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April 21, 2016

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing of the American Cable Association on Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, and AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593

Dear Ms. Dortch:

On April 19, 2016, Ross Lieberman, Senior Vice President of Government Affairs, American Cable Association (“ACA”), and the undersigned, Thomas Cohen, Kelley Drye & Warren LLP, Counsel to ACA, met with Rebekah Goodheart, Legal Advisor, Wireline, to Commissioner Clyburn, to discuss the above-referenced dockets and the Commission’s consideration at its meeting on April 28, 2016 of a Further Notice of Proposed Rulemaking (“FNPRM”) proposing a new regulatory framework for the provision of business data services (also known as special access or dedicated services). The sole purpose of the meeting was to discuss ACA’s opposition to the proposal in the FNPRM to consider regulating the rates for business data services (“BDS”) provided by competitive providers in areas that were deemed “non-competitive.”

The ACA representatives explained that, were the Commission to adopt a policy to regulate the rates of competitive providers in non-competitive areas, it would reverse over 35 years of Commission precedent of focusing its regulatory oversight on dominant carriers and

Marlene H. Dortch
April 21, 2016
Page Two

impose no or minimal barriers and obligations on competitive providers.¹ This dominant carrier approach to regulation has been an unqualified success, providing powerful incentives for competitive providers to enter markets to give consumers greater choices of innovative services at lower prices. Moreover, in the lengthy series of proceedings to consider re-regulating the special access rates of incumbent, price cap local exchange carriers, there has been no prior consideration of regulating participants lacking market power nor has anyone presented evidence in these proceedings that competitive providers have been charging supra-competitive rates or otherwise have been harming consumers. In fact, the opposite is the case: competitive providers, particularly cable operators and other ACA members, have taken great risks to invest billions of dollars to build networks in locations where incumbents have long exercised market power to provide business users with a choice of high-performance dedicated services.

Thus, it comes as a surprise that the Commission would “out of the blue” even consider soliciting comments about whether to regulate the rates of competitive providers. In brief, no public interest purpose would be served, and it would make competitive providers “think twice” about making further investments in their networks to serve additional business users. The ACA representatives thus urged that the Commission not even seek comments on this issue, or, at most, raise this topic in a Notice of Inquiry.

Should the Commission nonetheless raise this issue in the FNPRM, the Commission should offer its tentative economic rationale for reversing course on its dominant carrier approach to regulation and ask parties to comment on it and any alternative rationales that could plausibly justify such a reversal. The Commission should ask interested parties to provide specific evidence, should any exist, that competitive providers are charging supra-competitive pricing for products in non-competitive markets, are acting in a manner consistent with an exercise of market power in specific non-competitive geographic and product markets, or are harming business users in any non-competitive markets.

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

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
April 21, 2016
Page Three

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



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cc: Rebekah Goodheart