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VIA ELECTRONIC SUBMISSION
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 October 17, 2012, Robert Barber, Jay Bennett and the undersigned of AT&T and David Lawson of Sidley Austin LLP, participated in a telephone discussion with Eric Ralph, Elizabeth McIntyre, Luis Reyes, Jon Reel, and William Layton of the Commission's Wireline Competition Bureau and Jack Erb of the Commission's Office of Strategic Planning and Policy Analysis regarding the forthcoming special access data request. The Commission Staff requested the call to discuss mass-market UNE connections, indefeasible rights of use ("IRUs"), and ILEC pricing data. The discussion of each of these three subjects is reflected below.

Regarding the use of unbundled network elements to connect to individual buildings (*i.e.*, channel terminations), Staff questioned the burden impact of a requirement to exclude mass-market special access connections from the mandatory data request responses. We indicated that if the Commission properly instructs respondents to provide data only for commercial services at capacity levels of DS-1 or higher, then few, if any, mass-market UNE connections would be included in the data. Because AT&T's system records do not contain distinct USOCs for UNE loops that might be used to serve mass market locations as compared to business locations, an affirmative requirement to exclude any mass-market UNE loops having a capacity of DS-1 or higher would require extensive manual review and increase the response burden substantially.

With regard to IRUs, we explained that data requests seeking information about competitive fiber routes and building connections must be broadly framed to elicit complete responses that reflect not only wholly-owned wired and wireless facilities but also all facilities controlled through IRUs. Although there is no single IRU definition, we emphasized that it is essential that the Commission resist the latest CLEC efforts to underreport their facilities by identifying only arrangements with initial terms longer than 10 or even 20 years. Allowing respondents to conceal any arrangements merely because the primary term is less than twenty, ten or even five years would be patently unreasonable and would perpetuate the data deficit

that the mandatory data requests are designed to address. Competitive providers routinely rely upon IRU or similar arrangements that grant them the right to use the extensive fiber facilities of utilities and other companies that have not traditionally competed in the retail (or wholesale) provision of telecommunications services. AT&T's own competitive fiber facilities outside its incumbent service areas, for example, were largely built on IRU arrangements with cable companies or their affiliates. The primary terms of such arrangements vary widely; competitive providers may, for example, negotiate relatively short terms for fiber access to some locations to reflect the duration of their initial contracts with retail customers at those locations.

But whether the term of the arrangement is five years or 20 years, the competitive significance of that fiber connection is the same. At the end of the primary term, the IRU arrangement will either be extended or that fiber will be available to another competitive provider. But unless the mandatory data requests require the current competitive provider that is using the fiber to report it, it is unlikely to show up at all in the data provided to the Commission. That, of course, is precisely why some competitive providers seeking mandatory rate cuts continue to press for these and other data loopholes that would allow them to continue to engage in the "hide the ball" tactics that have characterized their participation in these proceedings for the better part of a decade.

Finally, AT&T addressed the impracticality of attempting to use the data collection process to pursue information concerning specific pricing decisions made by companies in MSAs in which the Commission has granted the ILEC pricing flexibility. Such an effort would not reflect marketplace realities. As AT&T previously has indicated,[1] the data necessary to conduct an econometric analysis that purports to link some observable marketplace measures to the existence of "competitive prices" in particular geographic areas simply do not exist. This is because AT&T's special access customers typically do not limit their purchases to individual MSAs, much less time their purchases to correlate with FCC regulatory decisions. Rather, customers characteristically obtain services when they need them across entire regions under a single, negotiated arrangement. And those arrangements usually include some form of bulk discount that is not directed – and cannot be allocated in a non-arbitrary way – by time or geography, such as to individual buildings, wire centers or even MSAs. Moreover, some such arrangements include non-regulated services other than special access. There is thus no non-arbitrary way to determine a "price" that is specific to any particular location, much less tie that "price" to both a discrete location and a decision by the Commission to grant pricing flexibility there.

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

Respectfully submitted,

cc: J. Erb
W. Layton

[1] Letter from Frank Simone (AT&T) to Marlene H. Dortch (FCC), WC Docket No. 05-25 (Sep. 28, 2012).

E. McIntyre
E. Ralph
J. Reel
L. Reyes