December 1, 2010

***EX PARTE***

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

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; RM 10593

Dear Ms. Dortch:

This is to inform you of a meeting yesterday between representatives of USTelecom and its member companies with staff of the Wireline Competition Bureau concerning the Commission's recent Public Notice in the above referenced proceeding seeking data on competition in the high-capacity services marketplace.[1] Attending this meeting were Melissa Newman from Qwest; Maggie McCready from Verizon; Jennie Chandra from Windstream; Jeff Lanning from CenturyLink; Mike Saperstein from Frontier; Frank Simone from AT&T; and Pat Brogan and the undersigned from USTelecom. Bureau staff in attendance were Steve Rosenberg; Betsy McIntyre; Al Lewis; Pamela Megna; Nick Alexander; Eric Ralph; Michael Goldstein; Marvin Sacks; and Pam Arluk. We greatly appreciate the time taken by staff to meet with us and consider our concerns.

This meeting was held in response to the Public Notice's solicitation of comments on "the quality, utility, and clarity" of the data request.[2] In response to this request, USTelecom and its member companies emphasized that while the current data request was an important step forward in this proceeding, additional data will need to be gathered in the subsequent data requests the Commission has indicated are forthcoming in order to develop an accurate and complete picture of the level of competition for high capacity services. We also identified some discrete clarifications which we believe are necessary in connection with the current request.

[1] Public Notice, *Data Requested in Special Access NPRM*, WC Docket 05-25 (DA 10-2073) rel. October 28, 2010 ("Public Notice").

[2] *See* Public Notice at p. 5.

**Additional Data Requirements**: USTelecom emphasized that to obtain a complete and accurate picture of the marketplace, the Commission needs to collect additional data not clearly included within the scope of the current request. In particular, the current data request does not adequately seek information about potential competition, the competitive bidding process or self-supply. As a result, the data the FCC receives will quickly become outdated and will miss significant competitive activity. USTelecom has previously urged the Commission to seek such data from the industry.

The FCC can and should address these issues in further data requests by specifically requesting information concerning all areas in the MSA where competitive providers currently offer or are capable of providing high-capacity services. The FCC should also request data or maps showing the geographic areas where competitive providers plan to offer high-capacity services in the near future (i.e., next 2 years), and information identifying the nature and type of such services. Further, the FCC should request information about competitive providers that may have submitted bids to provide backhaul services to wireless providers or dedicated high-capacity services to other types of customers. The FCC should also ensure that wireless providers are asked to report the extent to which they self-provision backhaul services, either in a separate request or through a clarification of the current request.

**Clarifications and Issues Concerning the Current Request**: During the meeting, we identified several items in the data request where additional clarification is needed.

1. First, we requested clarification concerning the Commission's intent that the current data request seeks information from owners of facilities irrespective of whether the owner (or holder of an IRU) is the actual provider of service to an "end user." The staff confirmed that because the definition of "connection" in the Public Notice includes any line or facility that provides a communications path to an end user, that owners of facilities (both ILECs <u>and non-ILECs</u> ) are asked to provide information concerning such facilities notwithstanding that the direct customer of the facility-owner (or holder of an IRU) is another carrier providing service to the end user.

2. For items III.B.1.a and b, we urged the staff to provide a precise definition of "IRU," which is a term of art, in order to capture all facilities subject to long-term leases.

3. For item III.C.5, we urged the staff to clarify that it is requesting the name of the "provider" rather than the "carrier" that provides a connection to the cell site, because some providers are not considered common carriers.

4. For item III.B.2, we urged the staff to clarify that it is requesting information for both virtual and physical collocation arrangements, and including collocations in so-called "collocation hotels" and similar arrangements. The fact that a provider is positioned to serve a particular geographic area demonstrates that there is the potential for competition even where the provider is not currently serving customers.

5. For item III.B.3, we urged the staff to clarify that it is seeking maps of all competitive facilities, regardless of technology, rather than just seeking maps of competitive fiber facilities. Providers in less densely populated areas, for instance, may use wireless facilities to backhaul traffic to a more centralized point where fiber is available. In addition, at least one wireless carrier has indicated that it will use wireless facilities almost exclusively in its backhaul network.

We also emphasized that by requesting data that will be more than a year old at the time of its filing, it will not be possible for responses to the current data request to reflect the very dynamic changes currently happening in this marketplace. Given competitive providers' significant ramp-ups in recent years, the FCC should be sure to capture the most current information possible. We also explained that it is difficult to generate historical data regarding network deployment. As currently worded, the data requests seeks information as of December 31, 2009—a time period that will miss competitive activity that may have occurred in the past year.[3] In comparison, only four weeks after responses to this request are due, many of these same companies will be required to provide related information pursuant to the Commission's Form 477 collection as of December 31, *2010*. Unless the Commission plans to require the filing of updated data in a subsequent request, the data the FCC receives will already be over a year old and cannot be reliably used to draw conclusions about the state of competition in the MSAs at issue.

In connection with this issue, staff asked for comment on whether it was important that the network data it is requesting in the current request be from a similar time frame as any financial information it might seek in future requests and, if so, how close in time need such information be. We believe that network and financial data should be quite closely associated in time to allow the Commission to develop a usable picture of the industry dynamics, and that this is particularly true in a marketplace where competitors are growing their customer bases and revenues at very rapid rates.[4] This conclusion reinforces USTelecom's point above that the Commission needs to obtain both network and financial data that is much more current than expressly sought in the Public Notice—preferably data that is current as of year-end (or very late) 2010. In this context, it should be noted that most companies have year-end financials prepared for meeting securities obligations within 45 days or less of the end of the period.

Finally, we emphasized that ensuring broad participation from competitive providers is necessary to obtain a complete and accurate picture of competition in the MSAs at issue. USTelecom had previously urged on several occasions that the Commission require participation of all companies in this data gathering exercise. However, because the current data request is voluntary, many competitive providers may choose not respond, which in turn would yield

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[3] For example, Clearwire expects to cover up to 120 million people in at least 70 markets with its 4G wireless network by year-end 2010, up from 34 Million in 27 markets at year-end 2009, with a network utilizing 90% fixed microwave backhaul. See Clearwire 3Q 2010 earnings news release (November 4, 2010) .

[4] For example, Comcast reported in the third quarter that its business services revenues were 54% greater than third quarter 2009. See Comcast Q3 2010 Trending Schedule and Earnings Call Transcript (October 27, 2010) available at http://www.cmcsk.com/earningdetails.cfm?QYear=2010&QQuarter=3 (visited December 1, 2010).

insufficient data for the MSAs at issue. To address this issue, the FCC should issue a second mandatory data request directed at those competitive providers who do not submit any data.

Pursuant to Commission rules, please include a copy of this ex parte letter in the docket identified above.

Sincerely,

Glenn Reynolds
Vice President for Policy
USTelecom

cc: Steve Rosenberg
Betsy McIntyre
Al Lewis
Pamela Megna
Nick Alexander
Eric Ralph
Michael Goldstein
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