

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Business Data Services in an Internet Protocol Environment)	WC Docket No. 16-143
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	

REPLY TO OPPOSITION

In the Motion for Extension of Time filed by the National Cable & Telecommunications Association (NCTA), we demonstrated that the scope and complexity of the *Further Notice* in the above-referenced proceeding warranted extending the deadlines for comments and reply comments.¹ As predicted,² a variety of parties opposed NCTA’s request.³ For the reasons explained below, these oppositions completely miss the mark and the extension request should be granted.

First, the suggestion that NCTA “cannot meet the high bar required for extension”⁴ under section 1.46(a) of the Commission’s rules does not withstand scrutiny. NCTA demonstrated that the Commission has granted 85 percent of recent extension requests under that rule.⁵ Even a cursory review of those orders shows that approval of NCTA’s request is consistent with Commission precedent. For example, the Commission granted a 30-day extension for comments

¹ Motion for Extension of Time of the National Cable & Telecommunications Association, WC Docket No. 16-143 (filed May 13, 2016) (Motion).
² *Id.* at 7.
³ Opposition to Motion for Extension of Time of Sprint Corporation, WC Docket No. 16-143 (filed May 17, 2016) (Sprint Opposition); Opposition of CCA et al. to Motion for Extension of Time, WC Docket No. 16-143 (filed May 19, 2016) (CLEC Opposition).
⁴ Sprint Opposition at 2; *see also* CLEC Opposition at 2-3.
⁵ Motion at 2, Appendix A.

on the annual report on satellite competition because affected companies were working on pleadings in a number of other proceedings (as is the case here);⁶ it granted an additional 45 days for comments on the network non-duplication and syndicated exclusivity rules because parties needed time to retain expert economists and provide requested data (as is the case here);⁷ and it granted a 30-day extension for comments on proposed changes to FM radio licensing rules because certain interested parties were attending an industry conference (as is the case here).⁸ If these cases were sufficient to clear the “high bar” of section 1.46, there should be no question that responding to a *Further Notice* of almost 300 pages that proposes to abandon four decades of legal and policy precedent and create an entirely new regime of rate regulation for competitive providers easily clears that bar as well.

Second, the CLECs are wrong in suggesting that regulation of rates charged by cable operators has been within the scope of this proceeding since the Commission’s 2012 *Further Notice of Proposed Rulemaking*, or even since the original *Notice of Proposed Rulemaking* issued in 2005.⁹ The Commission captioned this proceeding “**Special Access for Price Cap Local Exchange Carriers**” because it was considering changes to the rules that governed the rates for **special access** services provided by **price cap local exchange carriers**. The quotes provided by the CLECs confirm this view.¹⁰

⁶ *Fourth Annual Report to Congress on Status of Competition in the Satellite Services Industry*, IB Docket No. 14-229, Order, DA 14-1906 (rel. Dec. 30, 2014).

⁷ Public Notice, *Comment Period Extended for Further Notice of Proposed Rulemaking on Network Non-Duplication and Syndicated Exclusivity Rules*, DA 14-525 (rel. Apr. 22, 2014).

⁸ Public Notice, *Deadline Extended for Comment on SSR Communications, Inc.’s Petition for Rulemaking to Amend the Commission’s Rules Governing FM Broadcast Stations*, DA 14-1182 (rel. Aug. 14, 2014).

⁹ Sprint Opposition at 2-3; CLEC Opposition at 3-5.

¹⁰ CLEC Opposition at 4, *quoting 2005 NPRM* (“we commence a broad examination of the regulatory framework to apply to price cap local exchange carriers’ interstate special access services”); *id.* at 4 n.12, *quoting 2007 Public Notice* (“the Commission commenced a broad examination of the regulatory framework to apply to price cap local exchange carriers’ interstate special access services”); *id.*, *quoting 2012 Further Notice* (“The *Special*

Similarly, it is clear from the quotes provided by Sprint that the Commission in the *2012 Further Notice* was concerned with identifying and responding to “market power” and that cable operators were considered “competitive” providers.¹¹ Under the well-established Commission precedent in effect at the time, and still in effect today, competitive providers are considered non-dominant carriers that do not have market power and therefore are not subject to rate regulation.¹² Indeed, the CLECs’ argument that cable operators have been on notice for years that they could face the very same regulation as the dominant providers is difficult to reconcile with the fact that until a few weeks ago they were arguing that cable operators “generally are unable to compete in the provision of dedicated services.”¹³

The fact that the Commission collected data from cable operators as part of its market analysis does not mean that regulation of their rates was brought within the scope of the proceeding, as the CLECs suggest.¹⁴ Rather, it means that such data was necessary to determine whether incumbent LECs should continue to be treated as dominant carriers. The fact that incumbent LECs filed comments asking the Commission to account for the presence of cable operators in its analysis and to impose the same obligations on all providers is equally irrelevant in defining the scope of the proceeding prior to the *Further Notice*.¹⁵

Third, Sprint’s suggestion that an extension is not warranted because NCTA has had access to the data collection for months is unavailing. Sprint ignores the fact that the data

Access NPRM initiated a broad examination of what regulatory framework to apply to price cap LECs’ interstate special access services”).

¹¹ Sprint Opposition at 2-3

¹² *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, 23, ¶ 79 (1980).

¹³ Reply Comments of INCOMPAS, WC Docket No. 05-25 (filed Feb. 19, 2016) at 14; *see also id.* at 15-17.

¹⁴ Sprint Opposition at 2; CLEC Opposition at 7-8.

¹⁵ Sprint Opposition at 3; CLEC Opposition at 8.

collection will be irrelevant to resolving many of the significant issues raised in the *Further Notice*. For example, the proposal to “benchmark” a provider’s Ethernet rates to the rates that other companies charge for TDM-based services will depend on information and analysis that are totally separate from the data collection. And as NCTA explained, responding to these questions – both in the initial round of comments and in response to any proposals advanced by other parties – will require a significant commitment of technical and economic expertise and more time than the Commission has provided.¹⁶

For similar reasons, the CLECs’ suggestion that NCTA already addressed, or could have addressed, related issues in the context of the prior *Special Access* proceeding and therefore should not be provided with additional time misses the mark.¹⁷ As explained above and in our Motion, until the *Further Notice*, the focus of the Commission’s proposals was limited to direct regulation of incumbent LECs. While NCTA’s members would be affected by such regulation, and we raised concerns about the consequences of unwarranted rate regulation of those carriers, the issues raised in the *Further Notice* are fundamentally different because the Commission for the first time has proposed direct regulation of rates charged by competitors. Until the *Further Notice*, for example, there was no indication that the Commission was planning to discard the dominant/non-dominant regime that had governed the scope of rate regulation for the past 30 years. For the CLECs to suggest that there is no meaningful difference between proposals to modify the regulation that applies to a company’s competitors and proposals to directly impose an entirely different set of regulations on a company for the first time is wholly disingenuous.

¹⁶ Motion at 6. Moreover, even if the data collection might inform the development of a competitive test, the fact that the data provides an incomplete, out-of-date snapshot of the market means it cannot be used to make granular decisions about who or where regulation is warranted. As NCTA explained, cable operators have strong opinions on the collection and use of data to make such decisions, informed by their extensive experience with the special access data collection and the Connect America Fund challenge process, and will need to devote significant time and resources to addressing these issues as well. Motion at 10 n.27.

¹⁷ CLEC Opposition at 8-9.

Equally disingenuous is Sprint's argument that "no other party has expressed concern with the purported 'complexity' of the proposals contained in the *Further Notice*."¹⁸ As NCTA explained in its Motion, it represents numerous companies who all are concerned about the complexity of the item and who, for the first time, will be forced to participate in this proceeding because they are now being directly threatened with rate regulation.¹⁹ In particular, Sprint fails to acknowledge that NCTA represents many smaller cable operators who face significant risks as a result of the proposals in the *Further Notice* and significant challenges in responding on the accelerated schedule adopted by the Commission.²⁰ Moreover, we also explained that a majority of the commissioners that voted for the item expressed concern about its complexity and the bureau chief plainly acknowledged the challenging nature of the order's economic analysis.²¹ It seems the only parties unwilling to acknowledge the complex nature of this proceeding are the CLECs, who apparently will continue pushing for as much rate regulation as possible, as quickly as possible, regardless of whether such regulation is warranted by the facts (like the fact that Sprint already has negotiated commercial Ethernet arrangements with cable operators and telephone companies that enable the company to cover 95 percent of the country).²²

¹⁸ Sprint Opposition at 4.

¹⁹ Motion at 10-11.

²⁰ *Id.* at 11.

²¹ *Id.* at 3, 11.

²² See Fierce Telecom, *Sprint Ropes In Ethernet over Copper, Ethernet over DOCSIS into Ethernet Strategy* (May 15, 2016) ("We're going to be launching this summer Ethernet over Copper and Ethernet over DOCSIS options as well," Fitz said. 'It's the same Ethernet access, but just instead of using fiber we'll use existing copper in the ground or the cable plant that Comcast, Cox, and others offer services on, which will further expand our options for Ethernet as well.' Fitz added that 'we're confident that once we launch those alternatives we will have 95 percent of the country blanketed with Ethernet access.'"), at <http://www.fiercetelecom.com/story/sprint-ropes-ethernet-over-copper-ethernet-over-docsis-ethernet-strategy/2016-05-15>.

For all the reasons explained in this Reply, the Commission should extend the pleading cycle as requested in NCTA's Motion.

Respectfully submitted,

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