NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

June 24, 2009

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

***Ex Parte* Written Notice**

In the Matter of Special Access Rates for Price Cap Local Exchange Carriers,
WC Docket 05-25.

Dear Ms. Dortch:

On June 3, 2009, a group competitive local exchange carriers (CLECs), non-Regional Bell Holding Company (non-RBOC) wireless carriers, and other entities filed a proposed data request seeking that the Commission solicit information from price-cap carriers to assist in determining the state of competition in the special access marketplace. On June 22, 2009, nochokepoints.org, a coalition of consumer groups, CLECs, non-RBOC wireless carriers, and others filed a letter with the FCC urging the Commission to reform the high-capacity broadband market. NTCA shares the concerns expressed by these entities, but observes that the effects of the lack of competition cited in the letters are even more harmful to the availability of affordable broadband services for customers in rural areas of the nation.

In vast rural expanses of the country, the largest incumbent price-cap carriers are the only providers of high-capacity circuits that many rural ILECs must utilize to provide broadband Internet access to their retail customers. As a general matter, NTCA notes that its member companies report there is: (1) minimal, if any, choice of special access carriers in many rural areas throughout the United States; (2) no downward pressure on prices over many years; (3) no availability of discounts off price lists; and (4) no flexibility in terms and conditions. Coupled with the fact that the large price-cap carriers' services agreements are subject to non-disclosure terms, these conditions place rural carriers in a "take-it-or-leave-it" situation in securing these special access services that they require to offer broadband Internet services.

NTCA supports both the goals and most of the proposed data requests outlined in the June 3 letter and attachment, particularly as they pertain to AT&T and Verizon, which obviously have dominant positions in special access and all segments of the telecommunications market. In this letter, NTCA will document data pertaining to the largest price-cap carriers that it believes would be critical to determining the status of special access competition in the nation's most-rural geographic areas. These data are essential since NTCA and its member companies believe that the essentially unregulated special access market in rural America lacks competition, and thus purchasers of special access lack the ability to protect their retail broadband customers from the effects of the resulting pricing and other terms and conditions.

Echoing the assertions in the June 3rd and 22nd letters, NTCA supports that based on the ARMIS data that was available in years past, it is evident that the largest price-cap carriers have exercised their market power and are generating huge earnings from their special access operations. NTCA notes that these conclusions were similarly reached in the study released by the National Regulatory Research Institute earlier this year.[1] The NRRI study also concluded that market concentration and the RBOCs' market power are creating price disparity between so-called "rack rates" (which is what small customers such as rural LECs pay for special access) and discounts of 33% for DS-1s and 66% for DS-3s that are only available to the very largest customers. These NRRI findings are consistent with what NTCA member companies report in their experiences in obtaining special access services from the largest price-cap carriers.

Following are the data, consistent with the June 3rd and 22nd letters referenced above and the conditions specified therein, that NTCA specifically recommends be sought from the three largest price-cap carriers, AT&T, Verizon and Qwest. Such data from these carriers will be helpful in distinguishing behavior of these carriers between urban and rural areas, as NTCA believes rural purchasers of special access services are especially disadvantaged. AT&T and Verizon possess end-to-end market power in many areas throughout the United States. Furthermore, NTCA takes strong exception to the United States Telecom Association ("USTA") ex parte asking the Commission to gather data from every large and small business, school and hospital; the USTA recommendation is punitive and irrelevant.

<u>DATA REQUEST</u>

I. Data to identify whether there are areas where there is adequate competition to protect consumers.

A. Data on actual competition.

1. From all CMRS carriers.

a. Provide the address of each cell site served by transmission facilities of AT&T, Verizon and Qwest. For each cell site listed, provide street address and information sufficient to geocode (V&H coordinates, CLLI code) the location.

b. Provide information on the type of Transmission Facilities provided (DS1, DS3, or above DS3).

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1 *See "Competitive Issues in Special Access Markets-Revised Edition."* (rel. January 21, 2009), Peter Bluhm with Dr. Robert Loube, National Regulatory Research Institute, which concludes that RBOCs possess market power in the special access market, and that special access is a growing business on which these companies increasingly rely to offset declines in switched services revenues. The authors reported that based on their analysis, AT&T and Qwest are earning about three times the FCC authorized 11.25% rate of return on special access.

2. From AT&T, Qwest and Verizon.

   a. Provide the address of each building of cell site that these companies, as sellers of special access services, serve via a Transmission Facility that it owns or controls. For each building listed, provide street address and information sufficient to geocode the location.

   b. Identify the type of service(s) (DS1, DS3, Ethernet) that the carrier provides via Transmission Facilities it owns or controls that connect to end-user locations and for each service provide the number of unites provided in such manner (channel terminations, circuits or Ethernet ports).

II. Data to evaluate what demand and pricing data derived from the largest buyers and sellers of special access services indicates about competition.

   A. The three largest national CMRS providers (AT&T, Verizon and Sprint) and three largest IXCs (AT&T, Verizon and Qwest) should provide the demand data requested in the NRRI purchaser's data request for the top 50 MSAs.

   B. For 2001 to 2009, AT&T, Verizon and Qwest should provide all changes to the channel termination, and fixed and per-mile transport rates (separately for DS1/DS3, OCN/Ethernet services), that were not the result of either a price cap change or compliance with a merger condition. These changes should be shown separately for rack rates, each individual contract and each tier in generally available term and volume discount plans. Responses should indicate the year when a new pricing option with different terms and conditions became available and should provide the total volume (revenue) sold of each pricing element for each year.

III. Data from AT&T, Qwest and Verizon to identify terms and conditions imposed on purchasers of special access that forestall competition from having a chance to develop and to evaluate the state of competition for special access services.

   A. Provide, by year for 2002 through 2008, (1) the percent of their revenue (separately for DS1/DS3/aboveDS3), by geographic area as determined by the Commission that is subject to volume commitments; (2) total special access revenue; (3) number of special access circuits, by geographic area that are subject to volume commitments; and (4) number of special access circuits, by geographic area not subject to volume commitments.

B. Provide the number of special access circuits (separately for DS1/DS3/above DS3) that are subject to early termination penalty, and the number of circuits not subject to such penalty.

C. Compute for 2008 the total amount of early termination penalties and forgone discounts (separately for DS1/DS3/above DS3) that would be due if all special access service subject to volume commitments were transferred by buyers to alternative providers.

D. Provide (separately for DSa/DS3/above DS3) the number of access circuits it sells that are: (a) purchased without any term commitment; (b) purchased under contracts with a term commitment of one year or less; (c) purchased under contracts with a term commitment of more than one year but no more than three years; (d) purchased under contracts with a term commitment of more than three years but no more than five years; and (e) purchased under contracts with a term commitment of more than five years.

E. Provide a description of their volume commitments (separately for DS1/DS3/above DS3) and, for each such plan: (1) the volume levels required; (2) the covered/available geographic areas; (3) associated commitment requirements; (4) the associated true-up interval time frames; (5) the penalties for failing to meet commitment levels and/or terminating early; and (6) associated renewal requirements.

In conclusion, NTCA is encouraged by the efforts of the Commission and the Obama Administration to improve broadband access, especially in rural areas. To accomplish that, it is crucial to ensure that high-capacity broadband facilities are available at reasonable prices, terms and conditions, particularly from the largest price-cap carriers that dominate the special access market. NTCA urges the Commission to move forward aggressively to gather information from these providers and then to act on imposing necessary regulations to restrain anti-competitive pricing and conduct for special access services.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Vice President
Legal and Industry

DM: rhb

cc: Acting Chairman Michael Copps
Commissioner Robert McDowell
Commissioner Jonathan Adelstein
Acting WCB Chief, Julie Veach
Scott Deutchman
Jennifer Schneider
Nick Alexander
Mark Stone
Donald Stockdale
Kirk Burgee
Marcus Maher
Jeremy Marcus