



National Cable & Telecommunications Association
25 Massachusetts Avenue, NW – Suite 100
Washington, DC 20001
(202) 222-2300

www.ncta.com

Steven F. Morris
Vice President and Associate General Counsel

(202) 222-2454
(202) 222-2446 Fax

April 21, 2016

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

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

Dear Ms. Dortch:

On April 19, 2016, Jennifer McKee and Steve Morris of the National Cable & Telecommunications Association (NCTA) met with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel, and Nick Degani, Legal Advisor to Commissioner Pai, to discuss the above-referenced proceeding.

NCTA 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 providers¹ 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 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, NCTA 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*

¹ *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).

Ms. Marlene H. Dortch

April 21, 2016

Page 2

ante rate regulation of those services.² NCTA explained that any imposition of rate regulation on business data services offered by cable operators would have precisely the same effects the Commission sought to avoid in the *Open Internet Order*.³

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: T. Litman
N. Degani

² 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.”).

³ 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).