

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Special Access Rates 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 Services)	RM-10593
_____)	

**MOTION OF AT&T INC.
TO MAKE FIBER MAPS AVAILABLE**

Pursuant to 47 C.F.R. § 1.41, AT&T Inc. (“AT&T”) submits this motion to permit the parties to gain access to the highly confidential fiber route maps that were submitted in response to the Commission’s data collection effort (“data collection”) in the special access rulemaking proceeding.¹

The inability to obtain full and timely access to the data collection continues to plague these proceedings. The Commission has collected the most extensive set of data on the special access marketplace in the agency’s history, but the Commission’s unreasonably compressed schedule of comments and reply comments has already necessitated multiple industry motions, Commission extensions of time, and a variety of other on-the-fly accommodations as the parties

¹ Report and Order and Further Notice of Proposed Rulemaking, *Special Access for Price Cap Local Exchange Carriers*, 27 FCC Rcd 16318 (Wireline Comp. Bur. 2012) (“*Data Collection Order*”); see also Report and Order, *Special Access for Price Cap Local Exchange Carriers*, 28 FCC Rcd 13189 (Wireline Comp. Bur. 2013) (“*Implementation Order*”); Order on Reconsideration, *Special Access for Price Cap Local Exchange Carriers*, 29 FCC Rcd 10899 (Wireline Comp. Bur. 2014) (“*Reconsideration Order*”); Order, *Special Access for Price Cap Local Exchange Carriers*, 29 FCC Rcd 14346 (Wireline Comp. Bur. 2014) (“*Extension Order*”).

struggle to perform extraordinarily complex analyses of constantly changing data remotely through the Data Enclave.

The comments, in turn, have made clear that the Commission's restrictions on access to certain types of data via the Data Enclave have further compromised the parties' ability to perform the sorts of analyses that researchers would typically pursue when addressing the competitive issues presented here. One such restriction in particular can no longer be ignored: the Commission's blanket refusal to permit the parties to see and analyze the detailed fiber route maps that each competitor submitted in this proceeding (and to which the Commission alone has access). AT&T believes that these data would confirm what the census block data that is available already show – that special access competition is ubiquitous in the areas where there is special access demand. But in light of the CLECs' insistence that competition exists only in buildings they already serve, the Commission should immediately permit all parties to gain access to the detailed fiber route maps, consistent with the highly confidential designations of such maps in the applicable protective orders, so that these claims can be fully vetted.² The Commission would violate the Administrative Procedure Act if it were to accept these extreme CLEC claims while withholding access to the maps in its possession that would allow the ILECs to show where the CLECs have actually deployed fiber.³

² Order and Data Collection Protective Order, *Special Access for Price Cap Local Exchange Carriers*, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014) (“*Data Collection Protective Order*”); Second Protective Order, *Special Access for Price Cap Local Exchange Carriers*, 25 FCC Rcd 17725 (Wireline Comp. Bur. 2010) (“*Second Protective Order*”); Modified Protective Order, *Special Access for Price Cap Local Exchange Carriers*, 25 FCC Rcd 15168 (Wireline Comp. Bur. 2010) (“*Modified Protective Order*”).

³ *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973) (“It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 (D.C. Cir. 1977) (agency must “disclose in detail . . . the data

In the special access rulemaking proceeding, the Commission “require[d] providers and purchasers of special access service and certain other services to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market.”⁴ These data collection requests sought detailed information on the nature and location of each competitor’s fiber network, because the central question in this rulemaking proceeding is whether the Commission’s pricing flexibility “triggers” have been accurate predictors of where competitors have deployed alternative networks that are in position to compete for special access customers. To that end, the data collection went right to the heart of the issue: it required all competitors, including cable company competitors, to submit detailed route maps of their fiber networks, which would allow the Commission and interested parties to tell *exactly* where competitors (as of 2013, at least) had deployed alternative networks and how close those networks were to the existing demand.⁵

When it came time to give the parties access to the data collection, however, the Commission balked at providing access to the fiber route maps. Citing concern about “risks to critical infrastructure,” the Commission refused to provide access to the actual maps, but instead provided a table that identifies each census block that contains competing fiber facilities

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”).

⁴ *Data Collection Order* ¶ 13.

⁵ Order and Modified Data Collection Protective Order, *Special Access for Price Cap Local Exchange Carriers*, 30 FCC Rcd 10027 (Wireline Comp. Bur. 2015) ¶ 25 (“*September 2015 Protective Order*”) (“Competitive providers of dedicated services were required to report fiber network maps as well as interconnection nodes to help the Commission identify facilities that can or could be used to provide dedicated services and the sources of demand for dedicated service.”).

deployed by competitive providers, including both CLECs and cable companies.⁶ Because of these Commission restrictions, the parties can analyze competitive deployment of fiber networks at the census block level, but cannot determine the precise locations within a census block in which competitive fiber exists.

As AT&T has explained, the census block data provide compelling evidence that the existing pricing flexibility triggers are under-inclusive, not over-inclusive, as the CLECs maintain. In particular, these data show that competitors have deployed their own competitive facilities in the vast majority of census blocks nationwide that contain special access demand, and that those census blocks, in turn, account for virtually all of the total special access connections and business establishments.⁷ The average size of census blocks in MSAs with demand for special access services is only about one seventh of a square mile, and the median is about 0.02 square miles, and that means CLECs are in position to compete for virtually all special access demand, because most census blocks are smaller than the maximum distance to

⁶ Order, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, at ¶ 13 n.25 (rel. Dec. 21, 2015) (“*December 2015 Protective Order*”) (“The Bureau did commit to providing a table showing census blocks where a competitive provider has reported having fiber. This table is an alternative to the provision of electronic maps showing fiber routes. The Bureau chose this alternative approach to mitigate risks to critical infrastructure.”); see also *September 2015 Protective Order* ¶ 25 (“Providing the exact locations of fiber routes and interconnecting nodes might pose risks to critical infrastructure.”); Mark Israel, Daniel Rubinfeld & Glenn Woroch, “Competitive Analysis of the FCC’s Special Access Data Collection,” WC Docket No. 05-25, at 11-12 (Jan. 27, 2016) (“Israel-Rubinfeld-Woroch Analysis”) (“Question II.A.5 requests the route maps of the competitive providers’ fiber networks. For the protection of confidentiality, the Commission translated those maps into a collection of census blocks that are transected by a route of a fiber network submitted for this question.”).

⁷ Israel-Rubinfeld-Woroch Analysis at 5-6, 16-17, 20-22.

which the CLECs themselves have claimed they will build laterals.⁸ Thus, the census block data provides a conservative confirmation that competition is essentially ubiquitous.⁹

Yet even as multiple CLECs have filed sworn testimony conceding the obvious, that they do in fact extend laterals from their networks within specified radii that are larger than the typical census block with special access demand,¹⁰ they persist in arguing that only their building connections, and not their fiber networks, are relevant to an assessment of competition. In other words, they want the Commission to systematically ignore facilities-based competition that is documented by these fiber maps, which have, to date, been withheld from the ILECs.¹¹ It should go without saying that the Commission may not lawfully credit the CLEC arguments while

⁸ *See id.* at 4, 11.

⁹ *Id.* at 12 (“We note that access to the original route maps could have provided an even more granular depiction of competitive activity. Nonetheless, for the reasons stated above, the census block data provided by the Commission is sufficient to allow us to ascertain competition at the census block level.”). Indeed, with respect to evaluating AT&T’s showings at the census block level, the Commission has already indicated that such level of detail should be sufficient to analyze competition in the marketplace. *See September 2015 Protective Order* ¶ 26 (“Providing information at this level of detail will not materially impair the ability of reviewing parties to analyze the data and participate in the special access proceeding. While this information may be valuable to test various measures of the presence of competition, the information in the format provided through the SDE is sufficient to conduct such an analysis. In particular, we find it is implausible that a measure of competition that could be reasonably applied across all price cap territories could depend on more granular data than what we plan to release to the reviewing parties. On balance, this approach best serves the public interest.”).

¹⁰ Declaration of Michael Chambless ¶¶ 26-28, attached to the Comments of XO Communications, LLC on the Further Notice of Proposed Rulemaking, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Jan. 27, 2016); Declaration of Dan Deem, Douglas Derstine, Mike Kozlowski, Arthur Nichols, Joe Scattareggia, and Drew Smith ¶ 51, attached as Attachment A to the Comments of Windstream Services, LLC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Jan. 28, 2016) (“Windstream Comments”).

¹¹ Comments of Sprint Corporation, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, at 21-25 (Jan. 27, 2016); Windstream Comments, at 30-48; Comments of Birch, BT Americas, EarthLink, and Level 3, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, at 28-33 (Jan. 27, 2016).

withholding from ILECs the very maps that could – and, we believe, do – discredit them.¹² Nor can the Commission rely on its own analysis of these fiber maps without sharing the underlying data with parties. To do so would be unlawful and a mockery of the most basic principles of openness and transparency in Government processes.¹³ The Commission and its staff have full access to the fiber route data maps and are not hamstrung, as the commenting public is, by having to work through the Data Enclave. Moreover, the Commission has made clear that it is conducting its own analyses,¹⁴ but the black-box nature of those analyses, and whether and to what extent the Commission’s examination of the fiber route maps may have played a role in its conclusions, will infect any order adopting new regulations if the Commission keeps the actual route maps secret from the commenters.¹⁵

¹² *Portland Cement Ass’n*, 486 F.2d at 393 (D.C. Cir. 1973) (“It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency.”); *Home Box Office*, 567 F.2d at 35 (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”); *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009) (“The opportunity for comment must be a meaningful opportunity[.]”).

¹³ *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 243 (D.C. Cir. 2008) (Tatel, J., concurring) (stating the Commission must disclose redacted portions of the record to petitioners so they could “mount a substantial evidence challenge”); *Air Trans. Ass’n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) (“But even in the informal rulemaking context, we have cautioned that 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.” (emphasis omitted)).

¹⁴ Indeed, without direct access to the fiber route maps, the parties have no way of checking to see whether the Commission’s own translation of the route map information to the tables it has provided is accurate.

¹⁵ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449 (3d Cir. 2011) (APA requires agency “to ensure that agency regulations are tested via exposure to diverse public comment” and “to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review” (quoting *Int’l Union, United Mine Workers of Am. v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005))); *Portland Cement Ass’n*, 486 F.2d at 393 (D.C. Cir. 1973); *Home Box Office*, 567 F.2d at 35.

Thus, unless the Commission is already prepared to reject the CLECs' arguments based on the census block data, access to the fiber route maps is necessary to allow parties to supplement the record evidence refuting the CLECs' argument that their fiber facilities are generally so far away from buildings with special access demand that the Commission should assume that CLECs cannot compete for customers in buildings unless they have already extended laterals. The actual fiber route maps would allow the parties to determine precisely how many locations with special access demand are within the CLECs' own stated distances for lateral build-out from their fiber facilities.

Access to the fiber route maps would also enable parties to calculate the full reach of each competitor's network, which would likely demonstrate that competition is more extensive than can be gleaned from the summary tables provided by the Commission. As noted, census blocks are small – sometimes as small as a single city block – and in many cases, a CLEC's fiber facility located in one census block will be very close to locations located in adjacent census blocks. Thus, for example, the Commission's current tables might show three adjacent census blocks each containing one fiber competitor, but the actual fiber route maps might allow the parties to confirm that all three competitors are within range to serve most or even all of the buildings in all three census blocks.

There is no sound basis to prevent access to these maps, which are Highly Confidential and thus would be subject to the strictest limitations of the applicable protective orders. The Commission routinely issues protective orders under which the proper individuals are allowed to review maps of network facilities without any additional aggregation or masking of the data.¹⁶

¹⁶ See, e.g., *Sprint-Shentel-NTELOS Transaction*, 30 FCC Rcd 12694, 12702 (2015) (authorizing the release of Highly Confidential information to individuals admitted to the protective order, including, and defining Highly Confidential information to include, among other things,

In these cases, the Commission has treated the standard terms of the protective orders regarding Highly Confidential data, as well as the Commission's vigorous enforcement, as sufficient protection for any network facilities maps that the parties might submit during the proceeding. The Commission already makes very detailed data regarding broadband facilities available on the National Broadband Map website,¹⁷ and third party vendors offer subscription services that provide detailed fiber location data as well. The Commission has not offered any reason why the facilities maps here would present different issues, especially any issue that would outweigh the public interest in gaining access to these maps, considering that the location of competitive networks is the principal issue in this proceeding.

In short, the Commission has no grounds for continuing to withhold access to these maps. The Commission has expressly invited motions like this one where appropriate,¹⁸ and the Commission should now make the fiber route maps available.

CONCLUSION

The Commission should make the fiber route maps available to the parties, subject to the applicable protective orders in the above-captioned proceedings.

“information about specific facilities, including collocation sites, cell sites, or maps of network facilities”); *Application of The Alaska Wireless Network, LLC & T-Mobile License LLC*, 30 FCC Rcd 12509, 12516 (2015) (same); *Application of New Cingular Wireless PCS, LLC & Farmers Telecommunications Corp.*, 30 FCC Rcd 12533, 12540 (2015) (same); *Application of USCOC of Central Illinois, LLC & Adams Telecom, Inc.*, 30 FCC Rcd 12471, 12479 (2015) (same); *Applications Filed by Qwest Communications Int'l, Inc.*, 25 FCC Rcd 15238, 15240 (2010) (same).

¹⁷ See, e.g., National Broadband Map Website, <http://www.broadbandmap.gov/technology>.

¹⁸ *September 2015 Protective Order* ¶ 26 n.99 (“We will, however, entertain requests for the data to be reproduced in a different format, so long as the format does not heighten risks to critical infrastructure, and a valid case is made that such information could provide valuable insights to this proceeding that are unlikely to be obtained from the data in the form we release.”).

Respectfully submitted,

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