



August 27, 2010

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Notice in *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

On August 26, 2010, Dr. Lee L. Selwyn of Economics and Technology, Inc. and the undersigned met with Jonathan Baker of the Office of Strategic Planning and Policy Analysis, and Donald Stockdale, Eric Ralph, Albert Lewis, and Pamela Arluk of the Wireline Competition Bureau, on behalf of the Ad Hoc Telecommunications Users Committee. We referred to the *ex parte* presentation filed in this docket by USTelecom on August 13, 2010, which responded to an *ex parte* filing by Public Knowledge on July 28, 2010, and we discussed more generally the appropriate role of carrier profitability in a market power analysis.

We noted that sustained high accounting profits or sustained increases in accounting profits over time are an indicator of market power. We also noted that data regarding carrier profitability is necessary for the Commission to enforce Section 201 of the Communications Act which requires the Commission to ensure that rates are just and reasonable. We noted that Section 201 requires the Commission to reduce rates that are so high as to be unlawfully exploitive of consumers and to increase rates that are so low as to be unlawfully confiscatory for carriers. We observed that the carriers now objecting to the use of earnings data to determine whether rates are exploitively high could be expected to insist upon the use of such data should they demonstrate that rates are so low as to be confiscatory.

Finally, we discussed the utility of unbundled network element (“UNE”) rates, prices for comparable products in competitive markets, and the data collected under the Commission’s ARMIS rules as tools for assessing profitability



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and reasonable cost-price relationships for special access services. Dr. Selwyn observed that, because the Commission's ARMIS rules produce revenue, cost, and earnings data at the category level (*i.e.*, for all special access services and revenue streams combined), the ARMIS rules would not embroil interested parties and the Commission in the burdensome disputes over the far more granular cost attribution determinations required for UNE cost, rate-setting, and Section 252(c) arbitration proceedings.

Pursuant to the Commission's rules, we are filing a copy of this notice electronically in the above-referenced docket. If you require any additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads 'Colleen Boothby'. The signature is written in a cursive, flowing style.

Colleen Boothby

cc: Jonathan Baker
Donald Stockdale
Eric Ralph
Albert Lewis
Pamela Arluk