M serves. As the Commission noted in the *Tech Transitions Order*, to the extent that the cost of packet-based wholesale services are unreasonably high, a CLEC may not be able to absorb the "cost of the wholesale inputs without losing customers or losing revenue and potentially exiting the market, to the detriment of its customers and the public they serve."[6] TDS-M argued that because ***this price squeeze exists whether or not the RBOC discontinues its TDM service***, the Commission should take action in this docket to ensure CLECs have access to wholesale inputs to provide competitive retail service at bandwidth speeds where self-deployment is not economical, which in TDS-M's experience is 20-1000 Mbps.

Assuming, arguendo, that the RBOCs' current Ethernet services qualify for forbearance,[7] a proposition with which TDS does not agree, all such services remain subject to Section 201/202

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[3] Once a carrier has deployed Ethernet capability, it incurs little cost to increase bandwidth from 10 Mbps up to 1 Gbps. This can be contrasted with TDM, which requires substantial costs, including electronics, to upgrade to higher bandwidths.
[4] Loch Declaration, ¶ 4.
[5] TDS-M is very seldom able to obtain DS-3s as UNEs, which could in theory provide 45 Mbps of bandwidth if they were available. *See* Loch Declaration, ¶ 7. To deliver a UNE DS-3, an RBOC must have an existing OCn facility that has a DS-3 vacancy. If an OCn facility is not deployed, or if a deployed facility is exhausted, the RBOC will only provide a DS-3 at the special access rate.
[6] *Technology Transitions et al.,* Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9447, ¶ 136 (2015) ("*Technology Transitions Order*").
[7] *See* Letter from Karen Reidy, INCOMPAS to Marlene Dortch, FCC Secretary, (filed Dec. 1, 2015).

requirements that rates be just and reasonable.[8] Because a RBOC should avoid costs by selling an Ethernet loop at wholesale to TDS-M, a wholesale Ethernet loop logically should be priced lower than a retail Ethernet service. The Commission therefore should require pricing disclosures to better detect unjust and unreasonable pricing of wholesale Ethernet services and establish a benchmark that, at the very least, constrains wholesale Ethernet rates to be less than retail Ethernet rates by some measure that approximates actual avoided costs.

TDS-M looks forward to working with the Commission to preserve the benefits that competition brings to consumers, "which can include lower prices, higher output, and increased innovation and quality."[9] Please direct any questions to the undersigned.

Respectfully Submitted,

/s/ Tamar E. Finn

Tamar E. Finn

Counsel for TDS Metrocom, LLC

cc: Deena Shetler
Eric Ralph
David Zesiger
William Layton
Christopher Koves
Joseph Price
Shane Taylor
William Kehoe
Steve Pitterle

[8] See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18726, 18736-38, ¶¶ 35-36, 65-68 (2007).

[9] *Technology Transitions Order et al*, 30 FCC Rcd at 9372, 9427, ¶ 101.