

**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
)	
)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION
IN SUPPORT OF NCTA’S MOTION FOR EXTENSION OF TIME**

The United States Telecom Association (USTelecom) supports the request for more time to file comments in the above-referenced proceeding filed by the National Cable & Telecommunications Association (NCTA) on May 13, 2016.¹ The outcome of this proceeding will have a major economic impact on the special access, or business data services (BDS) marketplace. We have seen a rapidly changing competitive landscape marked by robust and steadily increasing intermodal competition; competitors in 2013 earned 51 percent of all standalone BDS revenues,² and competing facilities have been deployed in over 95 percent of census blocks with special access demand – covering more than 97 percent of all special access locations and about 99 percent of all establishments with potential demand for special access services.³ Despite this, much more remains to be done to build the backhaul and other

¹ Motion for Extension of Time of the National Cable & Telecommunications Association, WC Docket Nos. 16-143, 05-25 (filed May 13, 2016) (Motion).

² Mark Rysman, “Empirics of Business Data Services,” White Paper, Table 1 (April 2016) (Rysman White Paper) (Appendix B to Business Data Services in an Internet Protocol Environment et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, FCC 16-54 (rel. May 2, 2016) (*BDS Further Notice*)).

³ Mark Israel, Daniel Rubinfeld, Glenn Woroch, “Competitive Analysis of the FCC’s Special Access Data Collection,” White Paper, at 16 (Jan. 26, 2016) (enclosure with Letter to Marlene H.

infrastructure needed to support the rollout of 5G and other next-generation services, and all parties recognize the need for increased investment to ensure universal access to more and better broadband throughout the country.

Similar to our own requests for additional time to address the complex and important issues in this proceeding,⁴ NCTA's Motion reflects valid concerns with compressed pleading cycles that seem designed primarily to meet an arbitrary deadline for completing the next phase by the end of the year. We agree with NCTA that this lends credence to the suggestion that the outcome of this proceeding is predetermined. With one round of comments and replies on the BDS data collection in the record, the FCC has determined that yet another round of comment and replies is warranted – not due to foot-dragging or repeated attempts by ILECs “to avoid regulation,” as some opposing the Motion would have one believe⁵ – but to the FCC's own views as to the need for additional comment given the complexity and importance of this proceeding. To penalize interested parties by imposing inadequate comment cycles for the sake of meeting a self-imposed deadline would serve neither the FCC nor the public interest well. The FCC therefore should grant NCTA's Motion.

DISCUSSION

It should go without saying, especially at this point in this protracted proceeding, that it is more important to get this right than to get it done fast. Yet opposing parties focus the lion's

Dortch, Secretary, FCC from Kyle J. Fiet, Sidley Austin LLP, WC Docket No. 15-247, RM-10593 (Apr. 7, 2016)).

⁴ See Joint Request for Extension of Time of USTelecom and ITTA – The Voice of Midsize Communications Companies, WC Docket No. 05-25, RM-10593 (filed Oct. 21, 2015); Joint Request for Further Extension of Time of USTelecom and ITTA – The Voice of Midsize Communications Companies, WC Docket No. 05-25, RM-10593 (filed Nov. 10, 2015) (USTelecom Further Extension Request).

⁵ See, e.g., Sprint Corp. Opposition to Motion for Extension of Time, WC Docket Nos. 16-143, 05-25 at 3 (filed May 17, 2016) (Sprint Opposition).

share of their efforts on arguing against an extension on the bases that BDS reform is long-overdue, and “has already extended far too long,”⁶ asserting that NCTA’s true aim “is obviously to further delay the conclusion of this proceeding.”⁷ Those arguments are unfairly dismissive of the valid concerns NCTA and others have raised regarding the tortured path on which this proceeding has progressed.

We need not repeat NCTA’s detailed description of how long this proceeding has taken, and of the scope and breadth of complex issues that have been added along the way.⁸ Suffice it to say that there is plenty of blame for the delay to go around. Early on, it was the CLECs’ refusal to voluntarily submit special access data into the record, resulting in a mandatory collection that was not completed until 2015. Leading up to the collection of data, delays in securing OMB approval of the information collection and refining the appropriate scope of the data collection were at fault. Following the actual collection of data, efforts by the FCC to “scrub” the data, stabilize it, and make it available to parties for review added months to the process and necessitated additional review and comment extensions.⁹ At every juncture, CLECs and their associations have feigned disbelief that additional time was needed to address the complex issues present in this proceeding, and multiple times the FCC thought otherwise and granted extensions either on their own motion or the motion of interested parties.

⁶ Sprint Opposition at 1.

⁷ Opposition of CCA, CCIA, Free Press, INCOMPAS, OTI, and Public Knowledge to the Request for Extension of Time, WC Docket Nos. 16-143, 05-25 at 2 (filed May 19, 2016) (CCA et al. Opposition).

⁸ Motion at 2-4.

⁹ See, e.g., USTelecom Further Extension Request at 2-3. The Commission found good cause for granting an extension of the deadlines for comments to January 22, 2016 and reply comments to February 19, 2016. *Special Access for Price Cap Local Exchange Carriers, et al.*, WC Docket No. 05-25, RM-10593, DA 15-1473 (Dec. 21, 2015).

In addition to the valid reasons raised by NCTA in the Motion and its reply to oppositions to that Motion, there are two more reasons that support an extension of time for comments. One is the delay in releasing and seeking comment on the FCC-commissioned White Paper,¹⁰ which was partially rectified with the issuance of the *BDS Further Notice* on May 2, 2016. However, as USTelecom has explained, parties must have an opportunity to conduct a meaningful, independent review of the White Paper that is possible only with access to the same dataset and computer programs, including program code, used to do the analyses and reach the conclusions contained in the White Paper.¹¹ Although we are grateful for the FCC's prompt response to USTelecom's request for access to additional information used for the analyses in the White Paper, we have since learned that not all of the requested information was provided. Our consultants have explained that without the same access to the underlying raw data, they will not be able to replicate the results in the White Paper. Specifically, due to the FCC's masking of bandwidth for connections of over 1 Gbps, they lack the bandwidth information used in some of the White Paper's regression specifications. These specifications cannot be replicated. Additionally, they lack the "proprietary Tom-Tom" data relied upon for certain controls at the ZIP Code level. They do not have adequate information to identify what Tom-Tom data were used or whether these data can be obtained at a reasonable cost. Therefore, they have to identify substitutes to these data, upload them to the Enclave, and process them to be compatible with the programs and methodology used in the White Paper. Even if they can use different data as

¹⁰ Rysman White Paper, *supra* note 2.

¹¹ See Letter to Marlene H. Dortch, Secretary, FCC from Jonathan Banks and Diane Griffin Holland, USTelecom, WC Docket Nos. 16-143, 05-25, RM-10593 (May 11, 2016). Specifically, we requested access to the computer programs used to prepare the White Paper, including program code, as well as access to any relied-upon raw special access data and proprietary data sources that were not otherwise made available to outside parties.

inputs to rerun the programs, it will take a significant amount of time to find the necessary data, upload that data into the NORC Enclave, and process the data to be compatible with the programs and methodology used in the White Paper. Although they believe the additional 45 days and 30 days sought by NCTA would be very helpful, they cannot confirm that those time frames will provide sufficient time for a thorough, meaningful peer review that would assess the validity, strength, and relevance of the analysis in the White Paper.

Another development that supports an extension of time for comments is the recent submissions by multiple cable broadband service providers detailing the extent of business locations served by connections to a node over which dedicated services are being offered using fiber and/or hybrid-fiber (HFC) facilities.¹² Those submissions were necessary to correct a significant undercounting of locations capable of providing Ethernet over HFC, or Metro-Ethernet services.¹³ These new data will affect the analyses in the White Paper and those of several CLEC economists, as well as our economists' analyses.

The FCC and commenters need sufficient time to update their prior analyses of the state of competition in the BDS market using this new, expanded data, including an opportunity to

¹² *See, e.g.*, Letter to Marlene H. Dortch, Secretary, FCC from Matthew A. Brill, Counsel for Time Warner Cable, Inc., WC Docket No. 05-25 (May 12, 2016) (submitting supplemental information to identify additional locations capable of providing all Metro-Ethernet services including over hybrid fiber-coaxial (HFC)); Letter to Marlene H. Dortch, Secretary, FCC from Michael H. Pryor, Counsel for Cox Communications, Inc., WC Docket No. 05-25 (May 18, 2016) (supplementing the record to identify locations capable of providing Ethernet over HFC services).

¹³ *See BDS Further Notice* at ¶ 66 (recognizing the omission from the special access data collection of “Metro-E headend” locations and stating that “stakeholders will have the opportunity to consider the updated data and its impact on [the FCC’s] analysis”).

update the analyses in and peer reviews of the White Paper. Both of these developments, in addition to the reasons put forth by NCTA in the Motion, warrant additional time for comments and reply comments.

Please do not hesitate to contact the undersigned if you have any questions or concerns.

Respectfully submitted,

By:  _____

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