

June 10, 2009

Acting Chairman Michael J. Copps
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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

Dear Acting Chairman Copps:

Fair prices and conditions for special access are essential for the future of broadband deployment and a vibrant wireless market. The above captioned proceeding therefore has greater significance than as an “industry food fight” between sophisticated competitors. Resolution of the special access proceeding will have significant impact on the future of the economic recovery, job creation, health care, education technology, and e-commerce. For this reason, the Commission must act quickly to impose rules that will ensure reasonable rates for special access, rather than delay this four year old proceeding with yet another data request. If the Commission does decide it must refresh the record for the second time since beginning this proceeding in 2005, it should issue a short, targeted request enforced by the power to compel full responses from incumbent and competitive providers.

The Commission’s decision in 2000 to rely primarily on the market alone to develop competition in special access has resulted in higher prices and market dominance by incumbent providers such as Qwest, AT&T and Verizon. This, in turn, has seriously impeded the development of a competitive market in either broadband or wireless. The time has come for the FCC to act expeditiously to reregulate the special access market, and to reject any further requests for delay.

Specifically, the Commission should reject the effort by the US Telecom Association (USTA) to require yet another data request. The Commission began this proceeding four years ago based on disturbing reports that competition had failed to emerge in the special access market. *See, Special Access Rates for Price Cap Local Exchange Carriers and AT*

&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, 20 FCCRcd 1994 (2005). The Commission refreshed the record on this proceeding in 2007, *Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking*, 22 FCCRcd 13352 (2007). Nothing has happened to alleviate the competitive situation. To the contrary, all evidence in the record indicates that the market has grown less competitive since 2005.

The FCC's 2005 *Notice of Proposed Rulemaking* recognized that data provided by businesses and competitors to AT&T indicated a need to reexamine the Commission's previous deregulatory approach. Empirical data provided since then consistently show that, due to the lack of an effective system to measure and regulate competition in the special access market, incumbents continue to overcharge their competitors for wholesale access to high-speed digital lines. Steep special access rates and unreasonable terms and conditions prevent competitor carriers from building infrastructure and offering services necessary for reasonable competition, driving prices to consumers and delaying the deployment of broadband services in rural areas and the emergence of competing broadband providers even in more densely populated areas.

USTA's argument that the Commission cannot act unless it refreshes the record *yet again*, with data from entities beyond the reach of Commission authority and precluded from disclosing terms subject to non-disclosure agreements (NDAs) should be dismissed as a transparent delaying tactic designed to prolong for as long as possible the extraction of monopoly rents by its members. To the extent the Commission requires more information, the simplest and most direct way to gather it is to require that USTA's members produce any further information required. *See, e.g.*, 47 U.S.C. §§211 (authority to order filing of contracts), 215 (authority to examine business dealings), 220 (authority to review financial records). If this information indicates that potential competitors have not been forthcoming about their services, the Commission has the power to compel responses from them as well.

As part of your efforts to improve the U.S. broadband market, we urge you to address this critical issue as quickly as possible. We believe that sufficient evidence of uncompetitive practices exists to drive the Commission to act now. If you find that a data request is necessary to gather additional information, we ask that it be short and clearly targeted, and that the Commission use its authority to compel incumbents to provide full, accurate, and timely responses to the inquiry.

Sincerely,

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