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April 21, 2016

VIA ELECTRONIC FILING

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

Re: *Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25*

Dear Ms. Dortch:

On April 19, 2016, Mary McManus, Beth Choroser, and the undersigned from Comcast, along with Matthew Brill of Latham & Watkins LLP, met with Travis Litman from the office of Commissioner Rosenworcel, Amy Bender from the office of Commissioner O’Rielly, Nicholas Degani from the office of Commissioner Pai, and Rebekah Goodheart from the office of Commissioner Clyburn, in connection with the above-referenced proceeding. In addition, the undersigned spoke by telephone with Rebekah Goodheart on April 21 regarding the proposals at issue.

At these meetings, we expressed deep concerns over the prospect of exposing non-dominant, facilities-based providers of Ethernet services to *ex ante* rate regulation and other requirements traditionally applied only to dominant providers, as part of the Commission’s reexamination of its special access regulatory regime. We explained that doing so would depart dramatically from longstanding precedent founded upon bipartisan policy consensus, and would undercut the important goal of promoting new entry, competition, and investment in the marketplace for business data services (“BDS”). We likewise explained our strong opposition to seeking comment on the potential imposition of *ex ante* rate regulation on business broadband Internet access services. We noted that Internet access services are functionally distinct from, and are not competitive substitutes for, dedicated, point-to-point special access services. And we further observed that subjecting broadband Internet access services to price cap regulation would

directly contravene the Chairman's repeated commitment not to subject such services to prescriptive rate regulation.¹

Additionally, we emphasized that the powerful *disincentive* to invest in networks used to provide rate-regulated services would inhibit, rather than advance, the Commission's goal of stimulating new entry and competition in the provision of backhaul services supporting future 5G wireless technologies and in the enterprise services marketplace. We also discussed the significant operational challenges that would result from Commission rules that subject competitive BDS providers to a patchwork of disparate regulatory obligations in geographic markets (whether census blocks, census tracts, or other designated areas) across the country. These challenges would be particularly acute where cable BDS providers seek to offer uniform pricing to multi-location business customers (in competition with ILECs that have long dominated the market for such customers), and would only further diminish the entry and investment incentives of cable BDS providers.

Lastly, we pointed out that rushing to adopt a rulemaking notice proposing a radical rate-regulation scheme for new entrants, following a decade-plus-long review of special access pricing and related issues, would be unwise and counterproductive. Despite repeated notices refreshing the docket over the years and a comprehensive data collection through which new entrants like Comcast provided extensive information, no one had ever so much as hinted at imposing prescriptive rate regulation on the services provided by facilities-based competitors until a few weeks ago. Moreover, briefings from Commission staff leave no doubt that the Further Notice of Proposed Rulemaking under consideration is massively complicated and would benefit from considerably more input from the entities the Commission is thinking of regulating for the first time. We therefore urged each legal advisor to ensure that the Commission has adequate time to explore the many complex and unprecedented issues *before* adopting an FNPRM, rather than voting on a Notice that at best would be premature and incomplete.

Please contact the undersigned if you have any questions regarding these issues.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President
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¹ See Statement of Chairman Tom Wheeler, *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, 5915 (2015) ("Let me be clear, the FCC will not impose 'utility style' regulation [on broadband Internet access services]. . . . That means *no rate regulation*, no filing of tariffs, and no network unbundling.") (emphasis added); Tom Wheeler, *This Is How We Will Ensure Net Neutrality*, Wired.com (Feb. 4, 2015), available at <http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality/> ("To preserve incentives for broadband operators to invest in their networks, . . . [and] to provide returns necessary to construct competitive networks, . . . there will be no rate regulation, no tariffs, no last-mile unbundling.").

cc: Nicholas Degani
Rebekah Goodheart
Travis Litman
Amy Bender