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REDACTED - FOR PUBLIC INSPECTION

February 16, 2016

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 February 11, 2016, James Butman, Group President for TDS Telecommunications Corporation ("TDS"), Steven Pitterle, Manager, Carrier Relations of TDS Metrocom, LLC ("TDS Metrocom"), and the undersigned met with Wireline Competition Bureau Staff to discuss issues in the pending special access rulemaking. The following Staff attended the meeting: Pamela Arluk, William Kehoe, Chris Koves, William Layton, Virginia Metallo, Thomas Parisi, Joseph Price, Eric Ralph, Shane Taylor, Deena Shetler, and David Zesiger.

Mr. Butman explained TDS's experience as an incumbent LEC, a competitive LEC, and a cable provider, focusing on the impact regulatory uncertainty has had on TDS Metrocom's ("TDS CLEC's") ability to offer small and medium business customers in second and third tier markets a competitive option for broadband and voice services. TDS CLEC used a highly confidential map[1] of its fiber facilities and on-net customers in the Madison, Wisconsin market to discuss how its network was designed and built and whether it can add fiber laterals to serve new customers. TDS CLEC explained why the existence of a fiber ring transport facility in a census block does not mean it has the potential to compete for dedicated service customers in that census block. For example,

[1] The map is redacted in its entirety from the public filing of this ex parte.

TDS CLEC designed its fiber rings to pass RBOC Central Offices to aggregate traffic from UNE Loop-based service delivered to TDS CLEC collocation cages. TDS CLEC explained that it tries to minimize splice points in its fiber ring because too many splice points ruin fiber quality and degrade the integrity of the network. TDS CLEC explained that it measures the distance between a potential customer and a splice point on its ring, which often may not be in the same census block as the potential customer, and uses a pricing tool to estimate the cost of a fiber build and determine whether a build might be economically justified given the customer bandwidth demand. TDS CLEC noted that although it has been in the Madison market nearly 20 years and its corporate headquarters are in Madison, its number of fiber lateral builds is minimal relative to the overall number of businesses in the area. In fact, its TDS CLEC business market share has declined in the past eight years and it is increasingly unable to compete with the RBOC given the current regulatory environment in which RBOCs price wholesale Ethernet services above retail rates for the same service. TDS CLEC also noted that two competitive carriers that formerly served the Madison market no longer compete there.

Mr. Butman compared and contrasted TDS CLEC's and TDS Cable's network designs, services offered to business customers, churn rates, and types of customers. The participants discussed additional information TDS is developing to add to the record regarding this comparison.

Consistent with the points in the attached handout, TDS Metrocom urged the Commission to adopt rules to ensure nondiscriminatory rates for wholesale Ethernet services.

Respectfully Submitted,

/s/ Tamar E. Finn

Tamar E. Finn

Counsel for TDS Metrocom, LLC

Attachments

cc: Pamela Arluk
William Kehoe
Chris Koves
William Layton
Virginia Metallo
Thomas Parisi
Joseph Price
Eric Ralph
Shane Taylor
Deena Shetler
David Zesiger

ATTACHMENT REDACTED IN ITS ENTIRETY

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TDS Metrocom's (TDS CLEC's) View of the Current Ethernet Market

Three or more facilities-based, fixed broadband providers are needed to bring most of the benefits of competition to Small and Medium Business ("SMB") customers.

- The Commission should promote competition to bring customers lower prices, higher output, increased innovation, service quality, and additional investment in fiber facilities.
- A duopoly is not sufficient to ensure just and reasonable rates and practices.
- Actual and/or potential competition in one or a few buildings within a census block does not justify price deregulation throughout the census block or any larger area.

A competitor's fiber ring in a census block does not show actual or potential competition.

- CLEC declarations show that even short fiber builds may not be economically viable.
- It is not always technically or economically efficient to extend a lateral at the nearest point on a fiber ring. The best point to begin laterals may be distant from the census block where the customer is located, making the cost of building the lateral prohibitive.
- TDS CLEC has explored, without success, numerous alternatives to extend laterals from its transport network to customer locations, including fiber builds to RBOC remote terminals (sub loop unbundling), Ethernet over copper, and fixed wireless (licensed and unlicensed). Fiber to the premise builds have only been economically feasible in a limited number of instances.
- Incumbents have significant fiber build cost advantages over competitors, including ubiquitous networks that are closer to customers, existing rights-of-way and attachments, free access to buildings, and a larger customer base over which to spread the costs of deployment.

TDM and best efforts broadband/Ethernet are not adequate substitutes for dedicated Ethernet.

- Ethernet offers price and non-price advantages over TDM, including nearly limitless bandwidth and enabling cloud technology, video conferencing and other applications.
- Most SMB customers that want 10 Mbps or higher speeds prefer guaranteed network availability, preferably over fiber, and the ability to prioritize voice over data, which best efforts cable broadband/Ethernet cannot offer.
- Ethernet price advantage over TDM is significant at 10 Mbps and overwhelming at higher speeds.

Competitors need reasonable wholesale access to offer service to multi-location customers.

- Multi-location customers strongly prefer "one-stop shopping."
- A competitor's inability to build economically to nearly all of the customer's locations dooms competition for these customers (including those that the competition can service on its own facilities) unless the Commission maintains reasonably priced wholesale access to RBOC last mile facilities.

RBOCs' wholesale Ethernet price often exceeds their retail price for the same service.

- TDS CLEC's customers have advised TDS they were quoted retail rates by the RBOCs that are substantially lower than the RBOC's wholesale rate to TDS.

- This price squeeze exists whether or not the RBOC discontinues TDM service in the same market.
- Competitors who must pay above-retail rates for wholesale inputs cannot apply competitive pressure on the RBOCs' retail rates.

The guarantee of non-discriminatory wholesale access applies to RBOC Ethernet services.

- TDS CLEC agrees with INCOMPAS that not all RBOCs' current Ethernet services qualify for forbearance. Assuming, arguendo, an Ethernet service qualifies, it still remains subject to Sections 201/202 non-discrimination requirements.
- In contrast to MSA-wide TDM pricing, an RBOC has charged TDS CLEC higher wholesale rates for the same basic Ethernet service offering in the same market where competitive providers did not serve the customer's building.
- Section 202(a) requires that like services can only be priced differently if justified by material differences in cost, service quality, or network functions/architecture.
- Rates for the same service should not vary based on whether a competitor serves the same customer's building.

TDS CLEC's Request for Relief

The FCC should cap RBOC wholesale Ethernet rate at retail rate less avoided cost.

- Packet-based services are included in the scope of the FCC's market analysis to determine whether current special access regulations help or hinder just and reasonable special access prices.
- The FCC has used its Section 201 rulemaking authority to establish rate caps for subscriber line charges, CLEC access charges, and intercarrier compensation charges (bill-and-keep).
- A rulemaking satisfies the Section 205 hearing requirement.
- RBOCs avoid costs when offering Ethernet service at wholesale, which should be reflected in wholesale rates. Based on state PUC cost studies for POTS service in TDS Metrocom states, avoided costs range from 17% to 25%.

The FCC should require disclosure of RBOC retail Ethernet rates to deter discrimination.

- RBOCs already file (under Section 211(a)) or post certain commercial carrier agreements.
- The confidentiality provisions in wholesale and retail Ethernet contracts impede the Commission's ability to (1) review up-to-date information about Ethernet pricing and (2) detect discrimination.
- The Commission should adopt a contract filing or website posting requirement for RBOC retail Ethernet contracts to require pricing disclosures that deter unlawful discrimination without being unduly burdensome.