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EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

On Wednesday, September 5, 2012, Robert Barber and the undersigned of AT&T and David Lawson of Sidley Austin LLP, met with Eric Ralph, Nicholas Alexander, Elizabeth McIntyre, William Layton, Steve Rosenberg, Luis Reyes, Jamie Susskind, and Kenneth Lynch of the Commission's Wireline Competition Bureau and Jack Erb of the Commission's Office of Strategic Planning and Policy Analysis to discuss the Commission's recent decision¹ to issue a comprehensive data collection order as part of its continuing investigation of the special access marketplace.

During the meeting we emphasized the dramatic changes that have occurred in the special access marketplace over the last several years and the need for the upcoming data collection effort to gather information that fully reflects these changes. We discussed how the wireless industry's shift to fiber Ethernet backhaul has accelerated rapidly in an effort to keep up the exploding demand for mobile broadband services. We also discussed how competition has increased in the small/medium sized business market as cable companies and CLECs continue to become important providers of Ethernet services as replacements for the legacy TDM-based special access services that are the subject of this proceeding.

We supported the Order's conclusion that any analysis of this marketplace must be forward-looking and include all sources of competition, including intermodal and intramodal competition, potential market entrants, uncommitted entrants, carriers that self-supply special access services, and non-facilities-based competition. To that end, the Commission must gather up-to-date and detailed information from all non-ILECs to identify 1) locations of existing facilities, 2) locations other than ILEC wire centers where they interconnect, 3) geographic areas that technically can be served with existing non-ILEC facilities (i.e., not just areas where they are servicing customers today), and 4) locations that can be served in the near future based on existing planning. We emphasized that although the Commission may find it appropriate to provide some flexibility to responders in the form of their responses to its data requests, it is absolutely essential that the Commission collect from *all* competitive providers, large and small, adequate location data regarding not only their existing building connections (whether wireline or wireless), but also their fiber or other "ring" facilities from which such building connections are established. We noted, in particular, that exempting "small" competitors under some sort of "de minimis" exception based upon some purportedly "small" number

¹ In the Matter of *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, FCC 12-92, rel. Aug. 22, 2012, ("Order").

of current building connections in an MSA or nationwide would be particularly misguided and would, in aggregate, produce an incomplete data set that would greatly understate the true level of competitive activity.

We also discussed the value of requesting responses to industry requests for proposal (“RFPs”) demonstrating the extent of competitive offerings available in today’s special access marketplace. We noted recent news reports in which some of the parties involved in this proceeding have extolled the competitive market response to their RFPs for fiber, IP-based backhaul to replace their largely copper, TDM-based special access backhaul, citing multiple vendors for their backhaul contracts.²

We noted that the Order’s finding that MSA-wide relief is overbroad fails properly to account for the fact that in the MSAs where incumbent LECs have qualified for Phase II pricing flexibility for channel terminations using the Commission’s revenue based collocation triggers, almost all of the MSA-wide special access demand has been in the wire centers relied upon to obtain that pricing flexibility. Indeed, our analysis of Appendix D in the Order finds that in the approximately one third of MSAs where the Commission has granted Phase II pricing flexibility for channel terminations, the collocation wire centers that justified the MSA-wide relief accounted for, on average, 93% of the ILEC’s special access revenue in the entire MSA (and, in many cases, 95%, 97% or even 100% of MSA-wide demand). That MSA-wide relief extends to areas of an MSA with little or no competitive facilities is obviously of little moment if there is little or no special access demand in those areas. As such, the upcoming data collection effort must take into account the location of special access demand within a particular geography and the corresponding competitive activity driven by that demand.

In addition, because some parties have asserted that various factors impede non-ILEC providers from deploying or extending their own loop facilities to locations in close proximity to their fiber rings, the upcoming data collection order should seek complete and specific data on any such occurrences for all locations encompassed by the request.

Pursuant to section 1.1206 of the Commission’s rules, this *ex parte* notification is being filed electronically for inclusion in the record of the above-referenced proceeding.

Sincerely,



cc: N. Alexander
J. Erb
W. Layton
K. Lynch
E. McIntyre
E. Ralph
L. Reyes
S. Rosenberg
J. Susskind

² Carol Wilson, *Sprint to Reveal Backhaul Contract Winners Friday*, Light Reading, (Oct. 5, 2011), available at http://www.lightreading.com/document.asp?doc_id=213050; Joint Opposition of AT&T Inc., Deutsche Telekom AG, and T-Mobile USA, Inc. to Petitions to Deny and Reply to Comments, *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65 (June 10, 2011), Declaration of David Mayo, ¶¶6-7.