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January 27, 2011

FILED/ACCEPTED

VIA HAND DELIVERY AND ECFS

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

JAN 27 2011

Federal Communications Commission
Office of the Secretary

Re: Data Requested in Special Access NPRM, WC Docket No. 05-25 and RM 10-593

Dear Ms. Dortch:

Subject to and without waiver of its objections, Verizon submits the attached comments in response to the Federal Communication Commission's request, by Public Notice, for voluntary submission of data in the *Special Access NPRM*.¹ These comments respond to item III.F. of the Public Notice. These comments have been redacted for public review. A highly confidential version, subject to the Second Protective Order in the above-cited proceeding, will be filed under separate cover.

Please contact me should you have any questions.

Sincerely,

Enclosure

cc: Marvin Sacks

¹ Public Notice, *Data Requested in Special Access NPRM*, 25 FCC Rcd 15146 (2010) ("Public Notice").

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Before the
Federal Communications Commission
Washington, DC 20554

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JAN 27 2011

Federal Communications Commission
Office of the Secretary

In the Matter of)	
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Data Request)	
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Special Access Rates for Price Cap Local Exchange Carriers)	WC Docket No. 05-25
)	
)	
AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services)	RM 10593
)	
)	

**COMMENTS OF VERIZON¹ ON THE DATA REQUESTED
FOR SPECIAL ACCESS NOTICE OF PROPOSED RULEMAKING**

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January 27, 2011

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

TABLE OF CONTENTS

INTRODUCTION	1
I. THE DATA REQUEST WILL NOT GATHER RESPONSIVE INFORMATION THAT WILL ACCURATELY REPRESENT THE ENTIRE MARKETPLACE	4
A. By Being “Voluntary,” the Data Request Will Not Produce Data to Accurately Capture This Dynamic Marketplace.....	4
B. The Data Request Fails To Seek Information About Planned Competition or the Scope of Service Offerings, Thus Ignoring the Substantial Growth in Demand.....	8
C. The Data Request Fails To Address Other Important Sources of Competition.....	11
D. The Current Data Request, Even as Clarified, Remains Vague and Subject to Misinterpretation	12
II. THE DATA REQUEST IS PROCEDURALLY UNSOUND.....	14
III. ADDITIONAL DATA REQUESTS WILL BE NECESSARY TO CAPTURE A COMPLETE AND ACCURATE DEPICTION OF THE MARKETPLACE.....	15
CONCLUSION	16

INTRODUCTION

For some time, the industry has encouraged the Commission to collect substantive data on the special access competitive landscape. This voluntary Data Request² is an important move in the right direction. Without substantive and accurate data, the Commission cannot adequately assess the state of competition in the marketplace. This Data Request is a first step in understanding the broad and fast-moving changes that are occurring in a marketplace that offers an array of competitive alternatives to ILEC special access services. Notwithstanding this positive step, as crafted, this Data Request alone will not produce a complete or accurate picture of the marketplace, and consequently it cannot form a sufficient basis for any substantive changes in regulation. The Data Request remains too narrow in scope, and despite Staff's apparent hard work in carefully crafting the Request and the December 23 Clarification³ of certain issues, several terms remain confusing and prone to misinterpretation. As a result, the data the Commission receives in response will not fully reflect the existing substantial competition in this marketplace.

First, the Request is inappropriately narrow, and thus may not capture all relevant competitors. This is a dynamic, rapidly growing marketplace, with dramatic changes occurring even in the last year. However, many current or emerging competitive providers may choose not to respond because the Data Request is voluntary. If competitive providers fail to respond to the Data Request or fail to provide thorough or complete responses, the Data

² Public Notice, *Data Requested in Special Access NPRM*, 25 FCC Rcd 15146 (2010) ("Data Request" or "Request").

³ Public Notice, *Clarification of Data Requested in Special Access NPRM*, WC Docket No. 05-25, RM 10593 (Dec. 23, 2010) ("Clarification").

Request will yield insufficient data for the MSAs at issue. Without broad and representative participation, the Data Request will have limited usefulness.

Second, the Data Request fails to seek information about service offerings and planned competition. By not seeking information about competitors' planned future activities and projected demand, the Data Request will not capture forward looking capacity. Though a number of competitive providers have released plans for deploying increased capacity and offering nationwide service, the Data Request's focus on existing connections ignores them – and thus improperly ignores an important component of the marketplace.

The Request also fails to ask about the areas in which competitors offer service or have submitted bids. This is a critical area of inquiry, as it identifies ability or willingness to provide service in particular areas or locations beyond the existing connections.

Additionally, because the Data Request seeks information only as of December 31, 2009, it also completely misses the growth in competition that occurred over the past year. The Commission cannot rely on strictly backward looking, and now stale, data, to draw valid forward looking conclusions about the state of competition in the MSAs at issue.

Third, the Data Request fails to seek information about other forms of substantial and viable competition already existing in the marketplace. For example, the Data Request does not specifically request information about competitive providers' collocation arrangements with non-ILECs. Nor does the Data Request specifically seek information about competition using other providers' facilities. As a result of these omissions, the data the FCC receives will necessarily omit significant competitive activity.

Fourth, there remain certain undefined or confusing terms in the Data Request itself, despite the Clarification. For example, the Request is ambiguous regarding whether it seeks information about wireless backhaul self-supply, and this ambiguity may lead to inconsistent responses and data that cannot be compared.

Finally, there is a procedural concern because the Commission failed to follow the appropriate procedures under the Paperwork Reduction Act of 1995, Pub. L. No. 10413, which requires Office of Management and Budget (OMB) approval for requests such as these.

Notwithstanding these concerns, Verizon has submitted substantial data in response.⁴ This initial data highlights the need for further inquiry by demonstrating the existence of noteworthy competition. For example, the data shows that Verizon is competing successfully as a CLEC in the vast majority of the out-of-region Listed Statistical Areas in the Data Request. And the data demonstrates that outside the Verizon incumbent regions, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL]⁵

But other providers may not voluntarily produce similar responsive data. Regardless, based on all these deficiencies, the Commission will need to supplement the information collected here in the further collections contemplated in the notice in additional mandatory

⁴ Verizon is submitting its data and accompanying exhibit subject to the protection of the Second Protective Order, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, DA 10-2419 (Dec. 27, 2010) (“Second Protective Order”).

⁵ Further, **[BEGIN HIGHLY CONFIDENTIAL]**
[END HIGHLY CONFIDENTIAL].

data requests. Absent receipt of further data, the Commission should be wary of using the data collected here as a representation of the true state of competition in the marketplace. Indeed, to do so would ignore substantial critical and viable competitive elements and unfairly weight participation by others, thus causing inaccurate analysis.

I. THE DATA REQUEST WILL NOT GATHER RESPONSIVE INFORMATION THAT WILL ACCURATELY REPRESENT THE ENTIRE MARKETPLACE

As drafted, the Commission's Data Request is insufficiently broad in scope to accurately capture this dynamic marketplace. The Request is voluntary, not mandatory; it fails to capture prospective or potential competition; and it will not produce current data that will capture the ongoing change in the market.

A. By Being "Voluntary," the Data Request Will Not Produce Data to Accurately Capture This Dynamic Marketplace

First, the Commission's Data Request seeks voluntary production, not mandatory responses, from competitors. There is ample evidence that there is extensive and fast-growing competition to provide high-capacity services – but that evidence may not be produced by competitors acting on a voluntary basis. Indeed, some competitive providers not active in these regulatory proceedings may have a disincentive to provide data voluntarily; thus, self-selected participation risks biasing the collected responses and providing only a partial view of the competitive landscape.

This is a critical issue to the credibility of any analysis based on responses to this Data Request. The market for these services is highly dynamic and demonstrates a fast-growing industry. The growth is fueled by increasing demand that fuels competitive entry and competitive expansion of viable intramodel and intermodal competitors, including cable and

fixed wireless. In addition to data previously submitted in this proceeding, more recent events demonstrate the speed of change in this industry.

For example, in just the last year, competitive providers and cable MSOs grew their Ethernet services, generating the highest port growth of providers during the first half of 2010.⁶ Analysts view this growth as “a healthy broadening of market competition,” noting that this trend showed “more Tier 2 providers and Cable MSOs exploiting their footprints and intensifying their efforts to sell Ethernet services to enterprise customers.” *Id.*

Cable companies have aggressively moved to expand their business efforts to target commercial and high-capacity services, and those efforts are accelerating. In 2010, the United States cable industry produced “at least \$5 billion in commercial services revenue in 2010, up about 25 percent from approximately \$4 billion in 2009.”⁷ For the first time in the cable industry’s history, Comcast, Cox, and Time Warner Cable all indicated that they generated more than \$1 billion in business services revenues. *Id.* Importantly, this growth showed “that commercial services have firmly become the most rapidly growing area for many MSOs” *Id.* This growth allowed cable to take market share away from ILECs, particularly in the area of small and medium businesses, causing JD Power to recognize a cable provider as the number one provider of data services in that marketplace.⁸ And, the

⁶ Vertical Systems Group Press Release, “Mid-2010 U.S. Business Ethernet Leaderboard, Competitive Providers and Cable MSOs Continue to Gain Port Share During the First Half of 2010,” http://www.verticalsystems.com/prarticles/stat-flash-0810-Mid2010_US-Leaderboard.html (Aug. 16, 2010).

⁷ “Cable Industry Hits \$5 Billion Mark for Business Services,” *Communications Daily* at 3 (Dec. 28, 2010) (“*Cable Industry Hits \$5 Billion Mark*”).

⁸ Sean Buckley, FierceTelecom, “Phil Meeks, Vice President of Cox Business on reaching its \$1 billion sales milestone and future growth strategies,” <http://www.fiercewireless.com/special-reports> (Jan. 5, 2011) (“*Cox Sales Milestone Report*”).

cable industry has embraced a new fiber technology standard in delivering business services that will allow faster upgrades to 10Gpbs speeds,⁹ permitting further acceleration of that growth.

In 2010, there has been a substantial increase in demand for wireless data services: an increase by nearly 50 percent over the second half of 2009.¹⁰ This shift creates a corollary demand in the marketplace for increased capability to provide those technologies that can service the increase in wireless data. To accommodate that demand, wireless carriers are shifting substantially from copper technologies toward the increased use of fiber and microwave,¹¹ thus providing a more economical solution for extending broadband.¹² By mid 2010, this increased demand fomented “a wholesale shift in backhaul strategies” from a

⁹ “Cable Adopts EPON as Fiber Standard for Delivering Business Services,” *Communications Daily*, at 4 (Jan. 4, 2011).

¹⁰ CTIA Press Release, “CTIA-The Wireless Association ® Releases Semi-Annual Survey on Wireless Trends,” <http://www.ctia.org/media/press/body.cfm/prid/2021> (Oct. 6, 2010) (last visited Jan. 25, 2011) (“Among the many results showing the wireless industry’s growth, there were dramatic increases in wireless data usage ... Wireless carriers reported handling 161.5 billion megabytes of data in the six months ending in June 2010, up 49.8% from the last half of 2009.”).

¹¹ See, e.g., Craig Moffett, FCC National Broadband Plan Workshop, *Deployment – Wired*, Transcript, http://www.broadband.gov/docs/ws_02_deploy_wired_transcript.pdf, at 25-26 (Aug. 12, 2009); David Armentrout, *id.* at 31, 45; Yankee Group 4G Network Backhaul Summit, Powerpoint Presentation of Jennifer Pigg, (Yankee Group) (Sept. 15, 2009). See also P. Marshall, Yankee Group, “The Inevitable Transformation of the Mobile Internet,” at 3 (Apr. 2009) (“Backhaul networks, which in most cases continue to be based on TDM and Frame Relay technologies cannot support the massive growth in broadband traffic demands.”); David Sims, TMCnet, “Wireless Infrastructure – There’s a Shift in Mobile Backhaul Spending to Ethernet-Only Microwave: Report,” <http://4g-wirelessevolution.tmcnet.com/channels/wireless-infrastructure/articles/83644-theres-shift-mobile-backhaul-spending-ethernet-only-microwave.htm> (Apr. 30, 2010) (last visited Jan. 25, 2011) (“*Wireless Infrastructure Report*”).

¹² J. Pigg, Yankee Group, “Squeezing Cost Out of Mobile Backhaul” (June 1, 2010).

hybrid TDM plus IP/Ethernet toward an IP/Ethernet only approach.¹³ Indeed, published reports indicate that Clearwire, for example, now extensively utilizes a microwave backhaul strategy, estimating that 90% of its cell sites are backhauled by radio, relying on multiple suppliers to handle tower access and aggregation links in the network.¹⁴

Thus, cable revenue for wireless backhaul and in the wholesale space has grown by some reports in the mid-to-20 percent range for 2010,¹⁵ and cable providers explain that they are “counting on such potential high-growth areas as cellular backhaul to fuel continued commercial expansion.”¹⁶ Similarly, “the Ethernet-only microwave segment is poised for rapid growth over the next few years.”¹⁷

But, couched as voluntary, the current request may fail to capture these rapidly changing areas. Without a mandatory requirement, the Commission’s request may not garner data that accurately portrays this fast changing environment. A mandatory component that encompasses the broad sweep of this volatile marketplace is necessary to ensure that it is truthfully assessed.

¹³ See *Wireless Infrastructure Report*; see also Press Release, “Texas-New Mexico Power Deploys Exalt Microwave Backhaul Systems for Digital Network Upgrade: Native TDM and Ethernet Capabilities Enable Smooth Transition to IP,” <http://www.exaltcom.com/Texas-New-Mexico-Power.aspx> (May 11, 2010) (noting that providers report this year that they are using wireless backhaul to upgrade legacy analog microwave networks).

¹⁴ Sidecut Reports, “Clearwire’s Microwave Strategy, Backhaul: The Backbone of the New Network” (report excerpt), <http://www.sidecutreports.com/2010/01/31/report-excerpt-clearwires-microwave-strategy> (Jan. 31, 2010) (last visited Jan. 26, 2011).

¹⁵ See *Cox Sales Milestone Report*.

¹⁶ *Cable Industry Hits \$5 Billion Mark*, at 3.

¹⁷ Press Release, “Shift Seen in Operator Strategy for Mobile Backhaul; equipment spending up 21%,” <http://www.infonetics.com> (follow “News and Events” to “Market Research Report Highlights” to “Mobile Backhaul and Microwave”) (Apr. 21, 2010).

B. The Data Request Fails To Seek Information About Planned Competition or the Scope of Service Offerings, Thus Ignoring the Substantial Growth in Demand

To properly evaluate competition in this dynamic industry, the Commission's analytic framework should include data that encompasses recent competitive activities and growth in demand, as well as planned future activities and projected demand. Yet, resting as it does on an assessment of existing connections, the current Data Request and Clarification do not encompass these important markers of ongoing competition in the marketplace.

Competitive providers often upgrade their capacity as a predicate to providing a greater number of connections. For example, MegaPath recently announced that its new nationwide service "offers the broadest coverage of any provider, *with access to 90 percent of businesses* across the U.S."¹⁸ Other providers have announced their expansion of high performance networks in the west to allow for higher capacities.¹⁹

Similarly, TelePacific announced it was expanding its reach to small and medium sized businesses by acquiring a broadband fixed wireless carrier, allowing it "increased availability of high bandwidth products to customers, the ability to provision customers more quickly, and own the 'last mile' which reduces dependence on incumbent local exchange carriers (ILECs). The transaction also strengthens TelePacific's position as the number one

¹⁸ Press Release, "MegaPath's Ethernet Service Provides Small-to-Medium Sized Businesses with a Smart Start for 2011," <http://www.megapath.com> (follow "About MegaPath" to "Press Releases") (Jan. 5, 2011) (emphasis added).

¹⁹ Press Release, "AboveNet Expands Fiber Optic Network in Seattle," <http://www.above.net> (follow "News and Events" to "News and Events Overview") (Dec. 21, 2010) (explaining AboveNet intended to add to its existing fiber optic footprint with an infrastructure of more than 2.3 million fiber miles).

competitor to AT&T and Verizon for SMB customers in the California and Nevada markets.”²⁰

And, Level 3 Communications executives have observed that it has the capacity and plans to target business and other wholesale opportunities in addition to continuing to build to wireless cell sites that reside in its network footprint, noting “why would anyone want to build a network and say I am going to limit my available customers to those that happen to own cellular towers? ...Since the protocols that support it today are IP/Ethernet, why would you not want to pick up every building along the way, every wholesale location and every content location?”²¹

Moreover, as discussed in Part I.A above, the great increase in demand for wireless data has fueled a corresponding growth in demand for services to backhaul that data. Providers are thus rapidly expanding their capacity to serve wireless carriers, and have released plans for increased capacity across the country to “serve the explosive demand for wireless backhaul.”²²

But these types of contemplated, planned competition are simply not captured by the Data Request. To accurately reflect this important competitive aspect, the Commission’s analysis needs to encompass prospective competition and planned capacity.

²⁰ Press Release, “TelePacific Communications to Acquire Fixed Wireless Internet Service Provider Covad Wireless,” <http://www.telepacific.com/about/press/press-releases.asp> (Dec. 22, 2010).

²¹ Sean Buckley, FierceTelecom, “Level 3’s Crowe: Backhaul Represents One of Many Opportunities For Its Fiber Network,” <http://www.fiercetelecom.com/news> (Jan. 6, 2011).

²² Press Release, “FiberTower and Zayo Enter Into Long-Term Fiber Network Agreement,” <http://www.zayo.com> (follow “Media” to “News”) (Jan. 14, 2011); Press Release, “Lightower Fiber Networks to Acquire Open Access Inc.,” <http://www.lightower.com/lightower-fiber-networks-to-acquire-open-access-inc/> (Dec. 13, 2010).

Nor does the Data Request seek information concerning all areas in the MSA where competitive providers offer or are capable of providing high-capacity services. Yet those areas are additional, current, sources of competition. On that basis, the Data Request should have – rather than just focusing on existing connections – also specifically requested information to gauge providers’ service offerings.

Similarly, the Data Request should have requested information about competitive providers that may have submitted bids to provide backhaul services to wireless providers or wholesale services to other providers, evidencing their ability to provide those services in particular areas or locations. And, the Request should have requested data or maps that show the geographic areas where a provider plans to offer retail or wholesale high-capacity services, in the near future (i.e., next two years), and information identifying the nature and type of such services.

Finally, even setting aside the issues of voluntariness and competitive scope, the Data Request as drafted does not include a sufficiently recent time frame. The Data Request seeks information as of December 31, 2009. But given the dynamism of this marketplace, that year-old data is at best stale, and at worst fails to reflect even the changes in the market that have already occurred. Moreover, some companies may not have databases that allow data to be produced on a calendar year basis. Thus, Verizon is providing more current data in its responsive data production than is requested, both because of the way its databases are organized and also to attempt to provide the Commission with useful information. Other respondents may not do so; as such, any future or supplemental data requests should include requests for more current data updated to give a fresh view of the market.

C. The Data Request Fails To Address Other Important Sources of Competition

Third, the Data Request is unfortunately narrow and fails to capture key competitors in the marketplace for special access facilities. By failing to seek data concerning all forms of collocation, the Request fails to provide a mechanism for accurately gauging the existing competition.

While the Data Request seeks information regarding “each incumbent LEC wire center where your company is collocated in each Listed Statistical Area,”²³ the Request ignores other collocation arrangements. Examining only collocations at ILEC wire centers understates the level of competitive activity since collocation may also occur at non-ILEC locations (e.g., at “carrier hotels” or at CLEC interconnection points). In these instances, companies may interconnect with other CLECs or with end users at these locations, signifying points where the companies have invested equipment in other premises and are able to compete in those areas. These collocations at non-ILEC locations may be substantial.

[BEGIN HIGHLY CONFIDENTIAL]

²³ See Data Request III.B.2.

[END HIGHLY CONFIDENTIAL] To accurately assess the market, therefore, the Commission should request information for all types of interconnection and collocation arrangements.

The Data Request also does not specifically seek information about competition using other providers' facilities, or about the connections that competitive providers sell to other providers on a wholesale basis. But this is an important piece of the market: from the customers' perspective, they offer real competition; indeed, they may include many times more buildings than those asked about in the Data Request. For example, Verizon is competing successfully selling high-capacity services on connections it does not own. As of October 2010, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] These types of circuits will not be reported by other providers in response to the Data Request, and information regarding them should be specifically sought in later requests.

D. The Current Data Request, Even as Clarified, Remains Vague and Subject to Misinterpretation

As noted by other parties,²⁴ several of the terms in the current Data Request remain vague, undefined, or subject to misinterpretation. As such, responsive data is apt to be subject to distortion as individual respondents construe each term or request differently. Absent

²⁴ See, e.g. Letter from Glenn Reynolds, United States Telecom Association, to Marlene Dortch, FCC, *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593 (Dec. 1, 2010).

conformation, data submitted may not be able to be fairly compared or utilized, or may introduce unwarranted inaccuracies into such comparisons.

Importantly, the Data Request is ambiguous as to whether it is seeking information about wireless backhaul self-supply. As discussed above, there has been an explosion in demand for wireless backhaul, fueled by growth in wireless data services. A substantial portion of this demand is fulfilled by self-supply. For example, Clearwire has noted that it expects roughly 80% of its backhaul to be served by buying its own microwave equipment and using unlicensed spectrum rather than contracting with a third party wireless backhaul provider.²⁵ Similarly, Verizon Wireless self-supplies a portion of its own backhaul, e.g. using microwave to provide backhaul services. But the Data Request, even as clarified, does not clearly seek any information about this area of the marketplace since Request III.C.5 is ambiguous as to whether it includes self-supply. While Verizon is providing such information as available, other providers may not. Thus, future data requests should expressly include requests for information about the extent to which wireless providers self-supply their own backhaul services.

Next, Data Request item III.B.3 requests “a map of the routes followed by fiber that constitute your network” as well as “a map of the routes followed by fiber connecting your network to end-user locations.” But maps solely of fiber facilities do not accurately mirror the competitive marketplace. The Commission should clarify that it is seeking maps of all competitive facilities, regardless of medium, rather than just maps of competitive fiber.

²⁵ See J. Hodulik *et al.*, “UBS Investment Research, Clearwire Corp: Launching in an Unclear Environment,” at 13 (Dec. 19, 2008). Note that more recently Clearwire has stated it is also using third party suppliers. However, this only fuels the need to gather data on the prevalence of self-supply to better understand what is happening in the marketplace.

Additionally, in Data Request items III.B.1 j and k, the Commission requested “Total capacity (upstream and downstream)” and “Maximum total capacity (upstream and downstream)” of the connection. What is unclear, however, is whether that requests the summed capacity (which should be symmetrical for dedicated high-capacity services), as is requested in items III.E.1.c and d (which request that capacity information be listed by total capacity “upstream plus downstream”). In this instance, Verizon treated the request as seeking a summed capacity, but other respondents may have different interpretations. Future requests should clarify whether the Commission is requesting summed capacity in both instances.

II. THE DATA REQUEST IS PROCEDURALLY UNSOUND

The Data Request also is procedurally unsound. The Commission failed to follow the appropriate procedures under the Paperwork Reduction Act of 1995, Pub. L. No. 10413, which requires OMB approval for requests such as these. Although the Data Request states that it is not seeking the type of qualifying “information” that is subject to OMB review, that conclusion cannot be squared with the scope and nature of the Commission’s Data Request.

The Paperwork Act requires OMB approval for all the “collection of information,” which is defined as the “obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” 44 U.S.C. § 3507(a)(2); see also 5 C.F.R. § 1320.3(c). OMB regulations further define “information” to include “requests for information to be sent to the government, such as forms . . . written reports . . . and

surveys.” 5 C.F.R. 1320.3(h). The information sought here qualifies under this definition. The Commission provides detailed instructions of the type and format of data to be provided, even providing “templates for responses,” including requests for information in granular detail.

The contrary view taken in the Data Request appears to be based on the view that, because the Request is “voluntary,” it does not qualify as “information” under OMB regulations.²⁶ First, as noted above, the PRA requirements on their face specifically apply to “voluntary” submissions. *See* 44 U.S.C. § 3507(a)(2). Second, while the PRA requirements do not apply to “general solicitations of comments,” 5 C.F.R. §1320.3(h), the solicitation here goes well beyond that exclusion. The Data Request is a specific request for defined data, tantamount in nature and scope to other types of requests that the Commission has previously concluded were subject to OMB review.²⁷ The Commission should have taken the same approach here, and should follow these obligations in any supplemental requests.

III. ADDITIONAL DATA REQUESTS WILL BE NECESSARY TO CAPTURE A COMPLETE AND ACCURATE DEPICTION OF THE MARKETPLACE

Given the limitations on scope and the voluntary nature of the Data Request, the Commission will not receive sufficient data to assess competition in the MSAs at issue. Absent comprehensive submissions, the Commission will not be able to fairly assess the state of market competition. Thus, in a follow-up request, the Commission should compel data

²⁶ *See, e.g.*, Data Request, n. 7.

²⁷ *Compare, e.g.* Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested, *Residential Fixed Broadband Services Testing and Measurement*, OMB Control Number 3030-1139, 75 FR 48334 (Aug. 10, 2010) (regarding the Commission’s request for voluntary submission of data regarding hardware based test and analysis of broadband connections).

from competitive providers that refuse to provide it voluntarily. That mechanism should include supplemental, mandatory data requests to providers who do not provide data in this round, or who provide responses that are shown to be inadequate, as well as additional requests for current data and for data regarding prospective and self-supply capacities. Supplemental requests should specifically seek information concerning all areas in the MSA where competitive providers currently offer or are capable of providing high-capacity services, including prospective plans to offer such 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 and any self-provision of backhaul services.

CONCLUSION

While the current data request is a welcomed step in the right direction, it is insufficient and will not produce an accurate portrayal of the current state of competition in the marketplace. The Commission therefore needs to supplement the information collected prior to making any substantive changes in regulation.

Respectfully submitted,



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