



October 11, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, DC 20554

Re: Notice of Ex Parte Communication; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Dkt. No. 05-25; *Qwest, AT&T and BellSouth Petitions for Forbearance*, WC Dkt. No. 06-125; *Embarq, Frontier and Citizens Petitions for Forbearance*, WC Dkt. No. 06-147

Dear Ms. Dortch:

In light of several recent ex parte filings and proposals in the above-captioned dockets, T-Mobile USA, Inc. (“T-Mobile”) wishes to take this opportunity to restate and clarify its views on the critical special access reforms that are necessary in these proceedings. The Commission should deny the forbearance petitions in WC Docket Nos. 06-125 and 06-147 and instead focus its energies on resolving the long-pending rulemaking on special access in WC Docket No. 05-25.

As an initial matter, T-Mobile submits that the record in the special access rulemaking is more than sufficient for the Commission to take action now.<sup>1</sup> The record clearly demonstrates – in great detail – a marked failure in the special access marketplace that warrants prompt and decisive action by the Commission.<sup>2</sup> Inaction or mere reliance on the complaint process is simply inadequate to address the magnitude of this problem.

Immediate reform of the Commission’s special access regime is needed, and the need for reform will only become more critical as time passes. T-Mobile, along with many others, increasingly relies on advanced optical, packetized and Ethernet special access services purchased from the

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<sup>1</sup> T-Mobile thus disagrees with Level 3’s proposal to gather additional data before taking action. *See Special Access Regulation: Breaking the Log Jam Based on Real-World Data* at 2-3, attached to Ex Parte Letter from John M. Ryan, Asst. Chief Legal Officer, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (Oct. 3, 2007).

<sup>2</sup> Sprint Nextel has also summarized the plethora of record data demonstrating clear market failure. *See Special Access Pricing* at 1-3, attached to Ex Parte Letter from Gil Strobel, Counsel, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (Oct. 5, 2007) (“Sprint Ex Parte Attachment”).

ILECs for backhaul and related uses in T-Mobile's network. These Ethernet and OCn services – which are clearly special access services<sup>3</sup> – are replacing Frame Relay and Asynchronous Transfer Mode (“ATM”) service for such purposes. Accordingly, T-Mobile anticipates that its demand for these higher-capacity enterprise broadband services – **which are critical for broadband deployment** – will significantly increase.<sup>4</sup> But, contrary to AT&T's claims, the incumbent local exchange carriers remain the predominant providers of these services to T-Mobile and others.

In light of this overwhelming evidence, T-Mobile urges the Commission to reform immediately the special access regime in several respects:

- Reduce the geographic areas to which pricing flexibility applies from entire Metropolitan Service Areas (“MSAs”) to wire center or pairs of wire centers, which would result in a more tailored and granular analysis to better assess the true state of competition.<sup>5</sup>
- Narrow the product market and separately apply pricing flexibility triggers to: (1) customer premises-to-central office links (channel terminations), (2) interoffice transport links (channel mileage), and (3) other forms of special access, including links between ILEC wire centers and mobile switching centers (“MSCs”) and ILEC OCn services.
- Adopt more stringent triggers for pricing flexibility in these newly-defined markets.<sup>6</sup> One possibility for new triggers would be the triggers for unbundled network elements

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<sup>3</sup> See Ex Parte Letter from Colleen Boothby, Counsel, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Dkts. No. 06-125 & 06-147 (Oct. 10, 2007).

<sup>4</sup> Sprint Nextel also clearly demonstrates the negative impact of non-market-based special access prices on consumers and broadband deployment. See Sprint Ex Parte Attachment at 4-5.

<sup>5</sup> Another reasonable alternative would be to use a zone definition based upon line densities, as suggested in the 2005 notice of proposed rulemaking in this proceeding, *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994, 2024 (2005) (“2005 Notice”).

<sup>6</sup> Sprint Nextel also supports the establishment of new and more accurate triggers, see Sprint Ex Parte Attachment at 8-9, but T-Mobile believes that a Further Notice of Proposed Rulemaking is unnecessary to explore such triggers. The record already contains suggestions regarding appropriate triggers, and the FCC can and should act based upon the current record. See, e.g., Comments of T-Mobile USA, Inc. at 12, WC Dkt. No. 05-25 (Aug. 8, 2007).

(“UNEs”) that are functionally equivalent to special access services, *i.e.*, high-capacity loops and transport. These triggers would be both more granular and more current than the existing triggers.

- Bar price cap ILECs from all forms of anticompetitive and exclusionary behavior regarding the terms and conditions of their special access services.<sup>7</sup>
- Apply any new pricing flexibility rules to *all* areas and services, including those for which the price cap ILECs have obtained pricing flexibility under existing rules.
- Reform the price cap regime to account for both firm-wide productivity growth as well as increases in scale economies for special access services through mechanisms such as a productivity factor.<sup>8</sup>
- Revise the price cap rate structure to create separate service categories to prevent anticompetitive price manipulation. T-Mobile suggests one category for channel termination/channel mileage services (which face little or no competition) and a separate category for links between ILEC wire centers and MSCs and other services, including ILEC OCn services (which face some, albeit limited, competition).
- Reinitialize price cap rates for special access services based upon forward-looking economic costs.<sup>9</sup>

In the event that the Commission is not prepared to take these steps immediately, however, as interim measures pending reform, the Commission should: (a) immediately impose a 5.3 percent

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<sup>7</sup> Many parties have listed the specific forms of exclusionary and anti-competitive terms and conditions that should be prohibited. *See, e.g., Proposal for Interim Special Access Relief* at 2-3, attached to Ex Parte Letter from Colleen Boothby Counsel, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (Oct. 9, 2007) (filed on behalf of COMPTel, the Ad Hoc Telecommunications Users Committee, Time Warner Telecom, TelNet Worldwide, NuVox and XO Communications) (“Ad Hoc/CompTel Ex Parte Attachment”); and Reply Comments of the New Jersey Division of the Ratepayer Advocate, at Table 2, WC Dkt. No. 05-25 (July 29, 2005).

<sup>8</sup> Ad Hoc, CompTel and various CLECs also support a one-time downward exogenous adjustment to account for a productivity factor. *See Ad Hoc/CompTel Ex Parte Attachment* at 2.

<sup>9</sup> This is consistent with Sprint Nextel’s support of a reset of rates based upon forward-looking costs. *See Sprint Ex Parte Attachment* at 7-8.

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X-factor on special access services consistent with its proposal in the 2005 Notice;<sup>10</sup> (b) extend the existing special access merger conditions as interim nationwide rules until reform is complete;<sup>11</sup> and (c) subject any pending forbearance or pricing flexibility petitions seeking to eliminate regulation of special access services to close and careful scrutiny in light of the record evidence in this proceeding.

Prompt action by the Commission to correct the failure of the special access marketplace will help to support future wireless broadband offerings and other customer-focused improvements. T-Mobile urges the Commission to take immediate action.

One electronic copy of this ex parte notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

/s/ Kathleen O'Brien Ham  
Kathleen O'Brien Ham  
Managing Director, Federal Regulatory Affairs

cc: Ian Dillner  
Scott Deutchman  
Scott Bergmann  
Chris Moore  
John Hunter  
Dana Shaffer

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<sup>10</sup> Ad Hoc, CompTel, various CLECs and Sprint Nextel, among others, also support the use of a 5.3% X-factor. *See* Ad Hoc/CompTel Ex Parte Attachment at 2; and Sprint Ex Parte Attachment at 7.

<sup>11</sup> This is similar to the Ad Hoc/CompTel proposal to extend Phase I pricing flexibility rates to Phase II areas. *See* Ad Hoc/CompTel Ex Parte Attachment at 1-2.