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Accepted/Files

April 4, 2016

APR - 4 2016

VIA HAND DELIVERY & ECFS

Federal Communications Commission
Office of the Secretary

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

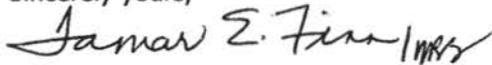
Re: In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593
Notice of Ex Parte Communication

Dear Ms. Dortch:

On behalf of TDS Metrocom, LLC ("TDS CLEC"), enclosed for filing are two (2) copies of the redacted version of a Notice of Ex Parte Communication and attachment for association with the above-captioned proceedings. The filing contains information that has been marked "REDACTED - FOR PUBLIC INSPECTION" in accordance with the Protective Orders issued in this proceeding.¹

Please date-stamp and return the enclosed extra copy of this filing. Any questions relating to this submission should be directed to the undersigned.

Sincerely yours,



Tamar E. Finn
Counsel for TDS Metrocom, LLC

Enclosure

No. of Copies rec'd 042
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¹ *In re Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 25 FCC Rcd 17725, Second Protective Order, (2010) ("Second Protective Order"); *In re Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 29 FCC Rcd 11657, Order and Data Collection Protective Order, (2014) ("Data Collection Order")

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

Dear Ms. Dortch:

On March 31, 2016, Matthew Loch, Vice President Sales for TDS Telecommunications Corporation ("TDS"), Steven Pitterle, Manager, Carrier Relations of TDS Metrocom, LLC ("TDS CLEC"), 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, Robin Cohn, William Kehoe, Christopher Koves, William Layton, Thomas Parisi, Joseph Price, Eric Ralph and Shane Taylor.

TDS CLEC reiterated that it does not suggest that the Commission set prices for retail Ethernet service. Wholesale prices should be set by reference to the retail prices that RBOCs establish. The Commission should confirm that the wholesale Ethernet rate RBOCs offer to CLECs must be priced below their retail rate for the same or similar service by the amount of the avoided cost discount for business services applicable in the relevant state.

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TDS CLEC reiterated the importance of competitive carriers and the Commission having access to RBOC retail rates to detect and deter discrimination against wholesale customers. TDS CLEC understands that current, retail rates offered by RBOCs may be readily available to RBOC agents, but not to CLECs or the FCC. The RBOCs maintain web-based portals for agents that contain product information, service availability and current, standard, retail pricing for products including Ethernet service.¹ RBOCs pay such agents commissions² in consideration for their marketing and sales efforts, which recognizes that the RBOC avoids certain costs when others (agents or competitive carriers) sell the RBOC's service.

Mr. Loch explained that offering wholesale customers a discount off retail rates is standard practice within the telecommunications industry (and others). TDS CLEC sells similar services (e.g., TDM and Ethernet transport) to both retail and wholesale (carrier) customers and routinely provides a lower, discounted price to wholesale (carrier) customers. For example, it offers T-1 service to wholesale (carrier) customers at a discount of approximately [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] off TDS CLEC's retail T-1 service rate. This is customary and necessary to earn business from wholesale (carrier) customers. The discount is in consideration for the responsibilities and costs assumed by the wholesale (carrier) customer. However, in TDS CLEC's experience, the RBOCs do not follow this standard industry practice for wholesale Ethernet services. As shown in the Fourth Declaration of Matthew J. Loch, AT&T's average wholesale Ethernet rates for 10 Mbps, 20 Mbps, and 50 Mbps bandwidths are [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]³ respectively of AT&T's retail rates for the same or similar service.

TDS CLEC explained that actual and potential competition must be measured from existing competitive networks, not hypothetical networks or traditional incumbent LEC network design. In the Madison, Wisconsin market in which TDS CLEC has most aggressively constructed laterals to reach customers, the average length of a lateral is [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL].⁴ Across all TDS CLEC markets, approximately two-thirds of its on-net builds are less than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] from the splice point and approximately 95% of its on-net builds are less than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] from the

¹ See <http://accbusiness.com/private-network-transport/ethernet-access-to-pnt/>.

² See <http://accbusiness.com/for-agents/> (explaining that AT&T's agent program includes "Attractive, timely commissions paid on billed revenue").

³ Fourth Declaration of Matthew J. Loch, ¶ 5 ("Loch Fourth Declaration").

⁴ Loch Fourth Declaration, ¶ 7.

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splice point.⁵ Mr. Loch explained that in TDS CLEC's fiber build trial in the Fox Valley region of Wisconsin, even though it had customers that committed prior to the build to order up to [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [BEGIN HIGHLY CONFIDENTIAL] of service, the trial nevertheless generated a "modest" profit that "was well below the standards of a viable business case."⁶

TDS CLEC's experience with cable MSOs as an option for reaching some of its small and medium business ("SMB") customers that may be candidates for best efforts cable modem service over hybrid fiber coax ("HFC") shows cable networks are not nearly as ubiquitous as RBOC last mile facilities. TDS CLEC purchases and resells [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] HFC to meet the needs of smaller customers who will accept best efforts service in metropolitan markets in Illinois, Michigan and Minnesota. TDS CLEC recently completed a survey of HFC availability in these markets and found that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] had last mile (HFC) facilities already built to only [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of TDS CLEC's existing and potential customer locations. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] offers TDS CLEC HFC broadband service on a resale basis at or below their currently-advertised retail price. In contrast, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]
[END HIGHLY CONFIDENTIAL] which are typically TDS CLEC's best markets. Therefore at best a duopoly is all that exists for dedicated last mile services for the vast majority of business customers in Madison but cable does not have on net facilities in all business locations (as demonstrated in the attached chart), so AT&T is often the lone provider of dedicated last mile service.

TDS CLEC also explained the attached Highly Confidential Madison Market Share handout as described in Mr. Loch's Fourth Declaration, paragraphs 9-11. As of the third quarter 2015, although TDS CLEC's Madison market share was approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of all Madison market business customers, most of this market share relies on RBOC last mile facilities. TDS CLEC's business customer market share using its own, on-net last mile facilities was approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL]. The market share data TDS CLEC receives does not permit Mr. Loch to determine what percentage of the cable market share is attributable to best efforts

⁵ *Id.*

⁶ *Id.*

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Internet or Ethernet over hybrid fiber coax (both best efforts service) versus dedicated Ethernet over fiber. He therefore estimated cable's market share for dedicated services by conservatively assuming that cable has built fiber to the same percentage of customers as TDS CLEC, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of served customers. Mr. Loch explained this is also consistent with TDS Cable, which serves approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of its business customers on fiber connections rather than HFC. Cable's Madison business customer market share based on estimated dedicated fiber is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of businesses overall in Madison. In contrast, AT&T's Madison retail and wholesale business customer market share based on its estimated control of the last mile is [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] of businesses overall in Madison. This shows that no matter how AT&T attempts to portray its losses to cable, AT&T still has considerable market power in the Madison business market for last mile access to provided dedicated service.

Consistent with its comments, TDS CLEC asked the Commission to reiterate that RBOCs must comply with the longstanding requirements of Sections 201, 202(a), 251(b), 251(c)(4), the Commission's 1998 and 1999 *Advanced Services Orders* and Rule 51.605(d) by offering Ethernet, an advanced telecommunications service, upon CLEC request at a wholesale, avoided cost discount below the rate offered to the RBOCs' retail customers for the same or similar service. Without the availability of wholesale Ethernet last mile access priced below RBOC retail (reflecting avoided costs), TDS CLEC will not be able to offer a competitive choice to business customers in its markets such that the only providers in some cases would be the duopoly of RBOC and Cable providers or, in the majority of cases, only the RBOC.

Respectfully Submitted,

/s/ Tamar E. Finn

Tamar E. Finn

Counsel for TDS Metrocom, LLC

Attachment

cc: Christopher Koves
Marvin Sacks
Pamela Arluk (Redacted Version)
Robin Cohn (Redacted Version)

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William Kehoe (Redacted Version)
William Layton (Redacted Version)
Thomas Parisi (Redacted Version)
Joseph Price (Redacted Version)
Eric Ralph (Redacted Version)
Shane Taylor (Redacted Version)
Steve Pitterle
Matthew Loch

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ATTACHMENT

