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April 20, 2016

Marlene H. Dortch  
 Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, SW  
 Washington, D.C. 20554

**Re: Special Access, WC Docket No. 05-25**

Dear Ms. Dortch:

On April 18, 2016, representatives of the American Cable Association (ACA), National Cable & Telecommunications Association (NCTA), and various cable operators met with Commission staff to discuss the above-referenced proceeding. The following people participated in the meeting:

FCC Representatives

Gigi Sohn	Chairman’s Office
Stephanie Weiner	Chairman’s Office
Jonathan Sallet	OGC
William Dever	OGC
Matt DelNero	WCB
Eric Ralph	WCB
Deena Shetler	WCB
Kristine Fargotstein	WCB

Cable Representatives

Ross Lieberman	ACA
Tom Cohen	Counsel to ACA
Jennifer McKee	NCTA
Steve Morris	NCTA
Michael Pryor	Counsel to NCTA
Mary McManus	Comcast
Terri Natoli	Time Warner Cable
Jennifer Prime*	Cox
Christi Barnhart*	Charter
Emmett O’Keefe*	Cablevision

\* by phone

The Cable Representatives expressed concern that the Commission is considering changes to the pro-competitive policies applicable to cable operators and other facilities-based competitors in the business data services marketplace under the proposed item circulated by Chairman Wheeler. Four decades ago the Commission established a highly streamlined regulatory regime for facilities-based competitive providers<sup>1</sup> and nothing in the record of this long-running proceeding remotely supports reversal of that policy. To the contrary, the record is clear that the current regulatory regime has enabled cable operators to invest billions of dollars in

<sup>1</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1 (1980).

new facilities to serve business customers, thereby enabling thousands of businesses to receive improved services and lower prices than they were able to obtain from other providers. Significant changes in that regulatory regime jeopardize the progress that cable is making in this marketplace and the substantial benefits that progress has delivered to consumers.

In particular, the Cable Representatives explained that rate regulation of competitive providers not only would be an unwarranted departure from the current streamlined regime, but it also would be counterproductive because it would reduce the incentive and the ability of competitors to continue investing in new facilities. In the context of broadband Internet access services (BIAS), Chairman Wheeler has consistently recognized the harmful effect that rate regulation can have on investment incentives and, for that reason, the Commission explicitly forbore from any *ex ante* rate regulation of those services.<sup>2</sup> The Cable Representatives explained that any imposition of rate regulation on their business data services would have precisely the same effects the Commission sought to avoid in the *Open Internet Order*.<sup>3</sup>

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris

cc: G. Sohn  
S. Weiner  
J. Sallet  
W. Dever  
M. DelNero  
E. Ralph  
D. Shetler  
K. Fargotstein

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<sup>2</sup> See, e.g., *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601 (2015), Statement of Chairman Tom Wheeler at 2 (“We also ensure that network operators continue to have the incentives they need to invest in their networks. Let me be clear, the FCC will not impose ‘utility style’ regulation. We forbear from sections of Title II that pose a meaningful threat to network investment . . . That means no rate regulation, no filing of tariffs, and no network unbundling.”); see also Letter from Chairman Wheeler to Chairman Fred Upton, House Committee on Energy and Commerce (Mar. 14, 2016) (“In the Open Internet Order, the Commission ‘expressly eschew[ed] the future use of prescriptive, industry-wide rate regulation.’ That is the law of the land. We achieved that goal by forbearing from the elements of the Communications Act that require prescriptive, industry-wide rate regulation – sections 203, 204, and 205. To the extent sections 201 and 202 could be read to allow the Commission to implement *ex ante* rate regulation, we forbore from those provisions too.”).

<sup>3</sup> As just one example, NCTA previously has explained that rate regulation would diminish the incentives of facilities-based providers to invest in new fiber for wireless backhaul services that will be needed if the U.S. is to play a leading role in the deployment of 5G wireless services. Letter from Steven F. Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25, at 3 (Apr. 13, 2016).